WORKCOVER QUEENSLAND BILL 1996

EXPLANATORY NOTES*

GENERAL OUTLINE

Objective of the Legislation

The objective of this Bill is to introduce a wide range of reform measures to the Queensland workers' compensation system to address financial, regulatory and operational difficulties identified by the Commission of Inquiry into Workers' Compensation and Related Matters in Queensland (the Kennedy Inquiry). The Government has not been able to introduce all of the reform measures foreshadowed by the Minister for Training and Industrial Relations in a Statement to Parliament on 10 July 1996. However, it has been decided in the interests of the workers' compensation system in Queensland that the majority of the proposed reform measures be introduced, even though three key measures have not been implemented.

The Bill effects a total rewrite of workers' compensation legislation in Queensland in a modern drafting style and is structured in a way to simplify administration of the legislation. Key elements of the Bill are designed to:

- introduce measures that will streamline and improve the capacity to manage statutory and common law claims
- strengthen employer and worker obligations in a number of areas
- ensure employers and workers participate in effective rehabilitation and return to work programs
- provide modern and more flexible insurance arrangements for Queensland employers
- establish a new commercially orientated organisation, WorkCover Queensland, as a statutory body to regulate and

* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

administer workers' compensation in Queensland

- provide a framework for the more effective and efficient management of workers' compensation.

Reasons for the Bill

This Bill implements the majority of the recommendations from the wide ranging public inquiry into workers' compensation in Queensland conducted by Mr Jim Kennedy. The recommendations were tabled in Parliament on 10 July 1996 at which time in principle commitment was given by the Government to implement the 79 recommendations as an integrated package to return the Fund to full solvency.

At 30 June 1995, the Workers' Compensation Fund showed a deficit of $114.3M. Amendments to the *Workers' Compensation Act 1990* were passed in 1995 in an attempt to address this deficit. Since that time the financial position of the Fund has continued to suffer significant deterioration. The Kennedy Inquiry determined that the 1995 amendments would not have sufficient impact to return the Fund to solvency.

An Implementation Task Force, established on 23 July 1996, was appointed to oversee the development of the Kennedy Inquiry recommendations. During the implementation of the recommendations, the Task Force has made decisions, reflected in this Bill, on matters which have arisen in both drafting the Kennedy recommendations into the Bill and transferring previous legislative provisions to this Bill.

The most contentious of these recommendations were the proposals for a 15% work related impairment threshold for access to seek damages at common law and the abolition of journey.and recess claims. Despite extensive negotiations and provision of all financial and actuarial data supporting the introduction of this threshold, the Member for Gladstone has made it clear that she will not support the abolition of journey claims, recess claims which occur away from the workplace or the introduction of further restrictions on the rights of workers to seek damages at common law.

As these provisions did not have the support of the Member for Gladstone, they were not included in the Bill. It was also necessary to not implement proposed increases to statutory benefits, namely removal of the nexus between weekly benefits, statutory lump sums and the statutory maximum compensation and the increase of the statutory maximum to

$130,000, without the corresponding savings that would have resulted from the proposed changes to common law, journey and recess claims.

While these omissions seriously diminish the financial impact of the reform package, many aspects of this Bill will assist in addressing the unfunded position.

The establishment of WorkCover Queensland as a statutory body and the distance this will give WorkCover to operate on a more commercially oriented basis is vital to create the right environment for the organisation.

Similarly the introduction of more flexible insurance arrangements will provide business with greater incentives and the necessary tools to better manage workplace injuries and provide greater equity between employers.

Achieving the objective

The Kennedy Inquiry recommendations were designed as a total package to return the Fund to a financially stable and fully funded position, while adequately meeting the needs of injured workers, employers and the wider community. The return to full funding is now not likely to occur in the short to medium term; however, some financial impact will be achieved through the combined effect of a number of the Bill's provisions including the reflection of the shared obligations for safety in the workplace and clarifying those who are, and are not, covered by workers' compensation.

The key regulatory and operational elements of the Bill have been addressed in the provisions that:

- allow self-insurance and introduce the new concept of self-rating to provide more flexible insurance arrangements for employers
- introduce a pre-proceedings process for common law and provisions to ensure that workers take greater responsibility for safety in the workplace and for minimising the effects of their injury
- require large employers to have mandatory workplace rehabilitation programs in place and for employees to participate in these programs to ensure effective return to work after injury.

Alternatives to the Bill

To achieve full funding, it would be necessary to implement the Kennedy recommendation to restrict access to common law via an impairment threshold in this Bill. However, as previously indicated, this provision is not able to be legislated.

If the provisions of this Bill are not implemented, the existing workers' compensation organisation would continue to be part of the Department of Training and Industrial Relations. Mr Kennedy found that the operational efficiency and effectiveness of the Workers' Compensation Division had been constrained by being maintained as a public service bureaucracy, unsuited to the delivery of a modern efficient insurance and compensation system.

In addition, the mechanism for appointment and mode of operation of the current board does not allow for the commercial focus required for such an organisation. It would continue, as Mr Kennedy stated, to be without power, authority or accountability.

Administrative cost to Government

Based on early projections of the unfunded liability as at 30 June 1996 of $290M, Mr Kennedy estimated that if the full package of recommendations was implemented, the Fund would return to full solvency within three years. This was based on a saving of $113M annually. End of year actuarial estimates of the outstanding claims liability as at 30 June 1996 indicate the Fund had an unfunded liability of $312.451M.

With the exclusion of the common law threshold and the abolition of journey and recess claims, the potential savings to the Fund are now projected to amount to $59M a year. This figure includes the capital injection being provided by Government to the Fund of $35M per annum from Consolidated Revenue for a period of three years.

The actuaries advise that should common law claims experience stabilise as at 1 January 1996 levels (i.e. 3610 claims per year at an average settlement of $90,800), full funding would be achieved after June 2006. However, if common law claims experience deteriorates by only a further 10%, full funding will never be achieved.

Consistency with fundamental legislative principles

The area of this Bill which could be seen as inconsistent with fundamental legislative principles is in relation to medical assessment tribunal decisions.

A number of clauses relate to the finality of decisions of medical assessment tribunals and review panels with no right of further appeal. Medical assessment tribunals, consisting of three eminent independent specialists from relevant medical areas, and review panels comprising two tribunal members, are considered by the medical profession capable of making an ultimate medical decision.

The tribunals were originally introduced as a body of final determination of medical matters because of delays in determinations and settlements. As Sir Gordon Chalk stated, when Treasurer of Queensland, during the debate about introducing further tribunals in 1967:

> *To whom would the appeal lie? Obviously it could only be to another Medical Tribunal; it could not be to a lay Tribunal. . If we already have the advice of three eminent Physicians or men [sic] of other professional appropriate status, to whom could there be an appeal?*

Therefore, while these provisions may be inconsistent with fundamental legislative principles, it is considered that the role and authority of medical assessment tribunals and review panels are appropriate and equitable.

Consultation

The Kennedy Inquiry, on whose recommendations this Bill is based, was a wide ranging public inquiry which sought input from all stakeholders and interested parties detailed as follows:

- 229 written submissions were received from stakeholder groups and interested individuals.
- 13 public hearings were held State-wide with attendance from all interest groups.
- Advisory and Consultative Committees, which comprised worker, employer, medical, legal, insurance and financial representatives, assisted the Kennedy Inquiry.

- Mr Kennedy met with the chairs of four medical assessment tribunals.
- Many representations to Mr Kennedy occurred throughout the duration of the Kennedy Inquiry.

On 30 August 1996, the Board's consulting actuaries, Coopers and Lybrand, provided a detailed briefing to a group of major stakeholders regarding the financial position of the Fund and significant impacting factors.

On 9 October 1996, Mr Kennedy provided detailed briefings regarding his findings to Government Members and to a policy advisor nominated by the Leader of the Opposition.

Five Ministerial Statements to Parliament have been presented to keep the House and the Queensland community informed of the progress of the Kennedy reforms and the implementation progress.

The Implementation Task Force consisted of eminent business persons representing a wide range of industries including the insurance, legal and rural industries, as well as Government representatives.

Ongoing consultation has been undertaken with the State Public Service Federation of Queensland (SPSFQ) regarding the transfer of staff from the State Public Service, the award, enterprise bargaining and the transitional arrangements. The SPSFQ will continue to represent many employees of WorkCover.

Extensive consultation has also been undertaken with Government departments including Treasury, Police, Office of the Public Service, Corrective Services Commission, Emergency Services, Families Youth and Community Care and Justice.

NOTES ON CLAUSES

The following notes indicate where clauses have replaced previous sections of.the *Workers' Compensation Act 1990* and where they have changed. If a clause has only been updated according to current drafting practice (including changing workers' compensation board references to

WorkCover, or *Workers' Compensation Act 1990* to *WorkCover Queensland Act 1996*), this is also specified.

CHAPTER 1—PRELIMINARY

This chapter:

- introduces the Bill
- defines the Bill's objects
- outlines and explains basic workers' compensation concepts.

PART 1—INTRODUCTION

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 states that the commencement date for provisions in the Bill is to be proclaimed.

Act binds all persons

Clause 3 states that to the extent that it is able, this Bill binds all persons in Queensland and Australia. This provision is used in most legislation.

PART 2—OBJECTS

Objects of Act

Clause 4 gives an application for this part in that the objects, which are to assist interpretation, are contained in the part.

Workers' compensation scheme

Clause 5 establishes a workers' compensation scheme and outlines the provisions and objects for the scheme.

These objects replace those in section 3 of the *Workers' Compensation Act 1990*. The new objects are designed to refocus the workers' compensation scheme in Queensland on its core business i.e. operating a fully funded injury insurance scheme. The scheme is also to ensure that a balance is maintained between compensation benefits and costs to employers.

This clause states that the workers' compensation scheme is to meet the minimum solvency level required by the *Insurance Act 1973* (Cwlth). Under this Commonwealth legislation, insurance funds are required to hold as free reserves a minimum of 15% of their outstanding claims liabilities. However, current insurance industry practice is to maintain a funding level of well above this level and to hold other special free reserves as necessary. The additional solvency level to be met, which will be set in the regulation, will mirror industry standards.

As at 30 June 1996, the Workers' Compensation Fund had no free reserves and was in a deficit position of $312.5M.

Protection of employers in relation to damages

Clause 6 conveys the protection afforded employers which includes the strengthened provisions for contributory negligence in common law damages actions as referenced in chapter 5 where workers, as well as employers, have obligations to ensure workers' safety.

Administration

Clause 7 outlines the reasons for WorkCover's establishment i.e. to provide efficient and economic administration of workers' compensation.

PART 3—DEFINITIONS

Definitions

Clause 8 replaces section 5(1) of the *Workers' Compensation Act 1990*. The relevant definitions have been moved to a dictionary in schedule 3 and amended where necessary. The dictionary also contains definitions required for the new provisions of this Bill.

PART 4—BASIC CONCEPTS

Division 1—Accident insurance, compensation and damages

Meaning of "accident insurance"

Clause 9 replaces the definition of "accident insurance" previously contained in section 5(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The term is used to refer to workers' compensation coverage for employers to protect against statutory compensation for their workers and damages action taken by their workers at common law.

Meaning of "compensation"

Clause 10 defines "compensation" to clarify a worker's entitlement to statutory compensation in relation to a worker's injury. Compensation does not include amounts paid in relation to damages for which workers have an entitlement under common law.

Meaning of "damages"

Clause 11 defines the term "damages". A worker may sustain an injury because of an employer's breach of the common law or statutory duty of care owed to the worker. The terms "worker", "injury" and "employer" are

defined in chapter 1. In these cases, the injured worker (or dependant of a deceased worker) is then entitled to seek damages from the employer. Damages are pecuniary or monetary recompense for the loss or harm suffered as a result of the employer's breach. Pecuniary recompense may include, but is not limited to, income lost, and medical expenses incurred.

This clause also states that there is no indemnity for the employer under this legislation if the employer is required to protect against their liability by another Act or a law of another State, the Commonwealth or another country. This prevents 'double dipping' by workers who choose where to claim to achieve the better outcome.

Division 2—Workers

Who is a "worker"

Clause 12 amends the definition of "worker" under section 5(1) of the *Workers' Compensation Act 1990* to be an individual who both works under a contract of service (as per the meaning under common law) and is a Pay-As-You-Earn (PAYE) taxpayer for that service.

The new definition of "worker" will clarify who is, and who is not, covered for workers' compensation. It more clearly outlines employers' obligations to their employees, as well as employees' eligibility for compensation benefits, especially for non-traditional employment relationships which have been increasing in frequency in recent years e.g. contractors and labour hire agencies.

The new definition will also:

- assist employers in understanding their obligations because the new definition will be closely aligned with the Commonwealth taxation laws
- present employers with less opportunity for premium avoidance
- allow for more accurate monitoring and auditing of employers
- encourage contract workers to take a greater responsibility for their own actions.

Most people in employment are PAYE taxpayers. Most people who work outside the PAYE taxpaying arrangements do so by choice to gain other benefits. The idea that workers be defined as PAYE taxpayers for the purpose of workers' compensation coverage was canvassed in a discussion paper by the workers' compensation board in April, 1994. It had support from employers and many within the union movement.

The new definition overcomes the need for sections 8 and 9 of the *Workers' Compensation Act 1990* which deemed certain persons to be, and not to be, workers and employers. However, this clause still specifically excludes some persons from being workers even if they are employed under a contract of service and are PAYE taxpayers. Those excluded are:

- directors of corporations, trustees and partners who may elect to be covered by a special contract of insurance with WorkCover under division 3, subdivision 4 of this part
- Commonwealth employees, as coverage exists under the Commonwealth workers' compensation scheme (known as Comcare)
- professional sportspersons as they do not work in a traditional employer/employee relationship and as such it has never been the intention for these sportspersons to be covered by workers' compensation.

Meaning of "PAYE taxpayer"

Clause 13 defines a "PAYE taxpayer" in relation to the definition of a "worker". An employer is required under part 6, division 2 of the *Income Tax Assessment Act 1936* (Cwlth), to make PAYE deductions from amounts paid to a worker for work performed or services provided to the employer.

This definition includes workers who:

- have PAYE tax deducted from their pay, which also includes situations where an employer is making deductions from the worker's pay and purporting to remit them to the Australian Taxation Office
- would have had PAYE tax deducted from their pay, but:
  - deductions have not been made because the worker had only

been employed for a short period and had not yet received any payment for their work

- their payments, combined with any taxation rebates they may be claiming, put them below the PAYE tax threshold

- are not having tax deducted because of special circumstances for which a variation or exemption certificate has been issued by the Commissioner of Taxation.

This will make it clear that employees who are having tax deducted under the Prescribed Payments System (PPS) or who work outside of a PAYE tax paying arrangement are not covered. For persons to be taxed under PPS, they must be set up in their own business. The PPS system is restricted to nine specific industries, with just under half of PPS taxpayers belonging to the building and construction industry. Based on 1993/94 taxation office figures, approximately 95% of individual taxpayers were PAYE taxpayers.

Situations may arise where persons are working in non PAYE taxation arrangements that are in contravention of taxation laws i.e. those who:

- agreed to, or knowingly entered into, such arrangements
- did not have a proper understanding of taxation arrangements e.g. minors or intellectually impaired persons.

In the former situation, it will be clear that the person is not a PAYE tax payer and it is not intended that these persons will be eligible for workers compensation benefits.

In the latter situation, WorkCover may consider a claim from such an employee on the grounds that the employee should have been a PAYE tax payer at the time of injury. The claimant will be required to provide evidence that they have applied to the Taxation Commissioner for a ruling as to whether the claimant should have been taxed under the PAYE system for work being performed at the time of the injury.

A ruling from the Taxation Commissioner may take some time. Therefore, if WorkCover considers the circumstances appropriate, it may pay the claimant compensation in advance under chapter 3, part 8, division 2 and expenses under chapter 4. If the Commissioner subsequently rules that the claimant should not have been a PAYE taxpayer, WorkCover would recover compensation payments from the claimant under chapter 3, part 8, division 6. If the ruling is that the claimant should have been taxed

under the PAYE system at the time of the injury, WorkCover would seek to recover premium and associated penalties from the employer in respect of the worker.

Division 3—Persons entitled to compensation other than workers

Persons outlined in this division may be covered under a contract of insurance with WorkCover even though they are not workers, as defined in the previous division. These persons are not workers because they are not employed under a contract of service. However, if covered under a contract of insurance, as opposed to a policy for a contract of accident insurance, they will have similar statutory entitlements as a "worker", subject to the specific provisions contained under each subdivision.

Subdivision 1—Volunteers etc

This subdivision allows WorkCover to continue to enter into a contract of insurance with certain public authorities, non-profit organisations or similar bodies to cover volunteers and other specified persons who are not workers, as defined in division 2 of this part.

Those covered by these contracts of insurance are not workers and do not have all of the same entitlements as workers. The cover provided under these contracts is for statutory benefits only and does not extend to common law damages.

Entitlements of persons mentioned in sdiv 1

Clause 14 replaces section 35(2) of the *Workers' Compensation Regulation 1992*.and has been changed according to current drafting practice and to clarify its intent. It states that a person who is covered under a contract of insurance with WorkCover under this subdivision has the same entitlement to compensation as a "worker"; however, the cover does not provide for the payment of common law damages.

Counterdisaster volunteer

Clause 15 replaces section 125(1)(a) of the *Workers' Compensation Act 1990*. It allows WorkCover to enter into a contract of insurance with a State counterdisaster organisation or similar public body to cover volunteer members of these organisations. This clause.now lists the volunteers previously covered under section 36 of the *State Counter-Disaster Organisation Act 1975*, which has been amended in schedule 2 of this Bill to reflect this change.

Rural fire brigade member

Clause 16 replaces section 125(1)(b) of the *Workers' Compensation Act 1990*. This clause allows WorkCover to enter into a contract of insurance with the authority responsible for the management of a rural fire brigade to cover members of the rural fire brigade.

Volunteer fire fighter or volunteer fire warden

Clause 17 replaces section 35(1)(c) of the *Workers' Compensation Regulation 1992.* This clause allows WorkCover to enter into a contract of insurance with the authority responsible for the management of fire services in the State to cover volunteer fire fighters or wardens.

Statutory or industrial body member

Clause 18 replaces section 35(1)(b) of the *Workers' Compensation Regulation 1992.* This clause allows WorkCover to enter into a contract of insurance with the authority responsible for a local government, statutory body, industrial union, an association of employers or similar public body to cover councillors, members, delegates or similar persons.

Honorary ambulance officers

Clause 19 replaces section 35(1)(d) of the *Workers' Compensation Regulation 1992*. This clause allows WorkCover to enter into a contract of insurance with the authority responsible for ambulance transport in the State to cover honorary ambulance officers.

Person in voluntary or honorary position with religious, charitable or benevolent organisation

Clause 20 replaces section 35(1)(e) of the *Workers' Compensation Regulation 1992*. This clause allows WorkCover to enter into a contract of insurance with a church, non-profit charitable organisation or benevolent institution to cover volunteers or honorary persons.

Person in voluntary or honorary position with nonprofit organisation

Clause 21 replaces section 35(1)(f) of the *Workers' Compensation Regulation 1992*. This clause allows WorkCover to enter into a contract of insurance with a non-profit organisation to cover volunteers or honorary persons.

Subdivision 2—Persons performing community service etc

Entitlements of persons in sdiv 2

Clause 22 specifies that persons who perform community service or duties as specified in this subdivision for organisations covered by contracts of insurance with WorkCover are not workers, as defined in division 2 of this part, and do not have all of the same entitlements as workers.

The cover given to the organisation by these contracts is for statutory benefits only and does not extend to common law damages.

Persons performing community service or unpaid duties

Clause 23 allows WorkCover to enter into a contract of insurance with the authority responsible for directing the performance of community service or similar unpaid duties as outlined in the clause. This clause now lists the persons previously covered under section 199 of the *Corrective Services Act 1988* and sections 162 and 181 of the *Juvenile Justice Act 1992*, which has been amended in schedule 2 of this Bill to reflect this change.

In section 199 of the *Corrective Services Act 1988*, the person's weekly earnings were deemed for the purpose of the entitlement to weekly

compensation. This deemed rate does not align with any other rate in the *Workers' Compensation Act 1990* and results in substantially higher benefits being paid.

This clause states that persons performing community service or unpaid duties listed who are covered under a contract of insurance with WorkCover have the same entitlement to compensation as a "worker"; however, the cover does not provide for the payment of common law damages.

Subdivision 3—Students

Students

Clause 24 replaces sections 33(1), (2) and (5) and section 34(1), (2), (5) and (6) of the *Workers' Compensation Regulation 1992*. It allows WorkCover to enter into a contract of insurance to cover a student for injury occurring whilst participating in work experience or industry placement. The contract must be with:

- the authority responsible for administering the *Education (Student Work Experience) Act 1978* to cover state school students
- the person having control of a non-State school to cover students over 14 years of age enrolled at the school
- the college attended by an industry placement student to cover the student.

Students are only entitled to lump sum payment of compensation under the regulation and cover does not extend to common law damages.

Subdivision 4—Eligible persons

This subdivision allows WorkCover to offer a contract of insurance to certain persons, referred to as eligible persons, who fall outside the meaning of a "worker". Eligible persons are contractors, self-employed persons, directors, trustees or members of a partnership who perform work or service for payment or other benefit.

The contract of insurance provides personal injury insurance for these eligible persons as individuals. As such, it is different from all other forms

of insurance offered by WorkCover because the persons mentioned in this clause insure themselves.

Such insurance will enable a person such as a contractor, who is not a "worker" under this Bill, to apply to WorkCover for cover equivalent to the statutory benefits provided to a "worker". As the contracts are to cover themselves, common law entitlements do not apply.

Meaning of "eligible person"

Clause 25 defines an eligible person.

Eligible person may apply to be insured

Clause 26 allows WorkCover to enter into a contract of insurance with eligible persons if.WorkCover deems it appropriate.

Entitlements of eligible persons

Clause 27 states that an eligible person who is covered under a contract of insurance with WorkCover under this subdivision, has the same entitlement to compensation as a "worker"; however, the cover does not provide for the payment of common law damages.

Subdivision 5—Other persons

Other persons

Clause 28 allows WorkCover to enter into a contract of insurance with a person to insure against injury sustained to another person.

This provision allows WorkCover to continue to provide cover to the Queensland Principal Club on a commercial basis to cover jockeys and stable hands who were previously deemed to be workers under section 8(7) of the *Workers' Compensation Act 1990.* This coverage has been in place over a long period of time.

In addition, this provision provides scope for WorkCover to enter into other contracts of insurance on a commercial basis. However, the cover under the contract can not exceed the cover provided to a "worker".

Division 4—Spouses, members of the family and dependants

Meaning of "dependant"

Clause 29 amends section 5(1) of the *Workers' Compensation Act 1990* which defines a "dependant" of a deceased worker. Reference to dependants of workers other than deceased workers has been removed as it is no longer required after amendments (in 1995) to the *Workers' Compensation Act 1990* were made to the weekly benefits structure.

Meaning of "member of the family"

Clause 30 defines who is a member of a deceased worker's family for use in the previous clause which defines a "dependant".

Meaning of "spouse"

Clause 31 replaces section 7 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It defines the meaning of "spouse" for a deceased worker.

Division 5—Employers

Meaning of "employer"

Clause 32 defines an "employer" as an entity that employs a "worker". Defining employer clarifies who bears the responsibility for injuries to workers. The definition of employer is aligned with the definition of "worker", as defined in division 2 of this part.

Division 6—Injuries and impairment

Subdivision 1—Event resulting in injury

Meaning of "event"

Clause 33 gives a definition of the term "event" which replaces the previous term "incident". Event is a more recognised term in the insurance

industry than incident. It is used in determining the maximum compensation payable to a worker under chapter 3, part 6.

An event includes continuous or repeated exposure to substantially the same conditions that results in an injury (e.g. industrial deafness) or a latent onset injury (e.g. asbestosis). It can also result in injuries to a number of persons such as in a catastrophe.

Subdivision 2—Injury

Meaning of "injury"

Clause 34 replaces section 6 of the *Workers' Compensation Act 1990*. It explains the meaning of "injury".

This clause changes the requirement for employment to be 'a significant contributing' factor to the injury to 'the major significant factor' causing the injury. The former requirement was added to the definition in 1994 in an attempt to exclude those injuries where the relationship of the injury to employment was only minimal and for which employers were held responsible.

Determining what 'a significant contributing factor' means has been difficult for claims staff. Courts have applied a lenient interpretation to 'a significant contributing factor' such that this 1994 addition has become less meaningful.

Changing 'a significant contributing factor' to 'the major significant factor' is designed to achieve what the 1994 amendment has not i.e. to exclude those injuries which have only a minimal work related component.

The exclusion criteria from the definition of injury in section 6(3) for psychiatric or psychological conditions have been strengthened in response to an increasing number of claims where remedial action regarding a worker's poor work performance (one example of reasonable management action) was the stimulus for the claim.

Amendments to the definition of injury were introduced in January 1996 in an attempt to control this trend. However, under these amendments, employers have still been held responsible for claims where reasonable

management action had been taken. This is considered to be inappropriate, especially when a worker may have a pre-existing disposition to psychiatric or psychological disorder.

This clause now requires regard to be had, when making a decision about the reasonableness of the management action, about how a worker of ordinary susceptibility would have reacted. A 'reasonable person test' has also been introduced so that consideration must be given to whether a reasonable person in the same employment would have been expected to sustain the psychiatric or psychological disorder.

This clause also excludes psychiatric or psychological injuries that result from action being taken by WorkCover, or a self-insurer, in relation to the management of a worker's compensation claim including rejection of the claim or cessation of an entitlement.

Subdivision 3—When injury arises out of, or in the course of, employment

Application of sdiv 3

Clause 35 replaces section 91(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It states that the circumstances listed in this subdivision do not preclude other circumstances that would be considered to be work related i.e. that have arisen out of, or in the course of, employment.

Injury while at place of employment or another place of employment

Clause 36 replaces section 91(2)(a) of the *Workers' Compensation Act 1990*. It has been changed to be updated according to current drafting practice. It outlines specific instances that are considered to be work related i.e. when an injury is taken to arise out of, or in the course of, employment. These instances include recess claims at or away from the workplace.

Other circumstances

Clause 37 replaces section 91(2)(b) of the *Workers' Compensation Act 1990*. It outlines further circumstances when an injury is taken to have

arisen out of, or in the course of, the worker's employment. The clause has been changed:

- to clarify where a journey commences and ends i.e. at the boundary of the property on which the worker's home is situated. This change is designed to remove the possibly fraudulent journey claims that arise on a worker's property e.g. getting into the car, falling down the front stairs or tripping in the front yard.
- to specify that a journey must be by the shortest convenient route
- to remove previously superfluous provisions which would be work related and as such covered by the previous clause i.e. receipt of wages, place of pick up
- according to current drafting practice.

Injury that happens during particular journeys

Clause 38 replaces section 92(2) of the *Workers' Compensation Act 1990* which only excluded journey claims because of a substantial interruption or deviation during a journey. The circumstances when journey claims are not payable have been expanded to include where the event causing the injury was partly or wholly caused by the fault of the worker i.e. a worker's.action. Examples of this action may be driving a vehicle under the influence of alcohol or a drug or one that resulted in the worker being convicted of a traffic offence e.g. driving through a red light. These exclusions will limit employers' responsibility for claims where the worker is directly responsible for the injury.

Subdivision 4—Impairment from injury

Meaning of "impairment"

Clause 39 replaces the definition of "impairment" contained in section 5(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice.

Meaning of "permanent impairment"

Clause 40 replaces the definition of "permanent impairment" contained in section 5(1) of the *Workers' Compensation Act 1990.* No changes have been made to this section. The degree of "permanent impairment" is assessed when an injury is stable and stationary in accordance with the table of injuries for determining a lump sum entitlement and work related impairment.

Meaning of "work related impairment"

Clause 41 defines work related impairment. The formula for determining "work related impairment" is:

$$\text{work related impairment (WRI)} = \frac{\text{lump sum entitlement* x 100}}{\text{statutory maximum compensation i.e. \$103,100}}$$

* lump sum entitlement is obtained from the degree of permanent impairment assessed under the table of injuries.

The level of a worker's WRI, or the WRI which could result, needs to be known in order to determine:

- whether the worker has to irrevocably elect between a lump sum and access to common law
- the level of weekly benefits after two years
- entitlement to, and the amount of, additional lump sum benefits
- if compensation is still payable despite the injury being caused by the worker's misconduct.

The work related impairment for items on the table of injuries will now be listed as a new column on the table in the regulation.

Subdivision 5—Certificate injury

Meaning of "certificate injury"

Clause 42 replaces section 6A of the *Workers' Compensation Act 1990.* It has been changed according to current drafting practice and to include the concept of work related impairment.

A "certificate injury" is one that has resulted in a work related impairment of 20% or more for either a physical or psychological/psychiatric injury, but not a combination of both. It is used in chapters 3 and 5 to clarify which workers have to irrevocably choose between common law access and an impairment lump sum and for which workers certain provisions about costs apply. Workers who have sustained a certificate injury do not have to make an irrevocable election.

Subdivision 6—Non-certificate injury

Meaning of "non-certificate injury"

Clause 43 introduces the term "non-certificate injury" as one that has resulted in a work related impairment of less than 20% (including 0%) for either a physical or psychological/psychiatric injury. It is used in chapters 3 and 5 to clarify which workers have to irrevocably choose between common law access and an impairment lump sum and for which workers certain provisions about costs apply. Workers who have sustained a non-certificate injury have to make an irrevocable election.

Division 7—Rehabilitation

Meaning of "rehabilitation"

Clause 44 defines "rehabilitation" of a worker as necessary and reasonable services (either by a registered person or as approved by WorkCover or a self-insurer) or suitable duties programs to enable a worker to return to their pre-injury employment and to maximise their capacity to function independently. It includes the provision of necessary and reasonable aids or equipment to the worker.

This definition has been included in the Bill to allow a common understanding of rehabilitation by all parties. A standard for rehabilitation has been included in the regulation to ensure that workers receive an appropriate level of rehabilitation to assist in their return to work.

Meaning of "rehabilitation coordinator"

Clause 45 defines "rehabilitation coordinator". It specifies that rehabilitation coordinators must have attended a WorkCover approved workplace rehabilitation course and have a current certificate issued by WorkCover. This is to ensure that coordinators have at least a reasonable level of knowledge in order to undertake their duties.

Meaning of "suitable duties"

Clause 46 defines "suitable duties". It provides clear guidelines for employers and workers in establishing return to work programs. An example of where it would not be considered reasonable to expect a worker to attend another location for alternative duties would be an injured worker who lives on the Gold Coast and works in the Southport store of a large retail chain being directed to attend at the chain's Caloundra store.

Meaning of "workplace rehabilitation"

Clause 47 defines "workplace rehabilitation". Employers' and workers' obligations in this regard are outlined under chapter 4.

Meaning of "workplace rehabilitation policy and procedures"

Clause 48 defines "workplace rehabilitation policy and procedures". This clause ensures that.employers have workplace rehabilitation policy and procedures of a suitable standard. This standard will be assessed through a WorkCover accreditation process.

Meaning of "accredited workplace"

Clause 49 defines "accredited workplace" as a workplace that has workplace policies and procedures accredited by WorkCover, which would include having coverage by a rehabilitation coordinator.

CHAPTER 2—EMPLOYER'S OBLIGATIONS

This chapter specifies an employer's obligations to insure their workers against workplace injury. It includes:

- the responsibilities of employers
- insurance requirements including the setting of premiums
- alternative insurance arrangements i.e. self-insurance and self-rating for employers.

PART 1—EMPLOYER'S LEGAL LIABILITY

Employer's legal liability

Clause 50 sets out the fundamental principle of workers' compensation insurance i.e. an employer is responsible for workers' compensation benefits payable to a worker injured in the course of their employment.

It amends section 44(1) of the *Workers' Compensation Act 1990* according to current drafting practice and by inserting a subclause to clarify that this Bill does not impose any legal liability.on an employer under common law.

An employer is not responsible for common law damages under this legislation but independently through common law. This legislation states:

- an employer is to be insured with WorkCover against common law damages
- WorkCover is to provide insurance for common law actions against insured employers
- access provisions and matters to be considered in the awarding of damages to apply when a "worker" (as defined under chapter 1, part 4, division 2) takes an action against an "employer" (as defined in chapter 1, part 4, division 5).

WorkCover's liability confined to compensation

Clause 51 replaces section 195 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. For workers other than those employed by WorkCover, it specifies that WorkCover's liability is confined to compensation of the worker. As such, WorkCover is not to be considered as the employer of such a worker. WorkCover is not liable to pay superannuation or other employer obligations for the worker being compensated.

PART 2—EMPLOYERS' INSURANCE REQUIREMENTS

Division 1—General obligations

Employer's obligation to insure

Clause 52 replaces section 44 (2) and (3) of the *Workers' Compensation Act 1990*. It specifies that an employer is required to be insured with WorkCover for their legal responsibility to pay compensation and common law damages to a worker as a result of injury in the course of employment. The clause also specifies that an employer's liability can be provided for through self-insurance.

It has changed:

- to allow for self-insurance
- to exclude the obligation to insure for certain damages e.g. exemplary damages
- according to current drafting practice.

Exemption if employer has other insurance

Clause 53 introduces a discretionary power for the WorkCover board to decide that workers' compensation insurance not be required by a particular Queensland employer in circumstances where cover is already provided under some other Act. In making a decision on an employer's application in this regard, the WorkCover board has a duty to ensure that workers are not

significantly disadvantaged by such a decision and that the decision is in the interests of the overall Queensland scheme, employers and workers.

Employers of seafarers who hold workers' compensation insurance with the maritime industry's workers' compensation scheme under the *Seafarers Rehabilitation and Compensation Act 1992* are a typical example of the type of employer who might be exempted.

Division 2—Contravention of employer's general obligation and associated provisions

When an employer contravenes the general obligation to insure

Clause 54 replaces section 49(1) of the *Workers' Compensation Act 1990*. It has not been changed except for being updated according to current drafting practice and to exclude self-insurers. The clause states when an employer has failed to fulfil their obligation to insure for workers' compensation i.e. when an employer does not hold or maintain a policy.

Offence of contravening general obligation to insure

Clause 55 replaces section 49(2) and (3) of the *Workers' Compensation Act 1990.* It creates an offence for an employer who has failed to fulfil their obligation to insure for workers' compensation. The clause has been updated according to current drafting practice and the penalty has been increased from 100 to 275 penalty units to reflect the seriousness of the offence. The penalty is intended to encourage all employers to meet their obligations to insure and therefore contribute to meeting the costs of workplace injury. The continuing offence penalty has been.removed because of this increased penalty.

Offence to charge worker for compensation or damages for injury

Clause 56 replaces section 193(1) of the *Workers' Compensation Act 1990*. This provision prevents persons from obtaining amounts from the worker to cover the cost of workers' compensation insurance i.e. an employer deducting the workers' compensation premium cost of employing workers from the worker's wages. This clause introduces a

maximum penalty for this offence of 20 penalty units which was the penalty which could be imposed under section 196(1) of the *Workers' Compensation Act 1990*.

Recovery of unlawful charge for compensation or damages for injury

Clause 57 replaces section 193(2) and (3) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. This provision allows workers who have had monies taken from them in contravention of the previous provision to be recovered by the worker as a debt from the worker's employer or the person who took the money.

PART 3—INSURANCE UNDER WORKCOVER POLICIES GENERALLY

Division 1—Premium setting generally

Setting of premium

Clause 58 replaces section 51A of the *Workers' Compensation Act 1990* and outlines how premiums are to be calculated. It has changed to allow for:

- the premium payable for a policy, other than a self-rated policy, to be calculated according to the 'method' and 'rate' specified by WorkCover in an industrial gazette notice
- the right of review for employers who are aggrieved by WorkCover's premium assessment
- current drafting practices.

Prior to this Bill, premium rates were outlined in the regulation. The gazetting of the 'method' and 'rate' for assessing premium will allow the WorkCover board more autonomy to set premiums on a commercial basis.

Before publishing a gazette notice for the above purpose, WorkCover must notify the Minister of the proposed specification of methods or rates.

If the Minister objects to WorkCover's intention to alter premium assessment methods or rates, the Minister can exercise a reserve power to give directions to the board in the public interest (under chapter 6).

The new method of calculating premium is to be based on a combination of an employer's predominant industry rate and an employer's previous claims history in an experience premium rating system.

It is not intended that this clause will apply to self-raters.

Setting premium on change of ownership of business

Clause 59 is a new clause introducing what is commonly known as 'succession rules'. When a business or part of a business changes ownership—providing the predominant activity and location of the business remain the same—the claims experience of the previous employer is to be taken into account when determining the premium rate for the new employing entity. This effectively means that the claims experience of a business should be taken into consideration by any prospective buyer of a business.

Succession rules provide an added incentive for employers to improve accident prevention and rehabilitation due to the claims experience forming a part of the valuation of the business.

In the past, some employers have been able to manipulate ownership of a business to avoid premium increases e.g. demerit charges or loss of merit bonus. This provision will significantly reduce such avoidance.

Reassessment of premium for policy

Clause 60 clarifies WorkCover's ability to review premium assessments and specifies a period of up to three previous years for which reassessments may be undertaken. In WorkCover's auditing process, it may be found that the premium paid by an employer does not correctly reflect the employer's responsibility for compensation, creating a need for the premium to be recalculated. Some examples where reassessment of premium may be required are where:

- premium has been overpaid e.g. in default assessments

- premium has been underpaid e.g. wages incorrectly declared by the employer
- the rate applied for the assessment of the premium did not reflect the industry or business of the employer.

An employer who is not satisfied with the amount of premium assessed by WorkCover may apply to have the decision reviewed in accordance with chapter 9.

Division 2—Assessments on contravention of general obligation to insure

Recovery of compensation and unpaid premium

Clause 61 replaces section 50 of the *Workers' Compensation Act 1990.* It allows WorkCover to recover premium, claims costs, damages paid and penalties from employers who have failed to meet their obligations to insure for workers' compensation. The clause has been updated according to current drafting practice and changed to conform with the new review provisions under chapter 9.

Default assessment on reasonable suspicion

Clause 62 replaces sections 53 and 54 of the *Workers' Compensation Act 1990.* It allows WorkCover to make a default assessment in accordance with the prescribed method and rate if an employer fails to declare wages for a period of insurance.

A default assessment is calculated by WorkCover based on nominal wages that WorkCover considers to be the probable wages paid by the employer to workers during the period of insurance. These assessments are made for uninsured employers or employers who have failed to maintain their policy by not lodging their declaration of wages by 31 August.

This clause amends the previous sections according to current drafting practice and to give employers the right to apply for review of a decision on an objection to a default assessment.

Further assessment and recovery after payment of default assessment

Clause 63 introduces a provision to clarify that WorkCover can reassess a default premium when further information becomes available, even if the employer has already paid the default assessment.

Employer's separate liabilities for 1 period of default

Clause 64 replaces section 59 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It allows WorkCover to issue a default assessment of premium to an employer who has failed to fulfill their obligation to insure. WorkCover may recover the unpaid default premium as a debt whether or not the employer has been prosecuted for failure to insure.

Division 3—Additional premiums

Additional premium payable if premium not paid

Clause 65 replaces section 60 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice.

WorkCover may charge an employer an additional premium for late payment of premium under the regulation as follows:

- if payment is made within 30 days of the due date, 5% of premium is charged
- if payment is made between 30 and 60 days of the due date, 10% of premium is charged
- if payment is not made within 60 days, 10% of premium plus additional interest is charged.

An employer is not covered by a policy until the premium and any additional premium is paid.

Further additional premium payable after appeal to industrial magistrate

Clause 66 replaces section 61 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice.

Where an employer's appeal in relation to an assessment has been determined before the industrial magistrate or Industrial Court, and where the industrial magistrate or Industrial Court has ruled an increase in premium due to WorkCover, the employer must pay this premium within 21 days after the decision. If the premium is not paid within the 21 days, an additional premium for late payment is payable by the employer.

The employer is not considered covered by a policy until the employer has paid the full amount of premium plus the additional premium.

Additional premium for out-of-State workers

Clause 67 replaces section 62 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows WorkCover to charge an additional premium to cover workers who work out of the State.

WorkCover may waive or reduce additional premium

Clause 68 replaces section 204 of the *Workers' Compensation Act 1990*. It has been updated according to current drafting practice and changed to allow employers the avenue for review of WorkCover's decision.

Division 4—Employer's liability for excess period

Meaning of "excess period"

Clause 69 defines "excess period" which replaces the "prescribed period" definition in section 123A of the *Workers' Compensation Act 1990.* The calculation of the period (up to 4 days) is to be outlined in the regulation to clarify the original intent of the excess period especially for part-time and casual workers. The calculation of the excess period will be subject to the worker's:

- contract of service with the employer when the injury happened
- continuing incapacity because of the work related injury.

Example 1: For a worker who is employed five days a week, the excess is four days, subject to the worker's incapacity extending to at least four days.

Example 2: For a worker who is employed on a casual basis for two days a week, the excess is two days.

Example 3: For a worker who is employed for one day only, the excess is one day.

Employer's liability for excess period

Clause 70 replaces section 123A of the *Workers' Compensation Act 1990*. It outlines the requirements for injured workers to be paid a period of up to the first four days period of weekly compensation by employers (other than employers of household workers) and the procedures to be followed if an employer fails to pay. The actual number of days to be paid by employers is to be calculated under the regulation.

The clause has been amended to include the ability for employers to request review under chapter 9 and updated according to current drafting practice.

Employer may insure against payment for excess period

Clause 71 introduces a buy-out option for employers to insure against the excess. The option will be able to be taken out from the date of renewal for existing polices and for new policies from the policy's commencement date. The buy-out insurance applies to all injuries incurred during the period for which the buy-out extends.

PART 4—SELF-RATING

Division 1—Preliminary

This part introduces a flexible insurance option called self-rating where employers who can satisfy certain criteria may apply to be registered as a self-rater. Under this option:

- employers have their premium assessment based on their own claims experience and not modified by the performance of the industry to which they belong (as with other policyholders)
- WorkCover may allow the employer to undertake different levels of self management of statutory claims under WorkCover's supervision.

What is self-rating

Clause 72 outlines the concept and framework of self-rating including:

- registration requirements
- premium assessment by WorkCover
- the provision of functions and powers to a self-rater
- supervision by WorkCover.

Division 2—Issue of registration of self-rater

Who may apply to be a self-rater

Clause 73 describes that a single or group employer (as defined in schedule 3) may apply to be registered by WorkCover as a self-rater if requirements, as detailed in this part, are met.

To ensure that all individual companies within a group of companies (i.e. related bodies corporate) are included in a group registration, such companies can not apply as single employers. All related companies must apply as part of one group registration. This is to ensure that a member of a group of companies with poor claims performance can not be excluded from a group employer application. However, a related body corporate may apply as a single employer if it is the only member of its group employing workers in Queensland.

Premium and surcharge payable

Clause 74 outlines that self-raters must pay a premium and surcharge in the way and at a time.prescribed by the regulation.

The premium payable will be based on an actuarial assessment of the self-rater's estimated claims liability plus administrative costs incurred by WorkCover. Self-raters may apply for the premium calculation to be reviewed if they disagree with their premium assessment.

All policy holding employers, including self-raters, are required to pay a 6.4% surcharge on gross premium as payment towards recouping the unfunded liability of the Fund.

Issue of registration to a single employer *(Clause 75)* and

Issue of registration to a group employer *(Clause 76)*

These clauses outline the criteria required by WorkCover to establish if a single or group employer's self-rating registration is to be issued. The criteria are required for specific reasons:

- To protect against volatility of premium, self-raters must be of sufficient size. Hence the requirement for at least 500 workers and a minimum deemed premium of $1M. For smaller employers a moderate increase in claims could cause a dramatic increase in premium from one period of insurance to the next. Deemed premium will be calculated as prescribed in the regulation and is intended to be a reflection of the self-rater's premium as if the gazetted industry rates are applied to their wages.
- The registration must cover all the self-rater's Queensland workers to ensure that a self-rater can not selectively exclude high risk employees.
- The provision of an unconditional bank guarantee or cash deposit is necessary to provide protection for WorkCover in the event of a self-rater failing and having unpaid premium or the premium charged later being found to be inadequate.
- Workplace rehabilitation criteria are specified to ensure adequate rehabilitation systems operate within the self-rater's organisation.
- The self-rater must be fit and proper, as defined in this part, to be able to be registered. This is to ensure that any other relevant matters are taken into consideration when determining eligibility.

For group employers, the employer must satisfy the definition of group employer under schedule 3. In determining the number of workers and

deemed premium for a group employer, an aggregate of all group members must be used.

Calculation of the number of fulltime workers

Clause 77 details the calculation of the number of fulltime workers (for the purpose of self-rater registration criteria). In the calculation, employers can choose a continuous six month period from the year prior to the application. Employers, especially those who employ on a seasonal basis, can choose the six month period which produces the best calculation result for them.

The calculation allows total ordinary time hours to be used including part-time and casual hours and is based on a fulltime worker employed for 35 hours per week. This is the number of hours per week set in the National Data Set for compensation statistics (established by Worksafe Australia) to define a fulltime worker.

Workers employed in Queensland

Clause 78 specifies that for the purposes of registering self-raters, a worker is taken to be employed in Queensland if the worker would have an entitlement to compensation for an injury under chapter 3, part 2, division 2 (Entitlement in relation to a place where injury is sustained).

Whether applicant fit and proper

Clause 79 outlines the matters considered 'fit and proper' for the purposes of registering self-raters. The employer must have complied with the *Workers' Compensation Act 1990* or this Bill e.g. paid annual premium by the due date and lodged all returns as required.

To determine if a self-rater is to be given powers and functions to manage claims, the employer must satisfy WorkCover that it has:

- adequate resources and systems to manage claims (including appropriately trained staff situated in Queensland) and a demonstrated ability to provide rehabilitation of a suitable standard

- the ability to supply the required data in the appropriate format, to enable WorkCover to maintain records of and to monitor claims and rehabilitation management performance.

WorkCover may consider any relevant matter in determining whether an employer may be registered.

Audit of self-rater

Clause 80 gives WorkCover, or suitably qualified or experienced persons they may engage, the authority to carry out an audit to assist WorkCover in deciding whether to register or continue to register an employer as a self-rater.

Refusal of application for registration

Clause 81 sets out the process by which an employer may seek review if an application for self-rating registration is refused.

Duration of registration

Clause 82 outlines the duration of registration for a self-rater as being until it is cancelled. As both WorkCover and the self-rater have the power to cancel a registration, it is not necessary to place a time limit on the registration.

Conditions of registration

Clause 83 allows WorkCover to impose, and set guidelines for, conditions on a self-rater's registration. Some conditions may be negotiated between WorkCover and the employer. Conditions will include the powers and functions given to the self-rater as well as any other specific conditions which are considered appropriate due to the unique circumstances of an individual self-rater.

Bank guarantee or cash deposit

Clause 84 outlines the unconditional bank guarantee or cash deposit requirements for self-raters. This guarantee or deposit is required to protect

WorkCover in the event of a self-rater failing and having unpaid premium or the premium charged later being found to be inadequate.

An annual actuarial assessment of the self-rater's estimated claims liability will be undertaken to ensure that the bank guarantee or deposit is of sufficient size. An annual assessment is required as the frequency and cost of claims can change regularly e.g. due to changes in worker numbers, the emergence of certain injury patterns or the risk categories of workers.

The actuarial assessment will estimate:

- the future cost of new claims that are likely to be incurred during the year, plus
- the remaining cost of previous years' claims incurred since the commencement of the registration, less
- the cost of the self-rater's claims likely to be paid during the year.

The minimum level of bank guarantee or deposit of 50% of estimated outstanding claims liability is considered an appropriate level to ensure adequate protection for WorkCover.

Investing Cash Deposit

Clause 85 outlines the guidelines to be followed by WorkCover for investing a cash deposit lodged by a self-rater.

Liability of group employers

Clause 86 sets out that each member of a group self-rater will be held jointly and independently responsible for all liabilities/duties (e.g. premium payment) under this legislation during the period of the self-rating registration. This is to ensure that individual members can not avoid their responsibilities by leaving a self-rating group.

Change in group self-rater's membership

Clause 87 allows a group self-rater to alter its membership subject to WorkCover's written approval. The need to alter membership could result from circumstances such as individual employers seeking to leave the group or, in the case of a related bodies corporate group, sale of a subsidiary company or purchase of another company.

Division 3—Functions, powers and obligations of self-raters

Conditions giving a self-rater some WorkCover functions and powers

Clause 88 allows WorkCover to give a self-rater certain powers and functions to perform their own claims and injury management. These powers and functions are recorded in the registration conditions. Some self-raters may be involved in self-rating only to the extent that they pay a premium to WorkCover, allowing WorkCover staff to carry out all claims administration and rehabilitation activities. Other self-raters may negotiate to carry out different levels of claims administration and rehabilitation under WorkCover's supervision.

In order for self-raters to have the level of negotiated claims management in the same manner as WorkCover, self-raters must have the same functions and powers as WorkCover. This clause lists the provisions of the Bill that contain the relevant functions and powers able to be given to a self-rater to allow them to manage claims. These functions and powers are transferred to WorkCover when a registration is cancelled.

The performing of functions and exercising of powers by a self-rater remains under the supervision of WorkCover at all times.

Documents that must be kept by self-rater *(Clause 89)* and

Documents must be given to WorkCover on request *(Clause 90)*

These clauses outline the documents, including electronic data, that must be kept by a self-rater and provided to WorkCover on request. Claim documents may be used by WorkCover to manage claims after a self-rater's registration is cancelled or to conduct claims or rehabilitation management audits.

Division 4—Cancellation of self-rater's registration

When registration may be cancelled

Clause 91 outlines when WorkCover may cancel a self-rater's registration.

Procedure for cancellation

Clause 92 outlines that WorkCover may cancel a self-rater's registration and the cancellation procedure that must be followed.

Self-rater may ask for cancellation

Clause 93 outlines the process of cancellation to be used if a self-rater wishes to cancel its registration.

Premium payable after cancellation

Clause 94 states that if a registration is cancelled and the former self-rater is still an employer, then the premium payable by the former self-rater is to be calculated in accordance with a regulation. It is proposed that the premium payable will be based on the claims history of the former self-rater over recent years. This is to remove any incentive for a self-rater to cancel its registration solely for the purpose of obtaining a premium reduction.

Transfer to WorkCover after cancellation

Clause 95 specifies on cancellation, the former self-rater is to give all claims documents to WorkCover. Upon cancellation, the self-rater will lose the ability to perform their claims management functions and powers and WorkCover will be responsible for the future management of the former self-rater's claims. Therefore, it is imperative that all claims documents be passed on to WorkCover. To ensure compliance, a penalty of 200 penalty units is to apply if the self-rater contravenes this provision.

Assessing residual liability after cancellation

Clause 96 outlines the process to be followed, after a self-rater's registration is cancelled, to assess the remaining outstanding claims liability for claims incurred during the period of registration. WorkCover may reassess the premium and surcharge payable for the period of registration. If additional premium is payable and the self-rater does not pay the reassessed premium, WorkCover may recover from the deposit or bank guarantee.

The clause also sets out a former self-rater's right of appeal if WorkCover refuses to return the remaining bank guarantee or deposit.

Return of bank guarantee or cash deposit after cancellation

Clause 97 specifies the process whereby a former self-rater may recover any remaining deposit or bank guarantee from WorkCover. The remaining deposit or guarantee may be returned or relinquished if WorkCover is satisfied that adequate provision has been made for all of the claims incurred during the period of self-rating registration.

PART 5—EMPLOYER'S SELF-INSURANCE

This part introduces the flexible insurance option of self-insurance where:

- employers carry their own insurance risk for workers' compensation
- premiums are not paid to WorkCover
- all claims (both statutory and common law) are managed by the self-insurer
- all payments in respect of claims (both statutory and common law) are made directly by the self-insurer.

Division 1—Preliminary

What is self-insurance

Clause 98 explains the concept of self-insurance and outlines its framework for operation as including:

- licencing requirements
- responsibility for injuries which occur during the period of licence
- provision of functions and powers to a self-insurer
- regulation by WorkCover.

Division 2—Issue and renewal of self-insurer's licence

Who may apply to be a self-insurer

Clause 99 describes that a single or group employer as defined in schedule 4 may apply to be licenced by WorkCover as a self-insurer if requirements as detailed in this part are met.

To ensure that all individual companies within a group of companies (i.e. related bodies corporate) are included in a group licence, such companies can not apply as single employers. All related companies must apply as part of one group registration. This is to ensure that a member of a group of companies with poor claims performance can not be excluded from a group employer application. However, a related body corporate may apply as a single employer if it is the only member of its group employing workers in Queensland.

How the application is made

Clause 100 outlines the process for making an application. Applications for issue or renewal of a self-insurer's licence must be made to WorkCover in an approved form so that sufficient information is supplied to enable proper consideration.

All members of a group in a group employer application must make the application to ensure that all members are aware of the application and accept responsibility for it.

The non-refundable application fee (likely to be $15,000 for single employers and $20,000 for group employers) is required to pay for WorkCover's administrative and other costs of processing the application which will include:

- assessment of financial viability
- an actuarial assessment of expected claims liability for the bank guarantee or cash deposit
- auditing of the applicant's claims management and rehabilitation systems and procedures.

Issue or renewal of licence to a single employer (*Clause 101*) and

Issue or renewal of licence to a group employer (*Clause 102*)

These clauses outline the criteria used by WorkCover to establish if a single or group employer's self-insurance licence can be issued or renewed. The criteria are required for specific reasons:

- A self-insurer must be of sufficient size to be able to put in place the infrastructure that will enable it to effectively administer its own claims and injury management. The self-insurer must have a minimum level of 500 fulltime Queensland workers to ensure these needs can be met.
- If a self-insurer becomes insolvent, WorkCover, effectively acting as the 'insurer of last resort', must meet the claims costs of the failed self-insurer. To protect against this occurrence, self-insurers must be financially sound. Hence the requirement for net tangible assets of at least $100M.
- The licence must cover all the self-insurer's Queensland workers to ensure that a self-insurer can not exclude their high-risk employees from the cover.
- The licensee must provide an unconditional bank guarantee or cash deposit to ensure sufficient funds are available to WorkCover to cover claims liabilities in the event of insolvency of the self-insurer.
- The licensee must effect reinsurance (catastrophe insurance) to protect the self-insurer against the costs of unexpected major disasters.
- Workplace rehabilitation criteria are specified to ensure adequate rehabilitation systems operate within the self-insurer's organisation.
- The self-insurer must be fit and proper, as defined in this part, to be able to hold a licence. This is to ensure that any other relevant matters are taken into consideration when determining eligibility.

For group employers, the employer must satisfy the definition of "group employer" under schedule 3. In determining the number of workers and net tangible assets for a group employer, an aggregate of all members must be used.

Calculation of the number of fulltime workers

Clause 103 details the calculation of the number of fulltime workers (for the purpose of self-insurance licencing criteria). In the calculation, employers can choose a continuous six month period from the year prior to the application. Employers, especially those who employ on a seasonal basis, can choose the six month period which produces the best calculation result for them.

The calculation allows total ordinary time hours to be used including part-time and casual hours and is based on a fulltime worker employed for 35 hours per week. This is the number of hours per week set in the National Data Set for compensation statistics (established by Worksafe Australia) to define a fulltime worker.

Workers employed in Queensland

Clause 104 specifies that for the purposes of licencing self-insurers, a worker is taken to be employed in Queensland if the worker would have an entitlement to compensation for an injury under chapter 3, part 2, division 2 (Entitlement in relation to place where injury is sustained).

Whether applicant fit and proper

Clause 105 outlines the matters that WorkCover may consider in determining whether an applicant is 'fit and proper' for the purposes of self-insurance licencing. WorkCover may consider any matter that it sees as relevant, but must consider whether the self-insurer has:

- the financial capacity to meet its own claims responsibilities on a long term basis
- adequate resources and systems to manage claims (including appropriately trained staff situated in Queensland) and a demonstrated ability to provide rehabilitation
- the ability to supply the required data, in the appropriate format, to enable WorkCover to maintain records of and to monitor claims and rehabilitation management performance
- for renewal purposes, reasonably performed the claims and injury

management functions and powers provided (under division 3 of this part).

Audit of self-insurer

Clause 106 gives WorkCover, or suitably qualified or experienced persons they may engage, the authority to carry out an audit to assist WorkCover in deciding whether to issue, renew or continue a self-insurance licence.

Decision on application for the issue of a licence

Clause 107 outlines WorkCover's obligations in determining an application for a licence and the applicant's right of appeal.

Duration of licence

Clause 108 outlines the period for which a licence issued to a self-insurer will be valid. A period of up to two years was chosen to minimise the administrative burden of renewal for the self-insurer and to allow WorkCover to adjust the initial licence period to suit the self-insurer's financial year cycle if required.

Renewal of licence

Clause 109 outlines the process of licence renewal for self-insurers. The self-insurer seeking licence renewal should give 90 days notice to allow WorkCover sufficient time for conducting relevant.analysis of the self-insurer e.g. financial or actuarial assessments, injury management audits.

Refusal of application for renewal of a licence

Clause 110 sets out the process which applies if WorkCover wishes to refuse a renewal application for self-insurance and the applicant's right of appeal.

Annual levy and surcharge payable

Clause 111 requires self-insurers to pay a levy and surcharge at the issue or renewal of a licence and annually thereafter. The levy is to cover costs associated with the administration of the self-insurance system and a contribution to scheme infrastructure costs, including:

- analysis of financial viability
- auditing of claims and rehabilitation management
- fraud investigation operations
- medical assessment tribunals' operations
- the regulation of self-insurers by WorkCover
- determining of reviews against self-insurers' claim decisions
- the overall scheme administration costs to which all employers should contribute.

The levy is initially proposed to be 5% of deemed premium. Deemed premium will be calculated as prescribed in the regulation and is intended to be a reflection of the self-insurer's premium as if the gazetted industry rates are applied to their wages.

All policy holding employers are required to pay a 6.4% surcharge on gross premium as payment towards recouping the unfunded liability of the Fund. Self-insurers will also have a responsibility for this payment which will be charged based on a deemed premium amount calculated by WorkCover.

Conditions of licence

Clause 112 allows WorkCover to impose, and set guidelines for, conditions on a self-insurer's licence. WorkCover may wish to apply specific conditions on a licence that are unique to a particular self-insurer. This could occur at the time of issue of the licence or during the period covered by the licence.

Conditions might be imposed for reasons such as:

- concerns with a particular self-insurer's ability to properly exercise certain powers or perform certain functions
- a change in circumstances or operations of a self-insurer.

Bank guarantee or cash deposit

Clause 113 outlines the unconditional bank guarantee or cash deposit requirements for self-insurers. This guarantee or deposit is required to protect the WorkCover Fund from occurrences such as the possible insolvency of the self-insurer. If a self-insurer becomes insolvent, WorkCover will have the responsibility to pay the self-insurer's claims. The amount of the guarantee or deposit was determined to be sufficient to provide for the cost of claims and the administrative costs for managing these claims.

An annual actuarial assessment of the self-insurer's estimated claims liability will be undertaken.to ensure that the bank guarantee or deposit is of sufficient size. An annual assessment is required as the frequency and cost of claims can change regularly e.g. due to changes in worker numbers,.the risk categories of workers, the emergence of certain injury patterns. The actuaries will calculate the level of claims liability by estimating:

- the future cost of new claims that are likely to be incurred during the year, plus
- the remaining cost of previous years' claims incurred since the commencement of the licence, less
- the cost of claims the self-insurer is likely to pay during the year.

The minimum level of bank guarantee or deposit should ensure adequate protection for WorkCover. It will also remove the need (in most instances) for a self-insurer to amend the size of the guarantee each year in line with the latest estimate of outstanding claims liability. This is likely to save the self-insurer additional bank charges.

No other creditors can access the guarantee or deposit.

Investing cash deposit

Clause 114 outlines the guidelines to be followed by WorkCover for the investment of a cash deposit lodged by a self-insurer.

Reinsurance

Clause 115 outlines the requirements for reinsurance placed on the self-insurer. Reinsurance is insurance taken out to cover losses that may

result from a catastrophic event during the period of the licence that leads to large claims costs beyond the self-insurer's normal capacity to pay.

The self-insurer is required to take out a policy of reinsurance with an approved insurer to cover the cost of such claims above a chosen level of risk (between $300,000 and $1M of claims costs). The reinsurance is to cover each and every event that occurs during the period of the licence. The reinsurance contract must be approved by WorkCover to ensure that the coverage is appropriate.

Self-insurer replaces WorkCover in liability for injury

Clause 116 clarifies a self-insurer's responsibility for all claims that result from events which occur during the period covered by the licence.

Liability of group employers

Clause 117 sets out that each member of a group self-insurer will be held jointly and independently responsible for all claims incurred during the period of the self-insurance licence as well as levies or other charges payable. This is to ensure that individual members can not avoid their responsibilities by leaving a self-insurance group.

Change in self-insurer's membership

Clause 118 allows a group self-insurer to alter its membership subject to WorkCover's written approval. The need to alter membership could result from circumstances such as individual employers seeking to leave the group or, in the case of a related bodies corporate group, sale of a subsidiary company or purchase of another company.

However, if a member of the group is allowed to withdraw from the licence by WorkCover, that member retains joint responsibility with the other members of the group for claims arising out of incidents during the period the member was part of the group.

Division 3—Powers, functions and obligations of self-insurers

Powers of self-insurers

Clause 119 allows for self-insurers to have those same functions and powers of WorkCover which will enable them to manage statutory and common law claims. This clause lists the provisions of this Bill that contain the relevant functions and powers to be given to a self-insurer to allow them to manage statutory and common law claims.

Documents that must be kept by self-insurer *(Clause 120)* and

Documents must be given to WorkCover on request *(Clause 121)*

These clauses outline the documents, including electronic data, that must be kept by a self-insurer and provided to WorkCover on request. Claim documents may be used by WorkCover to manage claims after a self-insurer's licence is cancelled or to conduct claims or rehabilitation management audits.

Division 4—Cancellation of self-insurer's licence

When licence may be cancelled

Clause 122 outlines the circumstances whereby a licence may be cancelled by WorkCover.

Procedure for cancellation

Clause 123.outlines the procedures to be taken if WorkCover wishes to cancel a self-insurer's licence.

Self-insurer may ask for cancellation

Clause 124 outlines the process of cancellation to be used if a self-insurer wishes to cancel its licence.

Premium payable after cancellation

Clause 125 provides that if a licence is cancelled and the former self-insurer is still an employer, then the premium payable by the former self-insurer is to be calculated in accordance with a regulation. It is proposed that the premium payable will be based on the claims history of the former self-insurer over recent years.

Transfer to WorkCover after cancellation *(Clause 126)* and

Certain functions and powers may be held by former self-insurer after cancellation *(Clause 127)*

These clauses specify the process to be followed after a licence is cancelled. It allows for the transfer of all the self-insurer's functions and powers to WorkCover except those certain functions specifically authorised by WorkCover.

On cancellation, the former self-insurer must give all claims documents to WorkCover so that WorkCover can properly take over management of the claims. If documents are not given, a penalty of 200 penalty units will apply. All future claims are to be lodged with WorkCover.

In certain circumstances, where considered appropriate, WorkCover may allow a former self-insurer to continue to have some powers and functions to manage claims. For example, a large national company may be winding down its operations in Queensland and no longer employs sufficient staff numbers in Queensland to retain a self-insurer's licence. However, the company has sufficient staff to handle claims in Queensland to be able to continue management of the run-off of claims incurred as a self-insurer. If WorkCover is satisfied that the former self-insurer has the capacity to continue management of these claims, it may allow extension of the powers and functions for this purpose.

Recovery of ongoing costs from former self-insurer

Clause 128 allows WorkCover to recover the cost of managing claims from a former self-insurer. The recovery is in respect of claims resulting from events which occur during the period of the self-insurance licence. The payments may be recovered as a debt or from the cash deposit or unconditional bank guarantee.

Recovery of claims costs from a former self-insurer will continue until such time as WorkCover is satisfied that all outstanding claims liabilities have been adequately provided for or satisfied. WorkCover may reach a settlement with a former self-insurer to finalise the former self-insurer's responsibilities following an actuarial assessment of residual liability.

Assessing residual liability after cancellation

Clause 129 outlines the process to be followed, after a self-insurer's licence is cancelled, to assess the total cost of claims for which the self-insurer is still responsible. The assessed claims cost (including claims management costs), if not paid to WorkCover, may be recovered as a debt or from the cash deposit or unconditional bank guarantee.

Return of bank guarantee or cash deposit after cancellation

Clause 130 specifies the process whereby a former self-insurer may recover any remaining deposit or bank guarantee from WorkCover. The remaining guarantee or deposit may be returned if WorkCover is satisfied that adequate provision has been made for the claims incurred during the self-insurance licence.

The clause also sets out a former self-insurer's right of appeal if WorkCover refuses to return the remaining bank guarantee or deposit.

Contingency account

Clause 131 empowers WorkCover to create a contingency account funded by self-insurers' annual levies. The account is to meet the costs of self-insurers' claims if:

- a self-insurer becomes insolvent or ceases to exist and the deposit or bank guarantee is insufficient
- after cancellation of a licence and refund of the deposit or bank guarantee, further claims are received e.g. asbestosis.

A self-insurer or former self-insurer has no right to claim reimbursement of any monies paid into the contingency account.

CHAPTER 3—COMPENSATION

This chapter outlines a worker's entitlement to compensation. It includes:

- requirements and procedures for claiming compensation
- when benefits are payable and when entitlement stops
- maximum entitlement
- weekly payments for total and partial incapacity
- lump sum compensation entitlements (including entitlements on the death of a worker).

PART 1—INTERPRETATION FOR CHAPTER 3

Meaning of "amount payable under an industrial instrument"

Clause 132 defines the meaning of "amount payable under an industrial instrument" for use in calculating the rate of weekly compensation under part 8 of this chapter. Industrial instrument is defined in schedule 3 and has been changed to reflect contemporary industrial relations practice.

It replaces section 124A of the *Workers' Compensation Act 1990* and adds a provision for seasonal workers such that the amount of weekly compensation payable must reflect the relevant season under the industrial instrument. The intent is that a seasonal worker should not receive more on compensation than they would have received had they not been injured and were still at work.

Under the previous provision in the *Workers' Compensation Act 1990*, a worker could potentially be paid more on compensation than they would have received at work, particularly for seasonal workers. This situation acts as a disincentive for the injured worker to return to work. This clause ensures that the worker's compensation would be reduced to the off-season rate.

Meaning of "normal weekly earnings"

Clause 133 defines the meaning of "normal weekly earnings" as the normal weekly earnings of the worker from employment (continuous or intermittent) in the 12 months before the day on which the worker sustained the injury. It is used to determine the level of weekly compensation payable to a worker who sustains a work injury.

Normal weekly earnings replaces "average weekly earnings" under section 5(1) of the *Workers' Compensation Act 1990* which did not accurately reflect variations in employment conditions and was not sufficiently linked to the conditions of employment outlined under the award or industrial agreement. Calculation of average weekly earnings generally took into account all overtime, penalties and allowances and did not take into account variations in employment conditions e.g. peaks and troughs in work flow in industry or seasonal variations.

Under this new definition, if the worker has not had employment for the 12 months immediately before the day on which they sustained the injury, normal weekly earnings are calculated from the earnings of the worker in the period in which the worker has had employment.

The calculation of normal weekly earnings is prescribed under the regulation. Normal weekly earnings takes into account amounts paid to a worker by the employer immediately prior to the injury by way of overtime, higher duties, penalties and allowances of a regular nature, required by the employer and that would have continued if not for the injury. It does not include one-off periods of overtime. Where the worker has been employed by different employers at different times over the 12 month period, only the amounts paid by the employer at the time of the injury are used in the calculation.

The intent of this provision is that no worker should receive more on compensation than they would have received had they not been injured and still been at work. An example would be an electrician at a mine who works a one-off shift underground and receives penalties for this work and who is injured the day before the shift ends. After this, the worker is due to return to surface work where the penalties do not apply. The weekly compensation for this worker's injury would not incorporate the penalties from this one-off shift as the worker would not have continued to receive penalties in their normal surface work.

Meaning of "QOTE"

Clause 134 which defines "QOTE", replaces section 6B of the *Workers' Compensation Act 1990* and has not significantly changed except for the exact source of QOTE being clarified i.e. the seasonally adjusted scale. QOTE is the standard for increasing statutory payments on an annual basis and establishing certain minimum weekly compensation payments.

PART 2—COMPENSATION ENTITLEMENTS OF WORKERS GENERALLY

Division 1—General statement of entitlement

Compensation entitlement and source of payments

Clause 135 replaces section 88 of the *Workers' Compensation Act 1990.* Changes have been made to incorporate the concept of self-insurance. The clause outlines that if a worker has sustained an injury, then statutory compensation is payable by a self-insurer (if the worker's employer is a self-insurer) or by WorkCover (if the worker's employer is not a self-insurer).

Compensation entitlement can not be relinquished, assigned or subject to execution

Clause 136 replaces sections 97 and 123 (1) and (2) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It states that a person can not relinquish their right to compensation and that an amount payable as compensation to a worker can not be paid to another person, except where, for example, an employer continues to pay the worker's wage during incapacity in which case WorkCover may reimburse the employer the worker's compensation entitlement paid.

This clause prevents workers signing a contract or agreement that relinquishes their right to compensation if they sustain injury. If a worker

does sign such a contract or agreement, the contract or agreement has no force or effect. This is to preserve workers' rights to compensation for injury.

Public trustee may act for claimant

Clause 137 replaces section 101 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that the public trustee can act on a claimant's behalf (if requested).

Public trustee may receive payments for minors

Clause 138 replaces section 117 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that lump sum entitlements or redemptions to persons under 18 years of age may be paid to the public trustee on behalf of the person.

Division 2—Entitlement in relation to place where injury is sustained

Entitlement depends on where the injury is sustained

Clause 139 introduces the previously unproclaimed section 1.5 of the *Workers' Compensation Act 1990*, which was designed to replace section 4(a) and (b) of the previous Act. It has not.changed except for being updated according to current drafting practice. A worker (or, if the injury results in the worker's death, the worker's dependants) is entitled to compensation if when the injury happened:

- the worker is in Queensland, unless the worker's principal place of employment is in another State or country
- a worker is outside Queensland and the worker's principal place of employment is in Queensland.

Interstate and overseas arrangements

Clause 140 introduces the previously unproclaimed section 5.2A of the

Workers' Compensation Act 1990 which was designed to replace sections 4(c) and 4(d) of the previous Act. It has not.changed except for being updated according to current drafting practice. The clause specifies that compensation is:

- paid to a worker injured whilst working in another State or country if the worker's principal place of employment is in Queensland
- not paid to a worker injured while working in Queensland if the worker's principal place of employment is in another State or country.

The clause incorporates tests for determining a worker's principal place of employment.

This clause is intended to prevent 'forum shopping' i.e. where a person applies for compensation in the State where they are likely to receive the maximum monetary gain even though the person or employer has minimal connection with that State. It clarifies for employers which employees they must cover in Queensland. However, Queensland employers will still be required to effect workers' compensation coverage in other States until provisions in these other States are enacted.

All States and Territories are currently in various stages of preparing legislation similar to this and the previous clause. The introduction of this legislation in other jurisdictions will add further clarification for employers.

Division 3—Relationship of entitlement to other compensation

Entitlement ends if compensated under corresponding laws

Clause 141 replaces section 89(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It outlines that a person's entitlement to compensation stops if they receive any payment for their injury under an entitlement under a law of the Commonwealth or of a place other than Queensland.

Compensation recoverable if later paid under corresponding laws

Clause 142 replaces section 89(2) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. This clause is included as a safeguard against 'double dipping' and allows WorkCover to recover an amount paid to a person for compensation for an injury if the person has received compensation under some other arrangement (e.g. Commonwealth payments) after the payment is made by WorkCover.

Condition on compensation application if compensation available under this Act and corresponding law

Clause 143 replaces section 89(3) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies to a person, who because of an injury, lodges an application for compensation and has an entitlement to a payment that corresponds to compensation under a law of the Commonwealth or a place other than Queensland.

This clause requires a worker to choose between receiving compensation under this legislation or under another arrangement. The worker must give an undertaking that they have not applied, and will not apply, under that other arrangement if they choose to be paid under this legislation.

Entitlement to compensation ends if damages claim is finalised

Clause 144 replaces section 90(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if a worker is entitled to compensation under this legislation and has a right of action against their employer, or other person, to recover damages independently of this legislation (e.g. compulsory third party, public liability). It states that entitlement to compensation ceases when a damages action is settled (either by agreement or judgement).

PART 3—COMPENSATION ENTITLEMENTS OF PARTICULAR WORKERS

Division 1—Seafarers

Application of div 1

Clause 145 replaces section 93(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that this division applies if the worker was a seafarer when the injury was sustained.

Meaning of "seafarer"

Clause 146 replaces the definition of "mariner" in section 5(1) of the *Workers' Compensation Act 1990*. It has not changed except for replacing the term "mariner" with "seafarer".

Entitlements of seafarers

Clause 147 replaces section 93(3) of the *Workers' Compensation Act 1990.* It outlines when compensation is payable to a seafarer for an injury. The clause has been updated according to current drafting practice and the term "mariner" has been replaced with "seafarer" for consistency with the national maritime industry's workers' compensation organisation i.e. the Seafarers Safety, Rehabilitation and Compensation Authority, known as SeaCare. Seafarers may have an entitlement under SeaCare for an injury. The seafarer may elect to apply for compensation under either WorkCover or SeaCare.

Payment on account of seafarers

Clause 148 replaces section 120 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It states when compensation is, and is not, payable to seafarers.

Division 2—Miners

Application of div 2

Clause 149 replaces section 94(1) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It states that this division applies if the worker was a miner when the injury was sustained and the injury is the disease silicosis or anthraco-silicosis which are respiratory diseases caused by the inhalation of silicone or coal particles.

Entitlements of miners

Clause 150 replaces section 94(2) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It outlines requirements for entitlement of miners with silicosis or anthraco-silicosis. The requirements for entitlement are necessary to ensure that the condition that is compensated is related to work performed in the State and therefore within the responsibility of Queensland employers.

Division 3—Workers with industrial deafness

Application of div 3

Clause 151 specifies that this division applies if a worker has sustained industrial deafness.

Entitlements for industrial deafness

Clause 152 specifies the conditions for a worker's entitlement to industrial deafness and replaces section 95 of the *Workers' Compensation Act 1990.* A worker is entitled to compensation for industrial deafness when it is attributable to their employment in Queensland for a period, or periods, totalling at least five years.

This clause states that compensation for industrial deafness is limited to payment of a lump sum and the cost of consultation with the worker's doctor. It clarifies that a worker who sustains industrial deafness is not entitled to weekly compensation payments.

The clause has been simplified so that a worker only has to demonstrate five years of exposure over any period of time.

It has also been amended to increase the 'threshold and deductible' from 1% to 5%. This means that the worker is not entitled to lump sum compensation for the first 5% of their hearing loss. The application of this 5% threshold and deductible means if a worker is assessed as having 6.5% hearing loss, they will be paid for 1.5% hearing loss under the table of injuries.

The intention of the 5% threshold and deductible is to discount the loss of hearing that would have been caused by the normal activities of life that are not work related.

Further application for compensation for industrial deafness

Clause 153 outlines the conditions for a worker's entitlement for further claims for industrial deafness. A further application may be considered only if it is lodged more than three years after the previous application. In order to obtain a lump sum, the claimant must have sustained a further diminution of hearing of more than 5%.

This provision recognises the need for a noticeable worsening of a worker's condition. Without it, multiple applications may be made for small or no hearing loss.

An example of the application of this clause follows:

Initial assessment (where application was lodged after proclamation date)—	
Hearing loss assessed	6.5% (i.e. greater than 5% threshold)
less deductible	5.0%
Entitlement	1.5%
Subsequent assessment (3 years later)—	
Hearing loss assessed	12.5% (i.e. greater than 6.5% + 5%)
less initial assessment	6.5% (as per the reduction in part 9)
Subsequent entitlement	6.0%

Total entitlement (both assessments) = 7.5%

As this examples illustrates, the 5% threshold is not deducted from subsequent applications (as the 5% has been previously deducted). However, if the worker was assessed under previous legislation, a percentage of hearing loss would be deducted from subsequent assessments. This is to ensure equity in assessments for workers. The following example is of a worker's entitlement where the initial assessment was undertaken when a 1% threshold/deductible applied:

Initial assessment (1 March 1994)—	
Hearing loss assessed	6.5%
less deductible	1.0%
Entitlement	5.5%
Subsequent assessment (3 years later)—	
Hearing loss assessed	12.5% (i.e. more than 6.5% + 5%)
less initial assessment	6.5% (as per the reduction in part 9)
less % for 5% deductible	4.0% as 1% already deducted)
Subsequent entitlement	2.0%

Total entitlement = 7.5%

Division 4—Workers with prescribed disfigurement

Application of div 4

Clause 154 replaces section 139 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It states that this division applies if a worker sustains an injury described as "prescribed disfigurement" i.e. severe facial disfigurement or severe body scarring.

Entitlements of worker who sustains prescribed disfigurement

Clause 155 replaces section 140 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. It specifies that a worker who sustains prescribed disfigurement is only entitled to lump sum compensation for their prescribed disfigurement.

PART 4—COMPENSATION AFFECTED BY WORKERS' CONDUCT

Self-inflicted injuries

Clause 156 replaces section 92(1)(a) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that if a worker's injury is intentionally self-inflicted then no compensation is payable for the injury. Such an instance would be where a worker deliberately severs a finger in order to obtain monetary benefits through workers' compensation.

Injuries caused by misconduct

Clause 157 replaces section 92(1)(b) of the *Workers' Compensation Act 1990.*

Deliberate and serious misconduct of workers means the worker is taking extraordinary risks that are often contrary to the safe practices established by the employer. However, if a worker's misconduct results in serious injury (i.e. would result in a work related impairment of at least 50%) or death, the worker (or the worker's dependant) is given an entitlement to compensation for the injury.

This clause removes reference to serious permanent impairment and replaces it with a reference to an injury that would result in a work related impairment of at least 50%. This is the same level of work related impairment required for those seriously injured to receive an additional lump sum under part 9 of this chapter.

As the condition will not be stable and stationary at the commencement of the claim, WorkCover will need to determine the work related impairment that could result from the injury. If there is no agreement between the worker and WorkCover about the level of impairment that could result, the impairment is to be decided by a medical assessment tribunal.

PART 5—COMPENSATION APPLICATION AND OTHER PROCEDURES

Time for applying

Clause 158 specifies the time limitation for lodging an application for compensation and replaces section 100 of the *Workers' Compensation Act 1990*. It has been changed:

- to specify that if an application is lodged more than 28 days after entitlement commences (except for fatal claims), WorkCover is only liable to pay compensation from the date the application is lodged
- to specify that WorkCover may waive the time limitation for lodging an application where.the reason for late lodgement is of a medical nature related to the injury
- according to current drafting practice

The intent of this clause is to ensure that applications are lodged in a timely manner to allow proper management of claims. Section 100 does not provide adequate ability to control applications lodged outside the time frame where the circumstances underlying the application are doubtful and not related to medical circumstances.

The Medical Assessment Tribunals are to determine whether the special circumstances for late lodgement are of a medical nature. A tribunal, consisting of three eminent specialists from relevant medical areas, is considered by the medical profession as capable of making an ultimate medical decision.

Applying for compensation

Clause 159 replaces sections 5(4) and 99 of the *Workers' Compensation Act 1990*. It has been changed to make reference to self-insurers, to remove the ability to lodge an application for compensation with the office of the industrial magistrates' court and to update it according to current drafting practice.

The clause states that an application for compensation must be made in the approved form by the person claiming compensation and must be

lodged at an office of WorkCover. However, if the employer is a self-insurer, the application must be lodged with the self-insurer.

The provision in the Workers' Compensation Act 1990 that allowed a worker to lodge their application with the office of the magistrates' court has been excluded. The availability of postal services and WorkCover's district office network makes the role of magistrates' courts in receiving workers' compensation applications on behalf of WorkCover no longer required.

Employer's duty to report injury

Clause 160 replaces section 102 of the *Workers' Compensation Act 1990*. It sets out the employer's duty, except for self-insurers, to report an injury for which compensation may be payable. The clause has been changed to clarify that employers must send a report immediately after the employer knows the injury was sustained or the worker reports the injury to the employer. In the past, some employers did not provide a report because they considered that an injury was not sustained. It is the responsibility of WorkCover, and not the employer, to decide these matters. The maximum penalty for noncompliance has been increased from 20 to 50 penalty units to emphasise the employer's obligation in this regard.

Decision about application for compensation

Clause 161 replaces section 104 of the *Workers' Compensation Act 1990*. This clause has been changed to reflect the provisions for review and appeal under chapter 9 and updated according to current drafting practice. It states that an application for compensation must be decided by WorkCover, in the first instance, within six months. Claimants may apply for review under chapter 9 after that time if WorkCover has not decided the application.

Examination by registered person

Clause 162 replaces section 103 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. Under this clause, WorkCover can require a claimant who is applying for compensation (excluding dependants), or a worker after whose

claim has been allowed, to submit to a personal medical examination by a registered person for the purpose of deciding an application or managing a claim.

Worker must notify return to work or engagement in a calling

Clause 163 replaces section 121 of the *Workers' Compensation Act 1990*. It has been modified to introduce a penalty for noncompliance and to include references to self-insurers. It specifies that a worker must notify WorkCover, or a self-insurer, in writing, within 14 days, of their return to work or engagement in a calling (even if returning to work on a partially incapacity basis). The worker may give the written notice in the form of an approved medical certificate stating the worker's fitness for work.

The intention of this clause is to assist in identifying potential cases of fraud where a worker returns to work while still in receipt of compensation. The maximum penalty of 50 penalty units reflects the potential seriousness of noncompliance with this provision.

Suspension of compensation during term of imprisonment

Clause 164 specifies that if a worker (who has an entitlement to compensation) commences a term of imprisonment, compensation to the worker may be suspended.

A worker who is serving a prison term is not able to participate in rehabilitation or to return to work and WorkCover is unable to monitor their capacity for work or to determine if their condition is stable and stationary.

Legislated claim control mechanisms and management procedures can not be implemented whilst a worker is incarcerated e.g. a worker's capacity for work or whether their injury is stable and stationary.

The major reason for the worker's non return to work is not their incapacity but their incarceration. Employers should not be responsible for benefits paid under these circumstances.

Compensation not payable during suspension

Clause 165 replaces section 118 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. It specifies that no compensation (including weekly benefits, medical expenses, rehabilitation costs etc.) is payable during a period of suspension.

PART 6—MAXIMUM STATUTORY COMPENSATION

Application of pt 6

Clause 166 specifies that this division applies to one injury, or multiple injuries, sustained by a worker in any one event.

Maximum entitlement

Clause 167 replaces sections 134 and 154 of the *Workers' Compensation Act 1990.* It specifies the maximum amount of compensation payable for weekly compensation and lump sum compensation (other than additional lump sum under part 9 of this chapter) for any one event. The maximum payment applies to the event and not to each injury arising out of an incident.

The clause has not changed except for replacing the term incident with event (the meaning of which is provided in chapter 1) and being updated according to current drafting practice.

A worker to whom the maximum amount is paid is not entitled to further compensation (including weekly payments, medical, rehabilitation or other expenses) for the injury (or injuries) arising out of the event - other than entitlement to additional lump sums (if any).

PART 7—PAYMENT OF COMPENSATION

Time from which compensation payable

Clause 168 replaces section 96 of the *Workers' Compensation Act 1990* and has been changed to clarify the section's intent. It specifies that entitlement to compensation for an injury arises on the day on which the worker is assessed by a doctor for the injury (or dentist for oral injury).

A worker's entitlement to weekly compensation starts on the day after the worker stops work because of the injury if seen by a doctor on the day of the injury. However, if the worker is seen by a doctor at a time later than the day the worker stops work, the entitlement is from the day the doctor (or dentist) assesses the injury as resulting in total or partial incapacity for work.

PART 8—WEEKLY PAYMENT OF COMPENSATION

Division 1—Application

Application and object of pt 8

Clause 169 replaces section 124 of the *Workers' Compensation Act 1990* and has not changed.except for being updated according to current drafting practice. It allows for the weekly payment of compensation to a worker who is incapacitated because of injury.

Division 2—Advances on weekly payments

Advances on account

Clause 170 replaces section 106 of the *Workers' Compensation Act 1990*. It allows WorkCover to pay amounts in advance on account of weekly payments if WorkCover is satisfied about the circumstances. The

clause has been changed to clarify its intent, to include reference to chapter 9 for review and to update it according to current drafting practice.

An example of the application of this clause would be where a worker is certified as totally incapacitated from the first of the month to the 30th of the month and a cheque for weekly compensation for the period from the first of the month to the 14th of the month has been forwarded to the worker but has been lost or destroyed. A further cheque may be forwarded for the period 15th of the month to 30th of the month being payment in advance. The cheque for first of the month to 14th of the month will be cancelled and following a clearance from the bank a fresh cheque will be issued to the worker. Therefore, the worker will not suffer undue financial hardship.

Division 3—Adjustment of entitlements under pt 8

Worker can not receive more than if injury had not been sustained

Clause 171 specifies that a worker must not receive weekly payments under this part that are more than the worker would have received from their employment with the employer if the worker were at work and the injury had not happened. This is to remove the incentive for workers to remain on compensation.

This previously occurred in some seasonal industries and where a worker's weekly compensation was based on average weekly earnings that included excessive abnormal overtime. Seasonal and normal weekly earnings provisions have been incorporated under part 1 of this chapter to specifically deal with these situations. This clause supplements those provisions and allows for any other similar occurrences which may arise.

Regard to other benefits for workers

Clause 172 replaces section 107 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice.

It specifies that, in assessing the amount of weekly compensation payable, WorkCover may have regard to other entitlements or payments for the injury/incapacity made to the worker and reduce the amount of weekly

compensation accordingly e.g. superannuation sickness benefits. This ensures that workers on weekly benefits are not paid more than they would have received had they not been injured and were still at work.

Division 4—Entitlement for total incapacity

Subdivision 1—Application of sdiv 1

Entitlement to weekly payments

Clause 173 specifies the compensation payable under this division i.e. weekly payments to totally incapacitated workers or persons.

Subdivision 2—Workers

This subdivision outlines the new weekly payment structure which:

- replaces average weekly earnings (AWE) with normal weekly earnings (NWE)
- introduces a two-tier payments schedule at two years
- introduces a five year limit on weekly payments.

In the first 26 weeks of incapacity and from 26 weeks to two years, the percentages of normal weekly earnings (NWE) and QOTE parallel the percentages of average weekly earnings (AWE) and QOTE in the Workers' Compensation Act 1990.

From two to five years of incapacity, a two-tier payment structure is introduced. That is, those workers who can demonstrate that their injury could result in a work related impairment of more than 15% would be entitled to a higher level of weekly payments (the same level as they received from 26 weeks to two years incapacity) than those with an injury that could result in a work related impairment of 15% or less (the same level as the Department of Social Security single pension rate).

After two years, it is reasonably expected that less seriously injured workers at or below 15% work related impairment should be able to return

to work. Therefore, this step-down is introduced to give an added incentive for these workers to return to work.

The degree of permanent impairment that could result is used in these provisions as the worker's condition is not yet stable and stationary. If the condition was stable and stationary, the actual degree of permanent impairment would be obtained and the worker would be entitled to a lump sum under part 9 of this chapter. This would mean the worker's entitlement to weekly compensation would end.

Those workers who are more seriously injured are able to be maintained on weekly payments up to five years. This will ensure that appropriate rehabilitation is provided.

Of all claims, approximately:

- 93% are finalised within 4 weeks
- 95% are finalised within 26 weeks
- 98% are finalised within 39 weeks.

The current amount of QOTE is $613.20 (60% of QOTE is $367.92) and the single pension rate.is $174.

Total incapacity—workers whose employment is governed by industrial instrument

Clause 174 replaces section 124B of the *Workers' Compensation Act 1990*. It specifies the weekly payment to a totally incapacitated worker whose employment is governed by an industrial instrument. It has been changed to incorporate the new payment structure (i.e. the two year tier and five year limit) and to replace average weekly earnings (AWE) with normal weekly earnings (NWE).

Total incapacity—workers whose employment is not governed by industrial instrument

Clause 175 replaces section 124C of the *Workers' Compensation Act 1990*. It specifies the weekly payment to a totally incapacitated worker whose employment is *not* governed by an industrial instrument. It has been changed to incorporate the new payment structure (i.e. the two year tier and five year limit) and to replace average weekly earnings (AWE) with normal weekly earnings (NWE).

Total incapacity—certain contract workers

Clause 176 replaces section 124D of the *Workers' Compensation Act 1990*. It specifies the weekly payment to a totally incapacitated contract worker as defined in this clause. It has been changed to incorporate the new payment structure (i.e. the two year tier and five year limit) and to replace average weekly earnings (AWE) with normal weekly earnings (NWE).

Total incapacity—casual or part-time workers

Clause 177 replaces section 124F of the *Workers' Compensation Act 1990*. It specifies the amount of weekly payment to a totally incapacitated worker engaged in casual or part-time employment. It has been changed to incorporate the new payment structure (i.e. the two year tier and five year limit) and to replace average weekly earnings (AWE) with normal weekly earnings (NWE).

Total incapacity—workers receiving certain benefits under Commonwealth law.

Clause 178 replaces section 124G of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies the weekly payment to a totally incapacitated worker who, when the worker was injured, was receiving an age, disability support, or class B widow pension under a Commonwealth law.

Total incapacity—workers with more than 1 employer

Clause 179 replaces section 124H of the *Workers' Compensation Act 1990* and has not changed except for being simplified and updated according to current drafting practice. It allows WorkCover to determine the weekly payment for a worker who is employed by more than one employer.

Subdivision 3—Persons entitled to compensation other than workers and students

Application of sdiv 3

Clause 180 specifies that this subdivision applies to entitled persons other than workers and students. Entitled persons are described in chapter 1, part 4, division 3.

Total incapacity

Clause 181 replaces section 125(3) to (6) of the *Workers' Compensation Act 1990*. It specifies the amount of weekly payment to a totally incapacitated person other than a worker or a student. It has been changed to incorporate the new payment structure (i.e. the two year tier and five year limit) and to replace average weekly earnings (AWE) with normal weekly earnings (NWE).

Subdivision 4—Reference to tribunal

Total incapacity—reference about impairment to medical assessment tribunal

Clause 182 specifies that the degree of impairment that could result from the injury for determining weekly payment after two years must be decided by a medical assessment tribunal if there is no agreement between WorkCover and the worker. This new clause is required to provide a mechanism for determining a worker's level of entitlement for weekly payments after two years incapacity when there is disagreement between the worker and WorkCover on the level of impairment that could result from the injury.

Division 5—Entitlement for partial incapacity.

Definitions for div 5

Clause 183 defines the terms used in the formula for calculating partial incapacity entitlement.

Partial incapacity

Clause 184 replaces section 128(1), (2) and (5) of the *Workers' Compensation Act 1990*. It specifies the formula to be used in calculating weekly payment to a partially incapacitated worker i.e. a worker who can return to, or continue at, work on reduced hours.

This formula has been simplified from the two formulas used in the previous section. The formula provides an incentive for a worker to move from total incapacity payments to partial incapacity payments. A worker will receive more in total income if they return to work to undertake partial duties than if they remain on compensation for total incapacity.

A partially incapacitated worker is not entitled to weekly compensation (under this division) that is more than the maximum weekly compensation payable for total incapacity of the worker resulting from the injury.

For example: a worker whose award is $500 per week and normal weekly earnings (NWE) are $550 per week and partial incapacity earnings are $300 per week. The worker's loss of earnings (LE) is $550 minus $300 i.e. $250.

In the first 26 weeks of incapacity:

Total incapacity payment = $500 i.e. the greater of the award or 85% of NWE

Partial incapacity payment =

amount received from employer	$300
amount payable by WorkCover	$227.27 (i.e. 500 x 250/550)
Total received by worker	$527.27

After 26 weeks and less than 2 years of incapacity:

Total incapacity payment = $367.92	i.e. the greater of 60% of QOTE ($367.92) or 65% of NWE ($357.50)

Partial incapacity payment =

amount received from employer	$300
amount payable by WorkCover	$167.24 (i.e. 367.92 x 250/550)
Total received by worker	$467.24

After 2 years and up to 5 years:

Work related impairment that could result is greater than 15%

Total incapacity payment = $367.92 i.e. the greater of 60% of QOTE ($367.92) or 65% of NWE ($357.50)

Partial incapacity payment =

amount received from employer	$300
amount payable by WorkCover	$167.24 (i.e. 367.92 x 250/550)
Total received by worker	$467.24

Work related impairment that could result is 15% or less

Total incapacity payment = $174 i.e. single pension rate

partial incapacity payment =

amount received from employer	$300
amount payable by WorkCover	$79.09 (i.e. 174 x 250/550)
Total received by worker	$379.09

WorkCover may require information from partially incapacitated worker

Clause 185 replaces section 128(3) and (4) of the *Workers' Compensation Act 1990*. It allows WorkCover to require a partially incapacitated worker to give particulars of their employment and earnings during the period of partial incapacity. This information is essential for determining the amount of weekly compensation payable. The clause has not changed except for being updated according to current drafting practice and for the inclusion of a time frame in which workers must give their particulars to make it clear for the injured worker.

Division 6—Review of compensation

Review of compensation and associated payments

Clause 186 replaces section 109(1) of the *Workers' Compensation Act 1990* and introduces the ability for WorkCover to suspend entitlements following a review. Previously an entitlement could only be terminated, increased or decreased.

This clause is designed to allow improved management of a claim. Examples of instances that may prompt a review of compensation entitlement include:

To increase entitlement:

- changes in awards for workers.

To terminate entitlement:

- receipt of medical evidence that demonstrates that the worker is no longer incapacitated for work due to the injury.

To suspend entitlement:

- where the worker refuses to provide information or prolongs the giving of information reasonably required by WorkCover to properly manage the claim
- where a worker deliberately obstructs their treatment/rehabilitation e.g. deliberately removing dressings/casts to prolong the injury
- where a worker takes spontaneous 'holidays' whilst receiving benefits e.g. a worker goes to Victoria for holidays, or fishing on Fraser Island, rather than undertaking their recommended treatment.

Review of weekly payments—worker under 18 years

Clause 187 replaces section 109(2) of the *Workers' Compensation Act 1990.* Changes have been made to update the section according to the new weekly payments structure and current drafting practice.

This clause applies to workers receiving weekly payments who, when the injury happened, were under 18 years of age. If a review takes place more than 12 months after the injury happened, WorkCover may increase the amount payable to the worker from the date of review. This allows payments to these workers to reflect change in remuneration according to age under the industrial instrument.

Recovery of compensation overpaid

Clause 188 replaces section 122 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows WorkCover to recover an amount paid to a person that is more than the amount to which they are entitled. If the overpayment was due to incorrect information supplied by the worker's employer, it.allows for WorkCover to recover the overpaid amount from the employer.

Division 7—Redemption of weekly payments

Redemption—worker receiving weekly payments for at least 2 years

Clause 189 replaces section 112 of the *Workers' Compensation Act 1990*. It enables WorkCover to discharge the liability to make weekly payments by making a lump sum redemption payment to the worker with the worker's agreement. This payment is not a lump sum payment from the table of injuries, as redemption payments can only be made where a worker's condition is not stable and stationary for the purpose of assessing permanent impairment. If the condition was stable and stationary, the worker would have a lump sum entitlement under part 9 of this chapter.

Under the previous section, a redemption could be paid up to the statutory maximum compensation (i.e. maximum $103,100 for weekly compensation and lump sum). The redemption under this clause is to be considered after a worker has been in receipt of weekly compensation for at least two years as:

- it reflects the current administrative arrangement for redemption under section 112
- by that stage for less serious injuries, little more can often be done for the worker
- it ensures that workers are not disadvantaged by taking a redemption too early
- it ties in with the two year step-down in benefits.

An example of an instance where a redemption would be considered would be a worker residing in a remote area who may be receiving minimum medical treatment and has limited access to rehabilitation.

To ensure consistency, the formula for calculating this redemption payment will be the same as that used for a worker who moves overseas.

Redemption—worker moves interstate

Clause 190 enables WorkCover to discharge the liability to make weekly payments by making a lump sum redemption payment (with the worker's agreement) to a worker moving interstate. It applies if a worker moves interstate permanently and WorkCover receives a report from a doctor stating the worker's injury is not stable and stationary for the purposes of

assessing permanent impairment. If the condition was stable and stationary, the worker would have a lump sum entitlement under part 9 of this chapter.

Previously such redemptions were made under section 112 of the *Workers' Compensation Act 1990*. This clause has been introduced to continue to allow such redemptions to be made to workers. It is difficult to manage a claim when the worker—whose injury resulted in minimal impairment—moves interstate. There are often delays in ensuring appropriate medical management and rehabilitation (and return to work). Doctors and providers (e.g. physiotherapists and rehabilitation providers) in other States are not familiar with the control mechanisms in place for providers in Queensland.

Redemption—worker moves abroad

Clause 191 replaces section 113 of the *Workers' Compensation Act 1990* which applied if a worker ceased to reside in Australia or New Zealand. This clause now applies only if a worker ceases to reside in Australia. It is extremely difficult to ensure that workers who are living abroad participate in appropriate treatment and rehabilitation. There is also a serious risk of fraud, as a worker could take up employment abroad and not inform WorkCover (and thus continue to receive weekly payments).

Calculation of redemption payment

Clause 192 replaces section 113(2) and (3) of the *Workers' Compensation Act 1990* which gave the formula for calculating the maximum amount payable for redemption of weekly payments for workers ceasing to reside in Australia or New Zealand. This formula now applies to all redemption payments.

Review of redemption payment

Clause 193 replaces section 112(2) and (3) and section 113(4) of the *Workers' Compensation Act 1990*. Changes have been made to reflect the provisions for review and appeal under chapter 9. It allows for a worker to request a review of the redemption payment within 12 months after the payment has been made. This clause applies to all redemption payments.

No compensation after redemption payment made

Clause 194 replaces section 112(5) and 113(5) of the *Workers' Compensation Act 1990.* It specifies that once a redemption payment has been paid to a worker, they have no further entitlement to compensation for the injury (including weekly payments, medical expenses, rehabilitation expenses etc.). This clause applies to all redemption payments in this part; however, it does not restrict the previous clause which allows a review of the redemption payment.

Division 8—When entitlement to weekly payments stops

When weekly payments stop

Clause 195 replaces section 126 of the *Workers' Compensation Act 1990* and has been changed according to the new weekly payment structure. It specifies when weekly compensation stops.

PART 9—ENTITLEMENT TO COMPENSATION FOR PERMANENT IMPAIRMENT

Division 1—General statement

Entitlement to assessment of permanent impairment and lump sum compensation

Clause 196 provides for an assessment to determine if a worker has sustained a permanent impairment and if so, to provide for payment or an offer of lump sum compensation for the permanent impairment.

Division 2—Assessment of permanent impairment under table of injuries

Assessment of permanent impairment.

Clause 197 which specifies how the degree of permanent impairment is to be assessed, replaces section 130A(1) and (2) of the *Workers' Compensation Act 1990.* It has been updated according to current drafting practice and has been modified to clarify the intent of the assessment of permanent impairment for industrial deafness. The clause clarifies that assessments for industrial deafness must be performed by suitably qualified audiologists.

Calculation of lump sum compensation

Clause 198 replaces section 130(2) and (3) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that the amount of lump sum compensation is the amount worked out under a regulation having regard to the worker's degree of permanent impairment and the table of injuries. The regulation specifies the method to be used to calculate a lump sum entitlement from the degree of permanent impairment for an injury. The clause also ensures that the lump sum only relates to the work related component, as employers are not responsible for any non-work related component of a condition.

It also specifies the date of calculation of the lump sum as the day the offer of lump sum has been made to ensure consistency in calculation of lump sums and that the worker can not gain additional benefit from periodic increases in the statutory maximum compensation by delaying acceptance of the offer.

Regard to previous entitlement of lump sum compensation for injury other than industrial deafness.

Clause 199 replaces section 131(3) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if a worker has an entitlement for injury to a part of the worker's body and the worker sustains further injury to the same part of the body. Lump sum compensation for the later injury must be reduced by the entitlement from the previous injury.

Regard to previous assessment for industrial deafness

Clause 200 replaces section 131(4) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if a worker has previously had a lump sum compensation entitlement for industrial deafness and the worker sustains further industrial deafness. Compensation for the injury must be reduced by the percentage loss of hearing for which the worker was previously assessed.

Calculation of WRI

Clause 201 specifies that WorkCover must calculate the worker's work related impairment if.permanent impairment has been assessed as specified in this division.

Work related impairment, which is defined under chapter 1, is a worker's lump sum compensation entitlement expressed as a percentage of statutory maximum compensation for the worker's permanent impairment and attributable to the worker's employment.

Work related impairment is used to determine if a worker has to make an irrevocable election to access common law and the level of certain weekly or lump sum benefits.

The formula for determining "work related impairment" is as follows:

$$\text{work related impairment (WRI)} = \frac{\text{lump sum entitlement* x 100}}{\text{statutory maximum compensation i.e. \$103,100}}$$

* lump sum entitlement is obtained from the degree of permanent impairment assessed under the table of injuries.

NB For each of the following examples, the worker's condition has been determined to be stable and stationary for determining the degree of permanent impairment.

Examples of the calculation of WRI are given below. Prior to determining a WRI, a worker's condition has to have been determined to be stable and stationary for determining the degree of permanent impairment.

Example 1: A worker who has lost their thumb

Degree of permanent impairment	= 36%
Lump sum entitlement	= 36% x $82,480 (maximum payable for arm) = $29,692.80
% WRI	= $\frac{\$29,692.80 \times 100}{\$103,100}$ **= 28.8%**

Example 2: A worker who has lost their little toe

As this is a deemed injury (i.e. one with a deemed lump sum on the table of injuries for historical reasons), their lump sum entitlement is as listed on the table of injuries.

Lump sum entitlement	= $8,400
% WRI	= $\frac{\$8,400 \times 100}{\$103,100}$ **= 8.145%**

Example 3: A worker who has sustained a mid back spinal injury resulting in partial paraplegia

Degree of permanent impairment	= 60%
Lump sum entitlement	= $61,860
% WRI	= $\frac{\$61,860 \times 100}{\$103,100}$ **= 60%**

Work related impairment must be calculated having regard to any previous lump sum compensation entitlement for a similar injury (for injuries other than industrial deafness) or the percentage of hearing loss (for industrial deafness) so that the lump sum and corresponding work related impairment can be reduced accordingly.

Example 1: A worker loses the right index finger in a work related incident and elects to receive lump sum compensation for the impairment. The worker loses the right hand in a subsequent work related incident and receives lump sum compensation for the impairment. The lump sum compensation payable for the second impairment must be reduced by the lump sum compensation that was paid for the first impairment.

Example 2: A worker loses the right index finger in a work related incident and elects to pursue common law damages. A settlement is made to the worker in relation to the common

law claim. The worker loses the right hand in a subsequent work related incident. The lump sum compensation payable for the second impairment must be reduced by the lump sum compensation that could have been paid for the first impairment.

Division 3—Notification of assessment of permanent impairment

Application of div 3

Clause 202 outlines that this division applies if permanent impairment has been assessed.

WorkCover to give notice of assessment of permanent impairment

Clause 203 replaces sections 130A(4) and 132(1) to (3) of the *Workers' Compensation Act 1990*. It specifies that WorkCover must, within 28 days of receiving an assessment of a worker's permanent impairment, give the worker a notice of the results of the assessment. The 28 day timeframe has been introduced to ensure the worker is given timely notification of the assessment results.

The notice of assessment provides details of the assessment including:

- whether the worker has sustained permanent impairment from the injury
- if so, the degree of permanent impairment
- the work related impairment resulting in either a certificate or non-certificate injury
- additional lump sum entitlements, if any.

A worker's degree of permanent.impairment for **all** injuries sustained in the event must be assessed before an offer of lump sum compensation can be made for any one of the injuries. This ensures that the worker is assessed for their total entitlement for lump sum before they are required to make a decision on the offer.

Worker's disagreement with assessment of permanent impairment

Clause 204 outlines the process if the worker disagrees with the assessment of permanent impairment that has not been assessed by a medical assessment tribunal. It allows for the degree of permanent impairment to be assessed by a medical assessment tribunal. It provides the avenue of review of the assessment for the worker.

The clause also states that the worker has 28 days after the notice of claim is given to disagree with the degree of impairment given. This is consistent with the current administrative process adopted in line with the offer.

Offer of lump sum compensation

Clause 205 incorporates the 'offer' component from section 132 of the *Workers' Compensation Act 1990*. It clarifies that the notice of assessment must contain an offer where a worker has an entitlement to lump sum compensation.

Certificate injury (*Clause 206*) and

Non-certificate injury (*Clause 207*)

Section 132 of the *Workers' Compensation Act 1990,* which these clauses replace, has been separated to clarify the specific offer processes which apply for certificate and non-certificate injuries.

The former clause specifically applies to certificate injuries. A certificate injury is defined in chapter 1 and specifies those workers able to access common law without the need to make an election between lump sum compensation and seeking common law damages. A worker with a certificate injury may accept or defer a decision about the offer within 28 days (i.e. the decision period) after the offer is made by giving a written notice to WorkCover.

The latter clause specifically applies to non-certificate injuries. For a worker with a non-certificate injury, when giving the notice of assessment, WorkCover must also advise the worker they must make an irrevocable election between accepting lump sum compensation or seeking damages. The worker may accept, reject or defer a decision about the offer within the decision period after the offer is made by giving a written notice to WorkCover.

For both certificate and non-certificate injuries, if the worker:

- accepts the offer, WorkCover must pay the worker the amount of lump sum compensation offered
- does not notify WorkCover within the decision period, the worker is taken to have deferred their decision
- fails to notify WorkCover of their decision before seeking damages (i.e. lodges a notice of claim), the worker is taken to rejected the offer of lump sum compensation.

No further compensation after fixed time

Clause 208 replaces section 135 of the *Workers' Compensation Act 1990*. It has been changed to clarify its intent and to update it according to current drafting practice. It specifies that no further compensation is payable (including weekly payments, medical, rehabilitation or other expenses) after the worker notifies WorkCover of their decision or after 28 days after receiving the offer, whichever is first. This does not limit the worker's entitlement to payment of the lump sum or any additional lump sum compensation (if entitled).

Division 4—Additional lump sum compensation

Application of div 4

Clause 209 specifies that this division applies if the worker's work related impairment has been calculated. Entitlements in this division are based on the level of work related impairment.

Additional lump sum compensation for certain workers.

Clause 210 expands section 130B of the *Workers' Compensation Act 1990* which limited the additional lump sum to workers sustaining spinal cord injury or chronic organic brain syndrome. This lump sum now applies to all serious injuries (i.e. a work related impairment of 50% or more) with the exception of psychological and psychiatric injuries.

Additional lump sum compensation for gratuitous care

Clause 211 specifies a worker's entitlement for additional lump sum compensation for gratuitous care. This lump sum is for workers who sustain a serious injury and are in need of ongoing special care assistance after cessation of a statutory claim and where such assistance is to be provided gratuitously by another person e.g. spouse, parent, child, or friend of the worker.

The lump sum is designed to replace the Griffiths v Kerkemeyer 'head of damage' under common law which is abolished under chapter 5. It is not designed for the provision of professional care or services for the worker—this is still available under common law.

A worker is entitled to a lump sum for gratuitous care if they have sustained a serious injury (i.e. a work related impairment of 50% or more) and a moderate to total level of dependency on day to day care for the fundamental activities of daily living.

The payment of this lump sum is limited to workers where physical injuries account for a work related impairment of 50% or more. Workers with psychological or psychiatric injuries are excluded from the determination of this lump sum.

The care is to be provided at home and on a voluntary basis. Home does not include a nursing home or a place where the worker would receive attendant care.

For a worker to be entitled to the gratuitous care lump sum, the worker must be able to demonstrate the ongoing need for gratuitous care, additional to any care which may have been provided prior to the injury, that will be required to enable the worker to perform the fundamental activities of daily living e.g. bathing, feeding, toiletting, dressing.

The worker's level of dependency is to be assessed by a registered occupational therapist in accordance with the regulation using the Modified Barthel Index. Occupational therapists are trained to assess functional ability relating to activities of daily living. The Modified Barthel Index is a recognised standard for assessing dependency. Having an impairment which equates to a serious injury does not necessarily mean that a worker will require ongoing care. For example, a paraplegic person can be totally independent. For this reason, a method of assessing the level of dependence is prescribed. This standard for assessing the level of dependence for

determining the gratuitous care lump sum ensures consistency of assessments and equitable payment of lump sums.

The scale of the lump sums payable in the regulation will be graduated between $5,000 and $150,000 based on both the level of dependency (either moderate, severe or total) and bands of work related impairment. If the worker and WorkCover can not agree on the level of dependency, the matter is to be referred to the General Medical Assessment Tribunal for decision. The General Medical Assessment Tribunal consists of medical specialists who are skilled in the interpretation and use information from health professionals.

Gratuitous care lump sums are not deducted from common law damages awarded in a common law action.

PART 10—COMPENSATION ON WORKER'S DEATH

Application and object of pt 10

Clause 212 specifies that this part applies if a worker dies because of injury for which compensation is payable. It provides for payment of particular expenses arising from a worker's death and compensation to persons having an entitlement e.g. dependants of the worker.

Definition for pt 10

Clause 213 provides a definition of student for this part.

To whom payments made for death of worker

Clause 214 replaces section 114 of the *Workers' Compensation Act 1990* and has not changed.except for being updated according to current drafting practice. It specifies to whom compensation for the death of a worker is payable i.e. the worker's legal personal representative or, if no legal personal representative, to the worker's dependants. If compensation is paid to the worker's legal representative, that person must pay or apply the compensation for the benefit of the worker's dependant.

Total and partial dependants

Clause 215 replaces section 115 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows WorkCover to apportion compensation for the death of a worker to the dependants of the worker. This clause allows compensation to be apportioned when there are multiple applications for compensation e.g. children from more than one relationship.

Dependant's compensation payable to public trustee

Clause 216 replaces section 116 of the *Workers' Compensation Act 1990.* It has been changed according to current drafting practice and to specify that WorkCover may pay amounts allotted to a dependant to the public trustee for the dependant's benefit. Previously, compensation could be invested by the board. Reference to the industrial magistrate has been removed in line with the review and appeal process under chapter 9.

Medical and funeral expenses must be paid by WorkCover

Clause 217 replaces section 136(1)(g) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that WorkCover must pay the reasonable medical expenses for treatment or attendance on the worker and for reasonable funeral expenses.

Total dependency

Clause 218 replaces section 136(1)(a), (b) and (c) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if **at least one of the worker's dependants was totally dependant** on the worker's earnings at the time of the worker's death. It outlines the amount of compensation payable to the dependants of the worker in these circumstances.

Partial dependency

Clause 219 replaces section 136(1)(d) and (e) of the *Workers' Compensation Act 1990* and has not changed except for being updated

according to current drafting practice. It applies if **all of the worker's dependants were partially dependant** on the worker's earnings at the time of the worker's death. It outlines the amount of compensation payable to the dependants of the worker in these circumstances.

Workers under 21

Clause 220 replaces section 136(f) of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It specifies that if a worker was under 21 years of age and left a parent (who is a resident of the State), but left no dependants, the amount of compensation payable is $11,395. The amount payable to each parent is to be decided by WorkCover, if appropriate in certain circumstances.

Reduction of amount payable on death

Clause 221 replaces section 137 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if weekly payments of compensation, a redemption payment or lump sum compensation payments have been made for an injury sustained by the worker that resulted in the worker's death.

Reduced compensation if dependant dies before payment made

Clause 222 replaces section 138 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies if the worker is survived by a dependant who dies before payment of compensation is made for the dependant's benefit.

PART 11—AUTOMATIC VARIATION OF COMPENSATION PAYABLE

Variation of payments for injuries

Clause 223 replaces section 156 of the *Workers' Compensation Act 1990.* It allows for a variation in the dollar amounts referenced in the parts specified in the clause (e.g. the statutory maximum, lump sums under the table of injuries) when QOTE is varied. Changes in these figures are published in the industrial gazette. The clause has changed according to current drafting practice and to remove weekly payment references which are no longer required.

Construing entitlements in light of variation.

Clause 224 replaces section 157 of the *Workers' Compensation Act 1990.* It states a payment.varied because of variations in QOTE is taken to be the worker's entitlement. The clause has changed according to current drafting practice and to remove the age, disability support or class B widow pension reference which is no longer required.

Application of part to existing benefits

Clause 225 replaces section 159 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows for entitlements accrued or benefits paid under previous Acts to be carried over into this Bill.

CHAPTER 4—INJURY MANAGEMENT

This chapter specifies WorkCover's responsibility and liability for medical treatment, hospitalisation, travel and rehabilitation. It also specifies employers' and workers' obligations regarding rehabilitation.

PART 1—APPLICATION

Application and object of ch 4

Clause 226 outlines that this chapter applies if a worker has sustained an injury for which compensation is payable. It provides for appropriate medical treatment, hospitalisation and rehabilitation for the worker.

PART 2—LIABILITY FOR MEDICAL TREATMENT, HOSPITALISATION AND EXPENSES

Division 1—Application and general statement of liability

Application of pt 2

Clause 227 outlines that this part applies if medical treatment or hospitalisation of the worker is required for the management of the worker's injury.

WorkCover's liability for medical treatment and hospitalisation

Clause 228 replaces section 143 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that WorkCover is liable for the cost of medical treatment and hospitalisation that WorkCover considers to be reasonable, having regard to the injury.

Division 2—Medical treatment costs

Extent of liability for medical treatment

Clause 229 replaces section 144 of the *Workers' Compensation Act 1990.* It has changed to clarify its intent, to delete outdated and superfluous provisions and to update it according to current drafting practice.

It outlines the extent of WorkCover's liability for the cost of medical treatment. The provision that specified liability for the cost of attendance

following surgery has been deleted. This provision limited liability of such attendance to a period of less than three months following surgery. This provision is superfluous as the attendance periods following surgical procedures will be outlined in a table of costs for medical treatment.

Extent of liability for prosthetic expenses

Clause 230 replaces section 145 of the *Workers' Compensation Act 1990.* It has changed to clarify its intent and to update it according to current drafting practice. The clause outlines WorkCover's liability for prosthetic expenses. It applies if a worker, because of a condition resulting from an injury, is fitted with a prosthesis or is dependent on support of a medical aid, crutches or other assistive device.

Accounts for medical treatment, certificate in approved form

Clause 231 replaces section 146 of the *Workers' Compensation Act 1990.* It specifies that accounts for medical treatment must be sent to WorkCover within two months after the completion of the treatment. The clause has not significantly been changed except for being updated according to current drafting practice and adding the requirement for the worker's date of birth to be given on the account to assist WorkCover to identify the worker. This provision allows WorkCover reasonable time to process the account and to be aware of the costs incurred on a claim.

Review of costs payable

Clause 232 replaces section 147 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows a provider of medical treatment to request WorkCover to review the cost payable if the provider considers that, because of special circumstances, the cost is inadequate in a particular case.

Division 3—Hospitalisation

Definitions for div 3

Clause 233 replaces section 148(6) of the *Workers' Compensation Act 1990.* It defines "elective hospitalisation", "private hospital" and "public hospital". The definition of "private hospital" has been extended.considering the development of day hospitals and emergency centres.

Extent of liability for period of hospitalisation

Clause 234 replaces sections 148(1) and (2) of the *Workers' Compensation Act 1990.* It has been changed to clarify its intent, to delete outdated and superfluous provisions and to update it according to current drafting practice. The clause sets out WorkCover's liability for the cost of hospitalisation.

Cost of hospitalisation

Clause 235 amends sections 148(3) and (4)(b) of the *Workers' Compensation Act 1990.* It specifies that the cost for hospitalisation is the cost for providing the facility where the procedure is undertaken. The costs payable for hospitalisation are those specified in a gazette notice. If a cost is not gazetted, WorkCover must pay the cost lawfully charged by the hospital.

Maximum liability for cost of hospitalisation

Clause 236 replaces section 149 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It specifies that the maximum amount that WorkCover is liable to pay for hospitalisation for injuries sustained in any one event is prescribed under a regulation. This maximum limit is designed to control the costs of hospitalisation. The regulation will increase the amount from $5,000 to $10,000 to allow reasonable hospital accommodation for workers.

Division 4—Travelling Expenses

Extent of liability for travelling expenses

Clause 237 replaces section 150 of the *Workers' Compensation Act 1990* and has not significantly changed except for being updated according to current drafting practice and having its intent clarified. It specifies WorkCover's liability for reasonable expenses incurred by the worker for necessary travel to obtain medical treatment, rehabilitation or to undertake examination by a medical assessment tribunal or registered person.

PART 3—RESPONSIBILITY FOR REHABILITATION

Division 1—WorkCover's responsibility

WorkCover's responsibility for worker's rehabilitation

Clause 238 replaces section 151(1) of the *Workers' Compensation Act 1990*. It broadly outlines WorkCover's responsibility to ensure the rehabilitation of injured workers.

This rehabilitation assists workers in their early return to work or, for those workers whose impairment is so serious that a return to work is not possible, to maximise the worker's independent functioning. To achieve this objective, WorkCover must provide or approve workplace rehabilitation training courses for employers and ensure that rehabilitation is provided for workers. Such rehabilitation may be initiated and managed by the worker's employer or by WorkCover.

Division 2—WorkCover's liability for rehabilitation fees and costs

Liability for rehabilitation fees and costs.

Clause 239 replaces section 152 of the *Workers' Compensation Act 1990*. It has been changed to clarify its intent and to update it according to current drafting practice. The clause sets out WorkCover's liability for the fees and costs of rehabilitation of injured workers.

Extent of liability for rehabilitation fees and costs

Clause 240 outlines the extent of WorkCover's liability for the cost of rehabilitation. It specifies that the fees or costs payable are those approved by WorkCover.

Division 3—Caring allowance

Liability for caring allowance

Clause 241 replaces section 153 of the *Workers' Compensation Act 1990.* It has been changed to clarify its intent and to update it according to the gratuitous care lump sum provision and.current drafting practice.

This clause applies to workers who are receiving weekly benefits and who, due to their injury, depend on day to day care for their fundamental activities of daily living. It enables an allowance to be paid to a person (usually the spouse, parent, child, friend of the worker) for voluntary care provided to the worker. It is not designed for the provision of professional attendant care for the worker. The cost of professional care is provided for as medical treatment under part 2, division 2 of this chapter. The voluntary care must be provided at the worker's home by the person (home does not include a nursing home or a place where the worker would receive attendant care).

The worker's day to day care needs are to be assessed by a registered occupational therapist. Occupational therapists are trained to assess functional ability relating to activities of daily living. The regulation will specify the Modified Barthel Index as the assessment tool to be used by.occupational therapists. It is a recognised standard for assessing dependency. This process ensures that workers' needs are assessed in a consistent and appropriate manner and is consistent with the assessment of dependency for entitlement to the gratuitous care lump sum.

Extent of liability for caring allowance

Clause 242 allows WorkCover to pay the caring allowance to the person providing the care. The regulation will provide the calculation method to be used which will be based on the level of the worker's dependency on day to

day care against a graduated scale which specifies the number of hours of care required per week. The scale is commonly used with the Modified Barthel Index. The amount to be paid will also be based on the Carer Pension as specified by the Department of Social Security. This weekly amount will be converted to an hourly rate (based on a 35 hour week).

PART 4—EMPLOYER'S OBLIGATION FOR REHABILITATION

Employer's obligation to appoint rehabilitation coordinator

Clause 243 requires employers who employ 30 or more workers at a workplace to appoint a rehabilitation coordinator. The purpose of this provision is to increase the involvement of employers in workplace rehabilitation and to reduce the costs of workplace injury.

A definition of "employs 30 or more workers" has been included in schedule 3 of the Bill to ensure that employers who employ shift workers or seasonal workers also fulfil their obligations. The specification for 30 or more workers is consistent with the requirement in the *Workplace Health and Safety Act 1995* for employers to appoint a Workplace Health and Safety Officer if there are 30 or more workers at the workplace.

To ensure all employers fulfil their obligations under this provision, a definition for "workplace" has also been included in schedule 3 of the Bill. This definition expands on the definition in the *Workplace Health and Safety Act 1995* to include a place 'that is for the time being occupied by the employer or under the control or direction of the worker's employer; or, where the worker is under the control or direction of the worker's employer.

The intent of this clause is to increase the involvement of employers in workplace-based rehabilitation so that the full benefits of this initiative can be realised. Therefore, a rehabilitation coordinator must be employed by the employer under a contract of service. This legislation does not limit a rehabilitation coordinator performing other duties in their employment outside of those performed in their role as a rehabilitation coordinator.

Employers must appoint a rehabilitation coordinator within 12 months of

the provision being proclaimed (as specified in chapter 11).

A maximum penalty of 50 penalty units has been included to ensure employers' compliance with these provisions.

An employer may request approval from WorkCover to appoint one rehabilitation coordinator for more than one workplace of 30 or more workers. For example, an employer who has two workplaces of 30 or more workers in the same city and has a good safety record with few workplace injuries may request consideration on the basis that one rehabilitation coordinator could reasonably perform the duties for both workplaces.

Employer's obligation to have workplace rehabilitation policy and procedures

Clause 244 outlines the responsibility of employers with 30 or more workers at a workplace to have workplace rehabilitation policies and procedures. These workplace rehabilitation policies and procedures must be accredited by WorkCover. This ensures policies and procedures are developed to a suitable standard. The maximum penalty for noncompliance is 50 penalty units.

Employers are initially given 12 months to develop workplace rehabilitation policy and procedures after this provision is proclaimed (as specified in chapter 11).

Employers must review their workplace rehabilitation policy and procedures every three years to ensure that policies and procedures are kept up to date. Employers must also comply with the reporting requirements to be specified under a regulation e.g. requiring evidence of an employer's review of their workplace rehabilitation policies and procedures be supplied to WorkCover within 30 days of the completion of such a review.

Employer's obligation to assist or provide rehabilitation

Clause 245 specifies that all employers (not just those that employ 30 or more workers) must take all reasonable steps to help or provide a worker with rehabilitation for the period for which compensation is payable. The intention of this clause is to ensure that a suitable standard of rehabilitation is provided to injured workers thereby ensuring that such rehabilitation is effective.

If the employer considers that providing suitable duties to a worker is not

practicable, the employer must provide written evidence to WorkCover that the suitable duties are not practicable. The provision of "suitable duties" is a component of "rehabilitation". These terms are both defined in chapter 1.

The intention of this clause is that reasonable rehabilitation be available for those workers who due to the nature of their injury require rehabilitation. It is not the intention of the clause to impose an obligation on the employer if the worker's injury is such that rehabilitation is not necessary.

Employer's failure in relation to rehabilitation

Clause 246 specifies the consequences of an employer failing to take reasonable steps to assist or provide the worker with rehabilitation. WorkCover may require the employer to pay WorkCover a penalty equal to the amount of compensation paid to the worker during the period of the employer's noncompliance. When the employer assumes their responsibility to provide rehabilitation, the accrual of penalty ceases.

PART 5—WORKER'S MITIGATION AND REHABILITATION OBLIGATIONS

Application of pt 5

Clause 247 outlines that this part applies when a worker has sustained an injury and is required to participate in rehabilitation. If the worker's injury is such that rehabilitation is not necessary, then this part does not apply.

Worker must mitigate loss

Clause 248 specifies that the common law duty of mitigation of loss applies to the worker. Workers are responsible for doing all they can to minimise the effects of their injury i.e. take medical advice, participate in rehabilitation and return to work programs. This clause reflects similar mitigation of damages provisions in chapter 5.

Worker must participate in rehabilitation

Clause 249 replaces section 151(2) to (6) of the *Workers' Compensation Act 1990*. It requires a worker to participate in rehabilitation during the period of the claim. This is consistent with the responsibility of the employer to provide rehabilitation for the claim's duration. This provision also applies to a worker who resigns from their employment during the period of the claim. They are still required to participate during the period in reasonable rehabilitation which may be with the original or another employer.

This clause ensures early rehabilitation intervention and return to work. Two of the key factors in successful rehabilitation are early intervention and a workplace-based approach e.g. suitable duties.

The ability to suspend a worker's entitlement to compensation if they refuse or fail to participate in rehabilitation has been continued in this clause.

CHAPTER 5—ACCESS TO DAMAGES

This chapter introduces:

- regulated access to damages for all injured workers
- a pre-proceedings claims process including a notice of claim form in an endeavour to achieve timely resolution of claims
- new provisions to ensure that both employers and workers take responsibility for safety in the workplace
- more responsibility for injured workers to minimise the effect of their injury
- an assessment of damages fair to both parties.

PART 1—INTERPRETATION AND APPLICATION

Definitions for ch 5

Clause 250 contains definitions for the chapter as follows:

"claimant" distinguishes the meaning of "claimant" as a person entitled to seek damages for use in this chapter. Elsewhere in the Bill it refers to a person applying for statutory compensation.

"damages certificate" defines a "damages certificate" for the purposes of this chapter. A "damages certificate" is issued to a worker, or dependant of a deceased worker, who has not previously lodged an application for compensation. It is different to a "certificate injury" which results when a worker sustains work related impairment of 20% or more. A conditional damages certificate can be issued by WorkCover if there is an urgent need for the claimant to commence legal proceedings and WorkCover is undecided about the application for a damages certificate.

"worker" is required for clarification within this chapter to distinguish between a worker who sustained the injury and is seeking damages and a person entitled to seek damages i.e. claimant.

Meaning of "terminal condition"

Clause 251 defines "terminal condition". The definition is not restricted to a work related injury but can also apply to a worker who has been diagnosed with a condition, other than a compensable injury, that is expected to terminate the worker's life within two years. It is required to support the application of this chapter to a worker with a terminal condition.

Requirements of chapter to prevail and are substantive law

Clause 252 replaces section 191 of the *Workers' Compensation Act 1990* in part. It states that the provisions contained in this chapter take priority over any other legislation. The rules and principles provided in this chapter are those that relate to a person's right and duty when accessing damages for an injury sustained by a worker. This provision is intended to prevent forum shopping by claimants attempting to overcome the rules provided by this chapter i.e. the irrevocable election which must be made by some claimants, contributory negligence provisions and restrictions on damages.

The requirement that the provisions of this legislation are to be regarded as substantive law has been added to clarify that these provisions are not just procedural law.

PART 2—ENTITLEMENT CONDITIONS

Division 1—Limitations on persons entitled to seek damages

General limitation on persons entitled to seek damages

Clause 253 retains access to damages for all workers who have sustained a work related injury. It outlines the only persons who have an entitlement to seek damages and that the provisions of this chapter must be complied with. Those persons who have an entitlement to seek damages are:

- a worker who has sustained a work related impairment of 20% or more resulting in a certificate injury
- a worker who has sustained an injury which has resulted in a work related impairment of less than 20%, and have irrevocably elected to seek damages
- a worker who has been assessed as having nil impairment
- a worker who has not been previously assessed for any permanent impairment even though an application for compensation has been allowed
- a worker who has not previously lodged an application for compensation
- dependants of a deceased worker who died as a result of a work related injury.

Worker with terminal condition

Clause 254 allows a worker who has a terminal condition to bypass some of the pre-proceedings requirements of this chapter, if they choose, to achieve more speedy resolution of the damages claim due to the extenuating circumstances of their condition.

Division 2—Claimant who has sustained certificate injury

Application of div 2

Clause 255 states to whom this division applies. It applies only to a worker who has been notified that they have sustained a work related impairment of 20% or more resulting in a certificate injury.

Claimant may seek damages only on receipt of notice of assessment

Clause 256 requires a claimant to have been assessed for permanent impairment and to have received a notice of assessment from WorkCover before damages can be sought.

Consequences of seeking damages

Clause 257 states that the principles about orders as to costs contained in part 11, division 1 of this chapter apply to claimants entitled to seek damages for a certificate injury.

Division 3—Claimant who has sustained non-certificate injury

Application of div 3

Clause 258 states to whom this division applies. It applies only to a worker who has been notified that they have sustained a work related impairment of less than 20% including those workers who have no work related impairment from their injury.

Claimant may seek damages only on receipt of notice of assessment

Clause 259 requires a claimant to have received a notice of.assessment from WorkCover before damages can be sought. If the notice of assessment indicates that the claimant has a non-certificate injury and contains an offer of lump sum compensation, the claimant must irrevocably choose between accepting lump sum compensation and seeking damages for the injury. If the notice of assessment states that the claimant has not sustained any permanent impairment, the claimant can choose to seek damages for the injury.

Consequences of seeking damages

Clause 260 states that the principles about orders as to costs contained in part 11, division 2 apply to claimants entitled to seek damages for a non-certificate injury.

Division 4—Claimant whose application for compensation was allowed

Application of div 4

Clause 261 states to whom this division applies. It applies only to a worker whose application for compensation has been successful, but has not been assessed for any permanent impairment that may have resulted from the consequences of the event for which the application for compensation was lodged.

Claimant may seek damages only after being assessed

Clause 262 replicates, in part, section 182D of the *Workers' Compensation Act 1990*. It applies to a worker whose application for compensation has been allowed, but in whose case, no assessment for any permanent impairment has been made. The worker must request WorkCover to assess the claimant's injury for any permanent impairment and the worker can not seek damages until WorkCover has given the worker notice of assessment stating the worker's work related impairment (if no impairment the notice of assessment will state nil). If the worker has less than 20% work related impairment, the worker must make an election to seek damages before proceeding further. No election is required if the worker has no impairment.

Consequences of seeking damages

Clause 263 states that in relation to costs in the claimant's proceeding for damages, for a claimant who has a certificate injury, part 11 division 1 applies, and for a claimant who has a non-certificate injury, part 11 division 2 applies.

Division 5—Claimant who has not lodged application for compensation

Application of div 5

Clause 264 states to whom this division applies. It applies only to a worker who has not previously lodged an application for compensation for the injury for which the worker wishes to seek damages.

Access to damages if no previous application for compensation

Clause 265 replicates, in part, section 182D of the *Workers' Compensation Act 1990*. It states that the claimant may seek damages only if WorkCover gives a damages certificate. An application for a damages certificate must be in the approved form.

WorkCover:

- may issue a damages certificate only if:
  - it decides the person was a "worker" at the time of the relevant event and has sustained an "injury" as defined in chapter 1; and
  - the degree of the worker's permanent impairment (related to an injury sustained at work) has been assessed and the worker agrees with the assessment or a tribunal has determined the degree of permanent impairment; and
- must issue a damages certificate if those conditions are met.

This clause contains a further provision to allow a conditional damages certificate to be issued by WorkCover in certain situations. It is anticipated that these situations will usually be when:

- WorkCover is not yet able to decide whether the person:
  - is a "worker"
  - has sustained an "injury"
- the degree of worker's permanent impairment can not be agreed upon
- expiry of the limitation period provided by the *Limitation of Actions Act 1974* is imminent
- the death of the worker is imminent.

In the above circumstances, WorkCover may issue a 'conditional'

damages certificate. The issue of a conditional damages certificate prevents the worker from losing their right to bring legal proceedings. However, legal proceedings commenced after the issue of a conditional damages certificate must be stayed until:

- WorkCover determines the person was a worker (as defined in chapter 1)
- WorkCover determines an injury (as defined in chapter 1) has been sustained by the worker
- the degree of the worker's permanent impairment is agreed upon or decided by a tribunal
- WorkCover makes the damages certificate unconditional
- the pre-proceedings process has been completed.

The requirements of this clause prevents the pre-proceedings process from being circumvented.

This clause:

- allows a person aggrieved by WorkCover's decision that the person was not a worker at the time of injury, to apply for a review of the decision as provided for in chapter 9
- allows WorkCover, where the person does not agree with WorkCover's decision, to seek the decision of a medical assessment tribunal about whether the worker has sustained an injury or about the degree of the worker's permanent impairment resulting from the injury.

Consequences of seeking damages

Clause 266 states that in relation to costs in the claimant's proceeding for damages, for a claimant who has a certificate injury, part 11 division 1 applies, and for a claimant who has a non-certificate injury, part 11 division 2 applies.

Proceedings to be discontinued

Clause 267 requires a person to discontinue the legal proceedings commenced under a conditional damages certificate if WorkCover does not make the damages certificate unconditional. WorkCover may not be able to

make the certificate unconditional because the person was not a worker or did not sustain an injury. It is intended that if the proceedings are not discontinued WorkCover will be able to make application to the court to have the proceedings struck out under the relevant court rules.

Division 6—Dependants

Application of div 6

Clause 268 states that this division applies to a dependant of a worker whose death resulted from an injury as defined in chapter 1.

Claimant may seek damages only in particular cases

Clause 269 allows a deceased worker's dependant to seek damages, only if the dependant has received statutory compensation in accordance with chapter 3, part 10, or, if an application for compensation has not previously been made, WorkCover has issued a damages certificate to the dependant.

Application for damages certificate

Clause 270 replicates, in part, section 182D of the *Workers' Compensation Act 1990* for a dependant of a deceased worker who has not previously lodged an application for compensation. Before seeking damages, the dependant must apply in the approved form to WorkCover for a damages certificate. WorkCover can only issue a certificate if the deceased person was a "worker" when the event occurred and the worker died as a result of an "injury" as defined in chapter 1.

Under this clause, WorkCover may issue a conditional damages certificate if:

- there is an urgent need to commence legal proceedings in the court for damages which may be due to, but not limited to, the imminent expiry of time as provided by the *Limitation of Actions Act 1974*; and
- WorkCover is not yet able to decide whether the:
  - deceased person was a "worker" (as defined in chapter 1)

- deceased worker sustained an "injury" (as defined in chapter 1)
- injury resulted in the worker's death.

The issue of a conditional damages certificate allows initial proceedings to be lodged in order to retain the legal rights of the dependant but these proceedings are stayed until:

- WorkCover makes the damages certificate unconditional by deciding that:
  - the person was a worker (as defined in chapter 1); and
  - an injury was sustained (as defined in chapter 1);.and
  - the injury resulted in the worker's death; and
- the pre-proceedings process has been completed.

This clause prevents the pre-proceedings process from being circumvented.

The clause also allows:

- a person aggrieved by WorkCover's decision that the deceased person was not a worker when the relevant event occurred, to apply for a review of the decision under chapter 9
- WorkCover, where the person does not agree with WorkCover's decision, to seek the decision of a medical assessment tribunal about whether the worker sustained an injury and whether the injury caused the worker's death.

Consequences of seeking damages

Clause 271 states that in relation to costs in the claimant's proceeding for damages, part 11 division 1 applies.

Proceedings to be discontinued

Clause 272 requires a person to discontinue the legal proceedings commenced under a conditional damages certificate if WorkCover does not make the damages certificate unconditional. WorkCover may not be able to make the certificate unconditional because the deceased was not a worker or did not sustain an injury. It is intended that if the proceedings are not discontinued WorkCover will be able to make application to the court to

have the proceedings struck out under the relevant court rules.

Division 7—Review of worker's decision to accept payment of lump sum compensation for a non-certificate injury

Application of div 7

Clause 273 anticipates that situations will arise where workers have chosen to accept lump sum compensation rather than proceed to damages for an injury (which resulted in less than 20% work related impairment) which later deteriorates. This division allows the worker to have their decision reviewed in certain circumstances.

Decision not to seek damages reviewable in certain circumstances

Clause 274 updates section 182E of the *Workers' Compensation Act 1990*. It allows a worker to ask WorkCover to consider fresh medical evidence within the period of limitation provided by the *Limitation of Actions Act 1974* about the worker's injury for which lump sum compensation was previously accepted.

WorkCover is required to consider the medical evidence only if:

- there was no reason to believe that there would be material deterioration of the injury when the degree of permanent impairment was assessed; and
- the further material deterioration is a deterioration of the injury for which the worker accepted lump sum compensation; and
- the medical evidence was not available when the permanent impairment was assessed or when the worker elected not to seek damages; and
- the medical evidence establishes that there has been a material deterioration of the injury.which would have entitled the worker to at least an additional 10% work related impairment which results in a certificate injury i.e. work related impairment of 20% or more. (The intent of this provision has been clarified in that work related impairment can not be achieved by combining a

psychological or psychiatric condition with a physical condition.)

If WorkCover rejects the evidence it must refer the evidence to a review panel, whose decision is final. If WorkCover or the review panel accepts the medical evidence, WorkCover must refer the question of the degree of permanent impairment to the appropriate medical assessment tribunal.

The worker may seek damages for the injury only if WorkCover is satisfied about the matters set out in the clause.

PART 3—MITIGATION OF DAMAGES

Mitigation of damages

Clause 275 places the onus on the injured worker in relation to a claim or a proceeding for damages to prove that they have taken all reasonable steps to mitigate damages. The clause also strengthens the current common law duty to reasonably reduce or minimise loss.

If WorkCover is not satisfied that the worker has taken all reasonable steps to mitigate damages, WorkCover may propose certain actions which the worker should take. The worker is under no direct obligation to comply, but the court must consider whether the worker has failed to mitigate damages and must reduce any damages awarded to reflect any such failure.

The fact that damages are usually awarded by a court on account of ongoing disability and loss of earnings may provide a disincentive for an injured worker to participate in rehabilitation and return to work programs. These provisions are designed to minimise this disincentive, as well as being consistent with the strengthened statutory provisions for workers to participate in rehabilitation programs.

PART 4—REDUCTION OF RECOVERABLE DAMAGES

When damages are to be reduced

Clause 276 replaces section 183(1) of the *Workers' Compensation Act 1990*. It ensures claimants are not compensated twice for the same injury. The damages paid to the claimant must be reduced by the total amount, including tax, paid or payable by WorkCover under the workers' compensation statutory claim. Lump sums paid for gratuitous care, under chapter 3, are not included in the reduction because damages commonly known as Griffiths v Kerkemeyer awards are excluded from a claim for damages under this chapter.

This clause does not limit the reduction of damages payable to the claimant by any other amount required to be refunded by the claimant under any other Federal or State law because of the statutory charge imposed by such legislation on the damages payable e.g. repayments to Department of Social Security, Medicare refund to Health Insurance Commission.

Assessment by court of total liability for damages

Clause 277 replaces section 184 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. This clause applies when damages are awarded by the court or a claim for an injury is settled. It allows a court, on application by either WorkCover or the claimant, to assess the amount of statutory compensation, paid by WorkCover, to be deducted from the awarded or agreed damages before the claimant receives the balance subject to other charges e.g. Department of Social Security, Health Insurance Commission.

WorkCover's charge on damages for compensation paid

Clause 278 replaces section 190 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice and to include a different meaning of damages, than that in chapter 1, for use in this section only.

In a situation where the worker's employer is not indemnified by this legislation or another person has a legal liability to pay damages for the injury independently of this legislation, this clause ensures that WorkCover can recover any workers' compensation paid from damages awarded as a first charge. Any question relating to indemnity can be decided by an industrial magistrate if both parties agree.

An example of the application of this clause would be where a worker is injured in a work related motor vehicle accident and receives workers' compensation benefits for this injury. If damages are payable by the driver of an insured motor vehicle, the amount of workers' compensation paid must be deducted by the motor vehicle insurer and paid to WorkCover, prior to paying any other party's charges or the worker their settlement.

It also allows WorkCover to take an action to recover compensation paid directly from the employer or other person if the person to whom compensation was paid has not taken, or does not intend to take, any action to recover the amount of compensation paid or has recovered insufficient damages to reimburse the compensation to WorkCover. Recovery of the total amount of workers' compensation paid by WorkCover satisfies the person's liability for damages.

PART 5—PRE-COURT PROCEDURES

Object of pt 5

Clause 279 describes the objective of part 5 as being to allow early negotiations with claimants before court proceedings are started.

The pre-proceeding process introduced by this part is intended to:

- implement a simplified procedure for the speedy resolution of claims for personal injury
- minimise costs associated with a claim for both parties
- promote early settlement of claims
- encourage complete preparation and investigation of a damages claim prior to legal proceedings being initiated
- ensure the claimant is fully informed of the possible cost penalties involved in proceeding further after WorkCover makes an offer or counter offer to settle.

Notice of claim for damages

Clause 280 is introduced to support the pre-proceedings process. It requires a claimant to give a notice of claim (including supporting documentation) to WorkCover or self-insurer in the approved form and a copy of the notice of claim (excluding supporting documents) to the employer before any court proceedings for damages are started. The notice of claim must be given to WorkCover or self-insurer within the limitation period prescribed by the *Limitation of Actions Act 1974*. The notice is designed to give sufficient information to WorkCover or self-insurer to enable it to investigate the allegations of negligence and extent of damages with a view to resolving the claim as soon as possible.

The claimant must state the extent of any admitted contributory negligence in the notice of claim and must make a genuine offer of settlement or state why an offer of settlement can not yet be made. The notice of claim must also state any particulars outlined in the regulation which will include heads of damage and method of calculation. The claimant is required to give WorkCover or self-insurer written authority to obtain relevant information including copies of documents from other persons and agencies.

Claimant to tell WorkCover of change to information in notice of claim

Clause 281 requires the claimant to keep WorkCover informed of changes in relation to the information provided to WorkCover in the notice of claim. This ensures WorkCover is fully informed of the claimant's current position in respect of the entitlement (if any) to damages to enable accurate assessment of damages.

Response to notice of claim

Clause 282 requires WorkCover to respond to a notice of claim within 30 days of receipt by giving notice that WorkCover is satisfied the notice of claim complies with requirements, or if it does not comply, identifying the noncompliance and stating whether WorkCover waives compliance. If WorkCover does not waive compliance the claimant has at least 30 days (or a longer period specified by WorkCover) to explain how the notice of claim does comply or to take reasonable action to remedy the noncompliance.

If WorkCover receives a complying notice of claim it must notify the employer, or employers, within 30 days of receipt.

WorkCover to give information to claimant

Clause 283 ensures WorkCover discloses to the claimant any relevant information it holds. However, documents may be withheld in accordance with the clause allowing non-disclosure of certain material.

Employer to cooperate with WorkCover

Clause 284 ensures the employer assists WorkCover in the early resolution of damages claims. It allows WorkCover to recover from an employer who does not cooperate, any additional legal and/or investigative costs it has reasonably incurred in connection with the claim. The amount is to reflect the extent WorkCover has been prejudiced as a result of the employer's failure to cooperate with WorkCover.

WorkCover and claimant to attempt to resolve claim

Clause 285 requires WorkCover and the claimant to endeavour to resolve a claim as quickly as possible. It requires WorkCover to give the claimant a written response to a complying notice of claim within six months, or for a worker with a terminal condition, within three months of:

- WorkCover receiving a compliant notice of claim
- WorkCover waiving the noncompliance of the notice of claim
- the court declaring the notice of claim compliant
- the court giving leave to proceed.

This response must include:

- WorkCover's attitude to liability; and
- acceptance or rejection of any offer of settlement; and
- a genuine counter offer of settlement (or a statement of reasons if WorkCover is unable to make an offer);.and
- copies of any supporting documentation not previously given to the claimant that may help the claimant make a proper assessment

of the offer.

Any offer or counteroffer must not be disclosed to a court except when the court is determining the issue of costs. This ensures that the making of an offer does not prejudice either party.

This clause also provides that any admission of liability by WorkCover:

- is not binding if it:
  - is later shown at the trial in the proceeding for damages that the claimant was relevantly guilty of fraud or attempted fraud
  - was admitted because of misrepresentation by any person
- is not an admission about the claimant's loss or damage
- does not permit the claimant to apply to a court for judgment.

Worker to undergo medical examination

Clause 286 assists WorkCover to assess the claimant's loss by allowing WorkCover to request.the claimant to undergo a medical examination or an assessment of their cognitive, functional or vocational capacities. The claimant may refuse to comply with WorkCover's request if it is unreasonable or repetitious.

Joint expert reports

Clause 287 allows WorkCover and the claimant to jointly arrange for expert reports where both parties agree on the experts, are each provided with a copy of the report and share the costs. This allows the parties to avoid unnecessary expenses associated with each obtaining their own reports. Neither party is compelled to comply with this provision.

Non-disclosure of certain material

Clause 288 allows information and documents to be withheld from the other party if the documents are protected by legal professional privilege i.e. when the information or document has come into existence between a party and that party's lawyer in the course of obtaining legal advice during pre-proceedings and court proceedings.

Certain reports must be disclosed to allow the sharing of information which supports the pre-proceeding process. However, statements of irrelevant opinion may be omitted. Documents may also be withheld if WorkCover has reasonable grounds to suspect the claimant of fraud or misrepresentation.

Consequence of failure to give information

Clause 289 provides that if a document, other than a document exempted under the clause providing for non-disclosure of certain material, is not given to another party, that document can not be used in a court proceeding for the claim by the party who failed to disclose it unless the court orders otherwise. If the document comes to the other party's knowledge, that other party may use the document.

Privilege and duties

Clause 290 allows for information and documents which are disclosed as part of the pre-proceedings process to be treated in the same way as if they were disclosed in court proceedings. For example, parties must maintain confidentiality of disclosed documents and such documents can not be used in defamation proceedings.

Court's power to enforce compliance with chapter

Clause 291 gives a court power to order a party or parties to comply with a provision of this chapter and the court may make such consequential or ancillary orders as may be necessary or desirable.

PART 6—SETTLEMENT OF CLAIMS

Division 1—Compulsory Conference

Application of div 1

Clause 292 states that this division does not apply to a claim which is settled by negotiation between the parties.

Compulsory conference

Clause 293 encourages the resolution of claims before court proceedings are started. It requires the claimant to organise and hold a compulsory conference within three months after WorkCover has given written notice of its response on liability (which must include a counteroffer or alternatively a statement of reasons).

If both parties agree, the compulsory conference may be held with a court approved mediator. The clause requires exchange of any documents not previously exchanged, to ensure that all parties are fully informed.

The claimant and a person authorised by WorkCover to settle the claim are required to attend the conference and actively participate to attempt to settle the claim. If a face-to-face conference can not reasonably be held another agreed method and time is allowed.

Parties to make written final offer if claim not settled at compulsory conference

Clause 294 ensures the claimant and WorkCover make every attempt to resolve a claim before proceedings are started. If the claim is not settled at a conference each party must (at the conference) make a final written offer that is to remain open for 14 days from the date of conference. This additional 14 days allows each party time to give proper consideration to acceptance of the offer. Court proceedings must not be started while the offers remain open.

If the claimant starts court proceedings, the final written offers must be filed at the court in a sealed envelope. The court is prevented from reading the final written offers until after the court has decided the claim, so that the court's decision on liability and quantum is not influenced by the offers, but the court must have regard to the offers in deciding costs.

Division 2—Financial information to be given to claimant

This division ensures the claimant is fully informed of the legal costs associated with all stages of the proceedings of the damages claim and the possible legal cost implications of failing to settle for a reasonable amount at an early stage.

Definition for div 2

Clause 295 states that in this division costs include outlays e.g. costs incurred in obtaining a medical report.

Information to be given by lawyer before compulsory conference

Clause 296 requires the claimant's lawyer to provide a written report to the claimant at least four days before the compulsory conference, informing the claimant about costs and net damages (damages minus refund of statutory workers' compensation payments). This ensures the claimant can make an informed decision about whether to accept or reject any counteroffers.

Information to be given by lawyer before other type of settlement attempted

Clause 297 requires the claimant's lawyer to provide a written report to the claimant at least four days before an attempt to settle the claim (other than by a compulsory conference), informing the claimant about costs and net damages (damages minus refund of statutory workers' compensation payments). This settlement may be other than by compulsory settlement conference. This ensures the claimant can make an informed decision whether to accept or reject a counteroffer.

Details of costs payable

Clause 298 ensures the claimant is fully informed as to the costs payable by the claimant to the lawyer and the total costs, if any, recoverable from WorkCover.

WorkCover to be informed that report given

Clause 299 requires the claimant to notify WorkCover that they have been provided with a written report on costs. Notification is to be received by WorkCover before a compulsory conference or before any settlement is made. This notification could actually be received immediately prior to the conference. This assures WorkCover that the claimant is aware of the cost implications of failing to settle.

Division 3—Settlement before court proceedings

Settlement of claim for damages

Clause 300 requires the parties to a settlement to sign a discharge for the claim. This then makes the agreement binding on parties to the settlement.

PART 7—START OF COURT PROCEEDINGS

Division 1— When claimant can start court proceedings

Application of div 1

Clause 301 states that the claimant must ensure that certain conditions, which are provided for by the division, are satisfied before court proceedings are commenced.

Compliance necessary before starting proceeding

Clause 302 requires the claimant to have complied with the relevant division in part 2 of this chapter. It also requires the claimant (including if the court makes a declaration or gives leave to proceed) to have complied with the pre-court procedures and made every endeavour to settle the claim for damages before commencing or continuing with court proceedings as outlined in the following three clauses.

Claimant to have given complying notice of claim or WorkCover to have waived compliance

Clause 303 sets out the conditions which must apply before the claimant can commence court proceedings.

Court to have made declaration about noncompliance

Clause 304 allows the claimant to apply to the court for a declaration that a notice of claim has been given, or that the claimant has remedied any noncompliance in respect of a notice of claim if WorkCover does not consider the claimant has lodged a complying notice of claim. If a court makes a declaration in the claimant's favour, the court may attach conditions to the order to minimise any prejudice to WorkCover due to the claimant's failure to comply with the notice of claim.

Court to have given leave despite noncompliance

Clause 305 allows the court to give leave for a claimant to start a proceeding despite noncompliance in respect of a notice of claim. If a court gives a claimant leave to proceed, the court may attach conditions to minimise prejudice to WorkCover due to the claimant's failure to comply with the requirements in respect of a notice of claim.

Division 2—Court proceedings

Carriage of proceedings

Clause 306 requires that a proceeding for damages must be brought against the employer of the injured or deceased worker and may only be brought against WorkCover in circumstances permitted by the clause.

The claimant must serve the initiating legal process on the employer and on WorkCover within the time specified in this clause. The claimant can take no further step in the action until WorkCover has been served—unless the employer was self-insured. An employer, other than a self-insurer, is required to cooperate with WorkCover by attending to the execution of documents and do everything reasonably requested by WorkCover to

ensure the proceedings are conducted in a timely manner. In certain circumstances, WorkCover may execute documents with respect to the legal process on behalf of the employer to ensure WorkCover is not disadvantaged in the conduct of the proceeding. The disadvantage could be in relation to cost orders imposed by the court for failure to lodge a document within the required time frame.

Exclusion of jury trial

Clause 307 requires that a proceeding for damages must be heard by a judge sitting without a jury.

Alteration of period of limitation

Clause 308 allows the claimant to bring proceedings outside the period of limitation under the *Limitation of Actions Act 1974*, provided that during the period of limitation:

- a complying notice of claim has been received by WorkCover
- WorkCover has waived noncompliance
- a court makes a declaration about noncompliance
- a court gives leave despite a noncompliant notice of claim.

If legal proceedings are to be issued outside the period of limitations, this clause requires that the pre-proceedings process be complied with before legal proceedings are commenced. The proceedings may only be brought within 60 days after the day of the compulsory conference.

Court may have regard to claimant's noncompliance with s 280 in relation to costs and interest

Clause 309 acts as an incentive to the claimant to ensure that a complying notice of claim is lodged with WorkCover. The notice of claim is a vital part of the pre-proceedings process. This clause allows the court to award legal and investigation costs incurred by WorkCover because of the claimant's failure to comply with the requirements for a notice of claim. The court may only award interest in the claimant's favour for the period of the claimant's default, if, in the court's opinion, there was a reasonable excuse for the failure to comply. Interest is allowable only in accordance with part 10 of

this chapter.

Court may have regard to compulsory conference

Clause 310 permits the court when deciding whether it is appropriate to refer a claim for damages to an alternate dispute resolution process to have regard to the compulsory conference undertaken in the pre-proceedings process. The court may have regard to the compulsory conference when determining costs.

PART 8—PARTICULAR MATTERS AFFECTING ASSESSMENTS OF LIABILITY

Absolute defences not reintroduced

Clause 311 prevents contributory negligence being used as an absolute defence. However, it does not prevent the reduction of damages to a nil award, due to the worker's contributory negligence, as provided in this part. The employer can still be found vicariously liable for injury that is caused by the acts or omissions of their employees while in the course of employment.

This clause also prevents the reintroduction of the doctrine of common employment which was abolished in Queensland in 1951. The doctrine of common employment was that where an employee was injured through the negligence of a fellow employee, the employer could not be held vicariously liable.

Liability of employers and workers

Clause 312 is intended to encourage workers to take care of their own safety. It requires courts to have regard to whether the claimant has proved the matters relevant to the claim set out in this clause when deciding issues of liability and contributory negligence on the part of the employer and worker respectively. The court must dismiss a claim in the circumstances provided for in the clause.

Worker's breach of instructions

Clause 313 places a greater onus on the worker to adhere to instructions provided by the employer. An employer will not be liable for damages because of the employer's failure to ensure the worker did not breach.instructions previously given by the employer.

Reduction of damages because of contributory negligence

Clause 314 requires that the court must make a finding of contributory negligence in the circumstances specified in the clause.

The clause requires that the damages must be reduced if the worker's injuries were caused or contributed to by one or more of the specified circumstances. The damages recoverable by the worker must be reduced by at least 25% for each of the specified circumstances causing or contributing to the worker's injuries.

PART 9—NO RIGHT TO PARTICULAR DAMAGES

Gratuitous services

Clause 315 relates to the head of damage commonly referred to as a Griffiths v Kerkemeyer award. Griffiths v Kerkemeyer awards are named after the 1977 case of that name, which established that nursing/caring services provided gratuitously by friends or family may be compensated by damages representing the value of the services rendered. This clause prevents.the court awarding the worker damages for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance when those services are provided by another person i.e. spouse, parents, siblings, other relatives or friends of the claimant. Examples of, but not limited to, services for which a claimant can not receive damages include housekeeping, assisting with personal hygiene needs, mowing of lawn, gardening, changing bandages, dressing wounds. The Bill recognises there will be a need in certain circumstances for gratuitous care. Therefore, provision has been made in the statutory compensation benefits design (under chapter 3) for payment of a lump sum in lieu of gratuitous care awards under common law for the more seriously injured workers in need

of ongoing unpaid care assistance.

Damages other than to claimant

Clause 316 prevents a court awarding damages under this Act to a person other than the claimant, including damages for loss of consortium i.e. association between spouses which includes companionship, love, affection, comfort, and sexual relationship.

PART 10—AWARDING OF PARTICULAR DAMAGES

Division 1—Future economic loss

Future economic loss

Clause 317 prevents a court awarding damages for future economic loss or diminution of future earnings unless the claimant satisfies the court that because of the level of work related impairment there is at least a 51% likelihood they will sustain future economic loss or reduction in future earning capacity.

Division 2—Interest

Interest

Clause 318 provides that a court may only order payment of interest on items of special damage that the claimant has actually paid and for damages for actual past economic loss. The court must have regard to any unreasonable failure by WorkCover to offer to settle. This clause prevents the awarding of interest on general damages.

Division 3—Exemplary damages

Exemplary damages

Clause 319 prevents a court from awarding exemplary damages against WorkCover. The court may make a separate judgment against the employer for the payment of exemplary or punitive damages if the court considers the employer acted in total disregard for the worker's safety. However, indemnity for exemplary damages can not be provided for employers under a policy of insurance with WorkCover.

PART 11—COSTS

Division 1—Costs applying to worker with certificate injury or dependant

Application of div 1

Clause 320 provides that division 1 applies only if a.worker has a work related impairment of 20% or more resulting in a certificate injury or if the worker is deceased and a dependant is seeking damages.

Principles about orders as to costs

Clause 321 places a responsibility on the parties to make realistic offers of settlement in the pre-proceedings process and parties who do not make realistic offers may risk a penalty in costs. It requires the court to consider the written final offers made at the compulsory conference and apply the principles in this part when making an order in respect of costs.

WorkCover's denial of liability

Clause 322 places the onus on WorkCover to ensure sound decisions are made by WorkCover on available evidence. The court must award costs in favour of the claimant, on a solicitor-client basis which may be a higher overall amount, if WorkCover denies liability or is seen to be unreasonable in admitting liability but claiming contributory liability from the worker or another party and the court establishes liability in the claimant's favour.

Costs because of noncompliance with this chapter

Clause 323 sets out the procedures to be used by the court in determining costs where a party has failed to comply with a provision of this chapter.

Division 2—Costs applying to worker with non-certificate injury

Application of div 2

Clause 324 provides that division 2 applies if a worker has a work related impairment of less than 20%, which includes a worker who has been assessed as having no work related impairment, and wishes to seek damages. This division only applies if the claim is determined by the courts.

Principles about orders as to costs

Clause 325 replaces section 182C of the *Worker's Compensation Act 1990*. It outlines the conditions which apply to the payment of costs where the worker has a work related impairment of less than 20% and makes an irrevocable choice to seek damages. This clause also applies to those workers who have been assessed as having no work related impairment and who nevertheless wish to seek damages. This clause has been designed to foster efficient management and settlement of claims. It provides for cost orders to be made against WorkCover or the worker in circumstances where inappropriate written final offers were made at the compulsory conference.

The basis of cost orders is that if the court makes an award at or above the worker's written final offer, then WorkCover must pay party and party costs (costs that are necessary to enable the party to conduct the litigation and no more) from the date of offer to trial. Conversely, should the court award damages equal to or below WorkCover's written final offer, then the worker must pay WorkCover's party and party costs from the date of the final offer to trial. In circumstances where the judgment award falls between each party's final offer, then each party bears their own costs.

The section also contains provisions for cost orders where parties to an action are required to make necessary court applications to enforce progress or supply information in an action and where another party is joined in the

proceedings. Any costs order for the pre-proceedings stage will be as prescribed under a regulation.

Division 3—Costs generally

Application of div 3

Clause 326 states this division applies to all claimants.

Costs if action could have been brought in a lower court

Clause 327 ensures that costs in a legal proceeding are awarded on the scale of costs applicable to the court which had the jurisdiction to hear the claim, given the amount of damages actually awarded. For example, if a writ was issued in the Supreme Court which has.jurisdiction to award damages over $200,000, and the actual damages awarded by the Supreme Court were only $100,000, then costs are to be awarded on the scale appropriate to the District Court.

PART 12—EXCESS DAMAGES AWARDED IN ANOTHER JURISDICTION

Application of pt 12

Clause 328 provides that part 12 applies if a person has an entitlement to seek damages for an injury sustained by a worker as provided by this legislation and does so in a court other than a court in Queensland and if the court awards damages which are greater than an award the claimant would have received had an action been commenced in Queensland and WorkCover is liable to pay these damages.

This part is intended to ensure equity in relation to a claimant's entitlement to seek damages under this legislation and prevent forum shopping by workers.

No liability for excess damages

Clause 329 provides that WorkCover is not liable for the difference between the damages the claimant has been awarded and what the claimant would have been awarded had the action been taken in Queensland.

CHAPTER 6—WORKCOVER QUEENSLAND

This chapter establishes WorkCover as a legal entity whose primary function is to manage the workers' compensation scheme established by this Bill. WorkCover will replace the workers' compensation board. In undertaking its functions, WorkCover is recognised under this Bill as the regulator and commercial provider of workers' compensation insurance in Queensland.

On the commencement of WorkCover, it is to be nominated as a candidate Government Owned Corporation via a regulation under the *Government Owned Corporations Act 1993*. It is not appropriate to expose WorkCover to the entire *Government Owned Corporations Act 1993* at this stage, due to its insolvent financial position and its retention of regulatory functions. Once the WorkCover Fund returns to full solvency, the issue of separating regulatory functions from commercial functions can be addressed. This would allow full corporatisation to proceed.

WorkCover will operate under a modified version of the corporatisation structure contained in the *Government Owned Corporations Act 1993*. The workers' compensation board has worked closely with the Government Owned Enterprise Unit of Treasury to ensure that WorkCover has an appropriate corporate structure that is compatible with its current financial position, the long term commercial objectives which are desirable and Treasury corporatisation policy.

Chapter 6 excludes WorkCover from the Corporations Law—the standard corporate accountability framework. Instead, the accountability regime established in the *Government Owned Corporations Act 1993* has been applied to WorkCover with some adjustments to reflect WorkCover's role as a regulator and a commercial provider and the fact that WorkCover is in an insolvent financial position.

The board of WorkCover is established as an independent statutory body, responsible for WorkCover's operations and performance. In contrast to the board of the workers' compensation board, which represented the major stakeholders in the scheme, the WorkCover board will be a commercial board, concerned with the commercial performance of WorkCover. The board will also be responsible for WorkCover meeting its regulatory goals.

To recognise the 'arm's length' relationship between the WorkCover board and government, the Minister is given reserve powers to influence WorkCover's operations. It is envisaged that these powers will be used sparingly (if at all). If the Minister uses these powers to give directions to the board, the Minister must publish these directions in the gazette, and in some cases, table them before the Legislative Assembly. This strengthens the board's autonomy to operate WorkCover in a commercial manner, whilst still providing an avenue for government intervention if necessary.

In summary, chapter 6:

- establishes WorkCover as a legal entity
- recognises the government financial guarantee extended to WorkCover
- establishes WorkCover's accountability regime
- outlines WorkCover's functions and powers
- outlines the powers of the Minister
- establishes WorkCover's board of directors and their role
- provides for a chief executive officer for WorkCover
- outlines the employment provisions for WorkCover staff
- establishes the financial structure within which WorkCover is to operate.

PART 1—ESTABLISHMENT

WorkCover is established

Clause 330 establishes the new entity to be known as WorkCover Queensland.

WorkCover is a body corporate etc.

Clause 331 replaces section 12(2) of the *Workers' Compensation Act 1990*. It establishes WorkCover as a legal entity in the form of a body corporate. It possesses all characteristics of a body corporate, such as being able to sue and be sued and being able to acquire and hold property.

Relationship with State

Clause 332 replaces section 12(4) of the *Workers' Compensation Act 1990*. It declares WorkCover to be representing the State, which provides WorkCover with the protection of Crown immunity. The main advantage of this provision is that third parties dealing with WorkCover are assured that they will not be left uninsured by reason of the insolvent position of WorkCover.

Subsection (2) replaces section 37 of the *Workers' Compensation Act 1990*. It clarifies the financial guarantee being extended from the government to WorkCover. If WorkCover is required to call on the guarantee, monies will be transferred from consolidated revenue to WorkCover.

PART 2—FUNCTIONS AND POWERS

Division 1—Functions and insurance business

General statement of WorkCover's functions

Clause 333 outlines the general functions of WorkCover in respect of its role as manager of the workers' compensation scheme and insurance provider. It recognises that WorkCover will, as far as practicable, deliver insurance in a commercial manner and regulate the workers' compensation

scheme. It further recognises the reserve powers of the Minister to intervene in the operations of WorkCover in special circumstances.

WorkCover's insurance business

Clause 334 replaces section 41 and 43 of the *Workers' Compensation Act 1990*. It outlines the types of.insurance WorkCover can provide. The clause also clarifies that WorkCover can reinsure risk if it wishes. Reinsurance is a common insurance practice, which allows WorkCover to insure some of the risk it carries. For instance, WorkCover may take out insurance to cover the financial risk of a catastrophe resulting in a large number of expensive claims.

WorkCover as the exclusive provider of accident insurance

Clause 335 replaces section 42 of the *Workers' Compensation Act 1990*. It provides for WorkCover to be the sole provider of.accident insurance. Any other policies issued by parties other than WorkCover for accident insurance are void and unenforceable at law. This provision reflects government policy that accident insurance should be provided by WorkCover rather than private insurers.

WorkCover's offices

Clause 336 replaces section 28 of the *Workers' Compensation Act 1990*. It states that WorkCover can maintain an office network suitable to its needs. WorkCover's general powers enable it to undertake activities such as opening and closing offices. It is common in legislation to include a provision similar to this for clarification purposes.

Division 2—Powers generally

Objects of div 2

Clause 337 outlines that the objects of the division are to:

- abolish the doctrine of 'ultra vires'
- ensure WorkCover recognises the limitations of its powers, but in a manner that does not affect the validity of its dealings with third

persons.

The doctrine of 'ultra vires' is a principle which applied to companies until 1982. Its premise was that a company only has capacity to do that which is permitted by its constitutive documents i.e. its memorandum and articles of association. If a company acted outside the permitted areas, then its act would be void. In practical terms, this meant that third parties dealing with the company in good faith could still find that their dealings were not legally valid because the company was acting 'ultra vires'. Application of the 'ultra vires' doctrine is unfair to third parties engaging in transactions with the company in good faith.

WorkCover's general powers

Clause 338 replicates section 149 of the *Government Owned Corporations Act 1993*. It states that WorkCover has all the powers of a 'natural person'. This means that WorkCover can engage in the same activities as an individual. Examples of these activities are provided, such as engaging in contracts, buying and selling property and hiring the services of consultants.

General restriction on WorkCover's powers

Clause 339 replicates section 150 of the *Government Owned Corporations Act 1993*. It provides a general restriction on WorkCover's powers. As stated in the objects of the division, WorkCover will not be able to apply the doctrine of 'ultra vires'. Hence, WorkCover needs to ensure that arrangements it enters into with other parties are in keeping with its powers and its areas of responsibility. This provision is designed to ensure that WorkCover operates within the constraints of its 'statement of corporate intent' and any directions provided to it by the Minister.

Disposal of main undertakings

Clause 340 replicates section 162 of the *Government Owned Corporations Act 1993*. It provides that decisions to dispose or sell any of WorkCover's main undertakings may only proceed with the written permission of the Minister. An example may be WorkCover wishing to sell or privatise any aspect of its current operations. Such a course of action

could only proceed with the Minister's approval.

Acquiring and disposing of subsidiaries

Clause 341 replicates section 163 of the *Government Owned Corporations Act 1993*. It prevents WorkCover from establishing or disposing of a subsidiary body without Ministerial permission.

Protection of persons who deal with WorkCover

Clause 342 replicates section 151 of the *Government Owned Corporations Act 1993*. It abolishes WorkCover's ability to apply the doctrine of 'ultra vires' to break arrangements it enters into with other parties. In practical terms, the clause protects reasonable assumptions that a person dealing with WorkCover may make e.g. that the Act has been complied with, authorities are valid, and so on.

Reserve power of Minister to direct that asset not be disposed of

Clause 343 replicates section 161 of the *Government Owned Corporations Act 1993*. It allows the Minister the power to prevent WorkCover from selling or otherwise disposing of a particular WorkCover asset. For example the Minister could intervene, by written direction to the board, in a commercial decision by WorkCover to sell one of the buildings it owns.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction under this provision is to be published in the gazette within 21 days after it is given.

PART 3—OBLIGATIONS

Division 1—Corporate Plan

WorkCover must have corporate plan

Clause 344 replicates section 103 of the *Government Owned Corporations Act 1993*. It provides that WorkCover must have a corporate plan.

Guidelines in relation to corporate plans

Clause 345 replicates section 105 of the *Government Owned Corporations Act 1993*. It enables the Minister to issue guidelines about the form and content of any corporate plan, which must be complied with by WorkCover.

Draft corporate plan

Clause 346 replicates section 106 of the *Government Owned Corporations Act 1993*. It specifies that the board of WorkCover must prepare and submit to the Minister for agreement, a draft corporate plan not later than two months before the start of each financial year. Section 106 provides instruction for a Government Owned Corporation's first corporate plan. This is not included in this WorkCover provision, as it is addressed as a transitional matter in chapter 11 of this Bill.

Special procedures for draft corporate plan

Clause 347 replicates section 107 of the *Government Owned Corporations Act 1993*. It sets out the procedures and time limits for the Minister to request or direct on the contents of, and other matters in relation to, the draft corporate plan. Section 107 provides instruction for a Government Owned Corporation's first corporate plan. This is not included in this WorkCover provision, as it is addressed as a transitional matter in chapter 11 of this Bill.

Corporate plan on agreement

Clause 348 replicates section 108 of the *Government Owned Corporations Act 1993*. It provides for the draft corporate plan to become WorkCover's corporate plan when it is agreed to by the Minister.

Corporate plan pending agreement

Clause 349 replicates section 109 of the *Government Owned Corporations Act 1993* and has not changed except for being updated according to current drafting practices. The draft corporate plan submitted, or last submitted, before the start of the financial year is taken to be the corporate plan until a draft corporate plan is agreed to under the previous clause. Section 109 provides instruction for a Government Owned Corporation's first corporate plan. This is not included in this WorkCover provision, as it is addressed as a transitional matter in chapter 11 of this Bill.

Changes to corporate plans

Clause 350 replicates section 110 of the *Government Owned Corporations Act 1993*. It provides for the modification of the corporate plan with the agreement of the Minister or by a direction to the board. In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction is to be published in the gazette within 21 days after it is given.

Division 2—Statement of corporate intent

WorkCover must have statement of corporate intent

Clause 351 replicates section 111 of the *Government Owned Corporations Act 1993*. It states WorkCover must have a statement of corporate intent for each financial year. The statement of corporate intent is a well-defined agreement between the board and the Minister as to the objectives of WorkCover for a financial year. At the end of the financial year, a comparison of actual outcomes can be made against the performance targets contained in the statement of corporate intent. The statement is reviewed and renegotiated annually.

Statement of corporate intent must be consistent with corporate plan

Clause 352 replicates section 113 of the *Government Owned Corporations Act 1993*. It states the statement of corporate intent must be consistent with the corporate plan of WorkCover.

Matters to be included in statement of corporate intent

Clause 353 replicates section 114 of the *Government Owned Corporations Act 1993*. It provides that WorkCover's statement of corporate intent must specify the financial and non-financial performance targets for its activities for the relevant financial year. The statement of corporate intent is to include the matters referred to in the following clause, any community service obligations to apply and the employment and industrial relations plan for WorkCover.

Additional matters to be included in statement of corporate intent

Clause 354 replicates section 115 of the *Government Owned Corporations Act 1993*. It sets out the additional matters which must be included in the statement of corporate intent. The matters listed in this clause do not limit the matters which may be included in the statement of corporate intent. The Minister may exempt WorkCover from including in the statement of corporate intent any of the specified matters or any aspect of one of those matters.

Draft statement of corporate intent

Clause 355 replicates section 116 of the *Government Owned Corporations Act 1993*. It requires the board of WorkCover to prepare and submit to the Minister for agreement a draft statement of corporate intent no later than two months before the start of each financial year. The board and the Minister must endeavour to reach agreement on the draft statement of corporate intent as soon as possible. The provision for the first statement of corporate intent is contained in the transitional provisions contained in chapter 11 of this Bill.

Special procedures for draft statement of corporate intent

Clause 356 replicates section 117 of the *Government Owned Corporations Act 1993.* It sets out the procedures for the Minister to request or direct modifications to the statement of corporate intent. If the draft statement of corporate intent has not been agreed to before the start of the financial year, the Minister may direct the board to take specified steps or make modifications in relation to the draft statement.

Section 117 provides instruction for a Government Owned Corporation's first corporate plan. This is not included in this WorkCover provision, as it is addressed as a transitional matter in chapter 11 of this Bill.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction is to be published in the gazette within 21 days after it is given.

Statement of corporate intent on agreement

Clause 357 replicates section 118 of the *Government Owned Corporations Act 1993*. It provides for the draft statement of corporate intent to become WorkCover's statement of corporate intent when it has been agreed to by the Minister.

Changes to statement of corporate intent

Clause 358 replicates section 120 of the *Government Owned Corporations Act 1993*. It provides for changes to the statement of corporate intent by the board with the agreement of the Minister or by a direction from the Minister to the board. In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction is to be published in the gazette within 21 days after it is given.

Division 3—Community service obligations

Meaning of "community service obligations"

Clause 359 replicates section 121 of the *Government Owned Corporations Act 1993*, with minor adjustment to reflect the fact that WorkCover will not be fully corporatised.

Community service obligations are non-commercial activities which WorkCover may be directed to pursue by the government. They are activities which would not be undertaken in a purely commercial environment. Community service obligations often relate to the equity objectives of government and do not normally include regulatory or policy functions.

Community service obligations to be specified in statement of corporate intent

Clause 360 replicates section 122 of the *Government Owned Corporations Act 1993*. It states that the community service obligations of WorkCover are to be specified in its statement of corporate intent, as are the costings of, funding for, or other arrangements to make adjustments relating to the community service obligations

Division 4—Reports and other accountability matters

Quarterly reports

Clause 361 replicates section 130 of the *Government Owned Corporations Act 1993*. It sets out the requirements for quarterly reports to be given to the Minister by WorkCover.

Matters to be included in annual report

Clause 362 replicates section 131 of the *Government Owned Corporations Act 1993*. It sets out the contents of annual reports of WorkCover. References in section 131 to the Corporations Law have been excluded from the WorkCover provision as WorkCover will not be subject to Corporations Law.

Deletion of commercially sensitive matters from annual report etc.

Clause 363.replicates section 132 of the *Government Owned Corporations Act 1993*. It enables WorkCover's board to apply to the Minister to have commercially sensitive matters deleted from the copy of the annual report and accompanying documents that are to be made available to the public.

The annual report provided to the Minister will have a detailed comparison of the performance of the organisation with respect to its statement of corporate intent. Some of the information in the statement of corporate intent may not be suitable for public release, due to its commercially sensitive nature.

The annual report may include a summary of an item required to be included in an annual report providing a full statement of the item is laid

before the Legislative Assembly at the same time as the annual report is laid before it.

Board to keep Minister informed

Clause 364 replicates section 133 of the *Government Owned Corporations Act 1993*. It sets out the information, reports and other matters required to be provided to the Minister by the board of WorkCover.

Division 5—Duties and liabilities of directors and other officers

Disclosure of interests by director

Clause 365 replicates section 134 of the *Government Owned Corporations Act 1993*. It sets out the requirements for disclosure of a direct or indirect interest in a matter being, or about to be considered, by the board. The director must disclose the interest to a meeting of the board, as soon as possible once the relevant facts come to the director's knowledge. This provision is designed to prevent conflicts of interest arising in director decision making.

Voting by interested director

Clause 366 replicates section 135 of the *Government Owned Corporations Act 1993*. It specifies that a director, who has a material interest in a matter, is not able to participate in any decision in relation to the matter or in any related resolution made relating to the matter except when the board has passed a resolution stating the director should not be disqualified from voting on the matter. This provision is designed to prevent conflicts of interest arising in director decision making.

Duty and liability of certain officers of WorkCover

Clause 367 replicates section 136 of the *Government Owned Corporations Act 1993*. It describes the standards of corporate conduct that are required from officers of WorkCover. The provision contains strict penalties for officers of WorkCover who do not act honestly or with care, or who abuse their position in WorkCover for their personal gain. The

provision allows WorkCover to make recovery from persons who have contravened this section.

For private sector companies, the Corporations Law provides rules for the conduct of employees of corporations. However, as WorkCover is to be exempt from the provisions of the Corporations Law, it is appropriate for this provision to apply to WorkCover, to ensure WorkCover officers behave in a responsible and ethical manner.

Prohibition on loans to directors

Clause 368 replicates section 137 of the *Government Owned Corporations Act 1993*. It prohibits WorkCover directors from using their position to establish financial loans from WorkCover to themselves or their relatives. An exception is provided if a director loans money from WorkCover under an arrangement that is available to members of the public. This provision is designed to prevent WorkCover directors from entering into inappropriate financial relationships with WorkCover.

WorkCover not to indemnify officers

Clause 369 replicates section 138 of the *Government Owned Corporations Act 1993*. It is designed to ensure the effective operation of the provision in this division regarding the duty and liability of certain officers of WorkCover.

The provision regarding the duty and liability of certain officers of WorkCover contains guidelines for the corporate behaviour of WorkCover officers and contains strict penalties for inappropriate behaviour by officers. It would be totally ineffective if WorkCover was able to indemnify officers from liabilities they have incurred as officers. Such liabilities could include the penalties an officer may incur for breaches of that provision.

However, WorkCover can indemnify officers in limited circumstances. For instance indemnity can be provided for civil liability, provided the liability does not arise from.conduct involving a lack of good faith.

Further, officers can be indemnified from the costs and expenses incurred by the officer in relation to defending proceedings that find in the officer’s favour or the costs arising from a successful application by the officer to a court for relief in respect to a legal action.

WorkCover not to pay premiums for certain liabilities of officers

Clause 370 replicates section 139 of the *Government Owned Corporations Act 1993*. It is designed to ensure the effective operation of the provision in this division regarding the duty and liability of certain officers of WorkCover.

The provision regarding the duty and liability of certain officers of WorkCover contains guidelines for the corporate behaviour of WorkCover officers and contains strict penalties for inappropriate behaviour by officers. This provision would be totally ineffective if WorkCover was able to pay premiums and take out insurance that would indemnify officers from liabilities they have incurred as officers. However, WorkCover may cover the costs and expenses of defending an officer in either a civil or criminal proceeding, whatever the outcome.

Examination of persons concerned with WorkCover

Clause 371 replicates section 142 of the *Government Owned Corporations Act 1993.* It provides for an examination—by the Supreme or a District Court—of persons who have been or may have been guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to WorkCover. This also relates to persons who may be capable of giving information in relation to the management, administration, or affairs of WorkCover.

This provision exists to ensure information can be gathered to investigate possible breaches of the duty and liability clause in this division or other inappropriate corporate behaviour of WorkCover officers.

Power to grant relief

Clause 372 replicates section 143 of the *Government Owned Corporations Act 1993*. WorkCover directors and officers will be liable for strict penalties if they engage in inappropriate corporate behaviour such as negligence, default, breach of trust or breach of duty. However, even though there may be a case for stating an officer is liable for a breach of any of these behaviours, the officer may have a reasonable excuse for their behaviour, such as they honestly believed they were following the correct course of action, and there was no intent to engage in inappropriate behaviour.

In these cases, the officer can apply to the Supreme Court or a District Court for 'relief'. The court may then relieve i.e. absolve the person, completely or partly, from liability on terms that the court considers appropriate.

If a case is being tried by a judge with a jury, the judge may, after hearing evidence, relieve the officer completely or partly of liability if the judge deems this to be appropriate.

False or misleading information or documents

Clause 373 replicates section 144 of the *Government Owned Corporations Act 1993*. It prohibits.an officer of WorkCover from making false or misleading statements concerning WorkCover to another officer or the Minister. A similar prohibition exists in relation to false or misleading documents, unless the officer indicates to the recipient that the documents are false or misleading, and provides correct information if possible. A penalty is applicable if it is established that the officer provided the false of misleading information or documents with an intent to deceive or defraud.

PART 4—THE MINISTER

Reserve power of Minister to notify board of public sector policies

Clause 374 replicates section 123 of the *Government Owned Corporations Act 1993*. It provides a reserve power for the Minister to notify the WorkCover board in writing of a public sector policy that is to apply to WorkCover if the Minister is satisfied that it is necessary to give the notification in the public interest.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction under this provision is to be published in the gazette within 21 days after it is given, and tabled before the Legislative Assembly within 14 sitting days after it is given.

Reserve power of the Minister to give directions in public interest

Clause 375 replicates section 124 of the *Government Owned Corporations Act 1993*. It is designed to be the mechanism for Ministerial intervention into the commercial management of WorkCover. For instance, if the board had notified the Minister of their commercial decision to increase premium rates under the provision in chapter 2 of this Bill, the Minister could give a direction under this clause stating the opinion that such a rate increase would not be in the public interest and that premium rates should be maintained at present levels.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction under this provision is to be published in the gazette within 21 days after it is given and tabled before the Legislative Assembly within 14 sitting days after it is given.

Additional power to direct WorkCover

Clause 376 allows the Minister to give the board directions regarding the non-commercial administration of this legislation. It is designed to be a mechanism for Ministerial intervention into the regulatory management of WorkCover.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction under this provision is to be published in the gazette within 21 days after it is given and tabled before the Legislative Assembly within 14 sitting days after it is given.

Notice of suspected threat to full funding because of direction or notification

Clause 377 incorporates provisions similar in style to section 147 of the *Government Owned Corporations Act 1993*. The modifications reflect the solvency issues which need to be considered in the administration of a workers' compensation scheme. It requires the board of WorkCover to immediately advise the Minister and the Auditor General if the board believes a Ministerial direction will threaten WorkCover's ability to achieve or maintain full funding.

Although the WorkCover board is to operate as autonomously as possible, the Minister has reserve powers under this part to provide directions to WorkCover. These directions may interfere with the board's ability to achieve or maintain WorkCover's objective of a fully funded workers' compensation scheme. Ministerial directions in relation to premium rates or benefit levels could affect the board's ability to progress the WorkCover scheme to a fully funded state.

If the board believes a Ministerial direction will threaten WorkCover's ability to achieve or maintain full funding, the board is to notify the Minister and the Auditor General in writing, stating the reasons why they believe compliance with the direction would threaten WorkCover's ability to achieve or maintain full funding.

This action results in the direction being suspended until the Minister writes to the board stating why the Minister does or does not support the board's advice and provides clarification to the board with respect to the original direction.

This clarification can be to withdraw the direction, issue an alternate direction or instruct the board to comply with the original direction. If the board suspects an alternative direction threatens full funding, the process recommences. This provision is designed to relieve the board of responsibility of funding problems in the scheme that have arisen from a Ministerial direction.

In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of the notice from the board and any direction under this provision are to be published in the gazette within 21 days after it is given and tabled before the Legislative Assembly within 14 sitting days after it is given.

WorkCover and board not otherwise subject to government direction

Clause 378 replicates section 126 of the *Government Owned Corporations Act 1993*. It states that not withstanding the Minister's ability to influence WorkCover operations via directions under powers in this chapter, the WorkCover board is to act autonomously in managing WorkCover's operations, free from government interference.

Minister not director etc.

Clause 379.replicates section 32 of the *Government Owned Corporations Act 1993*. It outlines that the Minister is not to be treated as a director of WorkCover. This reflects the autonomous nature of WorkCover, in that any action taken against WorkCover does not extend to the Minister.

The Minister does not incur a civil liability for any action that is done or not done by the Minister honestly and without negligence under, or for, this Bill in relation to WorkCover. Liabilities that would have attached to the Minister in the absence of this provision attach to the State.

Monitoring and assessment of WorkCover

Clause 380 replicates section 185 of the *Government Owned Corporations Act 1993*. It enables the Minister to delegate the Minister's monitoring powers under the specified clause of this chapter to the department chief executive officer or a suitable officer of WorkCover or the department.

The chief executive officer of the department can be authorised by the Minister under this provision to direct WorkCover to provide information or access to information to the chief executive. WorkCover must comply with such directions.

This provision allows the Minister additional scope to monitor the performance of WorkCover. The Minister could use this provision if the Minister was dissatisfied with the level of reporting from WorkCover or if the Minister felt that circumstances required close monitoring of WorkCover's performance.

PART 5—BOARD OF DIRECTORS

Division 1—Establishment of WorkCover's board

Establishment of board

Clause 381 replaces sections 13 and 14 of the *Workers' Compensation*

Act 1990. The provision states that WorkCover's board should have no less than seven members to ensure an appropriate level of skill and expertise which recognises the complex nature of WorkCover's operations.

Appointment of chairperson and deputy chairperson

Clause 382 replicates schedule 1, part 1, section 2 of the *Government Owned Corporations Act 1993*. It states the chairperson and deputy chairperson are appointed by the Governor in Council. The deputy chairperson is required to act as the chairperson during a vacancy of the chairperson's position or at times when the chairperson is absent or unable to perform the functions of the office.

Regard to particular ability in appointment of directors

Clause 383 is a modification of schedule 1, part 3, section 11 of the *Government Owned Corporations Act 1993*. The provision states the criteria that the Governor in Council should use to appoint WorkCover directors. It differs from the corresponding provision in the *Government Owned Corporations Act 1993.*to incorporate criteria reflecting the regulatory responsibilities of WorkCover directors and to exclude the maximum term a director can be appointed. The latter difference is contained in the section in division 3 of this part which relates to the term of appointment of directors.

Role of board

Clause 384 is an extension of section 95 of the *Government Owned Corporations Act 1993*. It states the role of the board. The board's responsibilities reflect both the commercial and regulatory nature of WorkCover's operations. Additional roles are included to reflect the regulatory aspects of WorkCover's operations, which do not exist to the same extent within Government Owned Corporations. Further, the board's role in respect to premium rates and benefit entitlements are also included for clarification purposes.

Delegation by board

Clause 385 replicates section 93 of the *Government Owned Corporations Act 1993*. It states to whom the board may delegate its powers.

Division 2—Meetings and other business of board

Meaning of "required minimum number" of directors

Clause 386 replicates schedule 1, part 2, section 3 of the *Government Owned Corporations Act 1993* and gives the meaning of the "required minimum number" of directors for use in this division.

Conduct of meetings and other business

Clause 387 replicates schedule 1, part 2, section 4 of the *Government Owned Corporations Act 1993*. It allows the board of WorkCover to conduct its business in the way it considers appropriate.

Times and places of meetings

Clause 388 replaces section 20(1) and section 20(2) of the *Workers' Compensation Act 1990* and replicates schedule 1, part 2, section 5 of the *Government Owned Corporations Act 1993*. It gives the requirements for determining when and where board meetings can be held.

Presiding at meetings

Clause 389.replaces section 22(1) and section 22(2) of the *Workers' Compensation Act 1990* replicates schedule 1, part 2, section 6 of the *Government Owned Corporations Act 1993*. It states who can preside at meetings of the board.

Quorum and voting at meetings

Clause 390.replaces section 22(3) to section 22(7) of the *Workers' Compensation Act 1990*, and replicates schedule 1, part 2, section 7 of the

Government Owned Corporations Act 1993. It states the number of directors that make up a quorum and the procedure for voting at meetings.

Participation in meetings by telephone etc.

Clause 391.replicates schedule 1, part 2, section 8 of the *Government Owned Corporations Act 1993*. It states how directors are able to participate in meetings.

Resolutions without meetings

Clause 392 replicates schedule 1, part 2, section 9 of the *Government Owned Corporations Act 1993*. It allows a resolution of the board to be passed without a meeting, if at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document. Resolutions passed in this manner are taken to be passed as if a board meeting had taken place. If a resolution is passed in this manner, each director must be immediately advised of the resolution and provided with a copy. Each director does not have to sign the same copy of the resolution for the resolution to be passed. It will suffice if each director individually signs an identical copy of the resolution.

Minutes

Clause 393 replaces section 23(1) of the *Workers' Compensation Act 1990* and replicates schedule 1, part 2, section 10 of the *Government Owned Corporations Act 1993*. It requires the board to keep minutes of its proceedings at meetings.

Division 3—Other provisions about directors

Term of appointment of directors

Clause 394 replaces section 17 of the *Workers' Compensation Act 1990* and replicates schedule 1, part 3, section 11 of the *Government Owned Corporations Act 1993*. It states the appointment of a director by the Governor in Council is for a period of not more than five years.

Terms of appointment not provided for under Act

Clause 395 replaces section 27 of the *Workers' Compensation Act 1990* and replicates schedule 1, part 3, section 12 of the *Government Owned Corporations Act 1993.* It states that, except as determined by the Governor in Council, a director is not to receive payment of any kind whilst being a director or in connection with retirement, or termination from office.

Appointment of acting director

Clause 396 replaces section 19 of the *Workers' Compensation Act 1990* and replicates schedule 1, part 3, section 13 of the *Government Owned Corporations Act 1993*. It enables the appointment of an acting director during a period when a director is absent from duty or is unable to perform the functions of the office.

Resignation

Clause 397 replaces section 18(1)(b) of the *Workers' Compensation Act 1990* and replicates schedule 1, part 3, section 14 of the *Government Owned Corporations Act 1993*. It states that a director may resign from office by signed notice given to the Governor and the chairperson and deputy chairperson may resign from office but still remain as a director.

Termination of appointment as director

Clause 398 replaces section 18(1)(e) of the *Workers' Compensation Act 1990* and replicates schedule 1, part 3, section 15 of the *Government Owned Corporations Act 1993*. It states that the appointment of any or all of the directors of the board may be terminated by the Governor in Council at any time and a reason is not necessary. The appointment of a director, appointed as a public service officer, terminates when that person ceases to be a public service officer.

PART 6—THE CHIEF EXECUTIVE OFFICER

WorkCover's chief executive officer

Clause 399 replaces section 29(1) of the *Workers' Compensation Act 1990* and is an extension of section 97 of the *Government Owned Corporations Act 1993*. It requires WorkCover to have a chief executive officer and outlines the appointment requirements for this position. The chief executive officer is to be appointed under a contract of service with WorkCover, rather than under the *Public Service Act 1996*.

The appointment of the chief executive officer is not subject to industrial instruments. However this clause recognises that the appointment of the chief executive officer will be subject to provisions of the *Industrial Relations Act 1990,* i.e. the power to vary or void contracts (section 40) and unfair dismissal provisions (part 12, division 5).

Duties of the chief executive officer

Clause 400 replaces section 30(1) of the *Workers' Compensation Act 1990* and replicates section 98 of the *Government Owned Corporations Act 1993*. It specifies the chief executive officer's duty to manage WorkCover under the board.

Things done by chief executive officer

Clause 401 replaces section 30(2) of the *Workers' Compensation Act 1990* and replicates section 99 of the *Government Owned Corporations Act 1993*. It specifies the chief executive officer's duty to manage WorkCover under the board and provides that anything done by the chief executive officer is taken to have been done by WorkCover. This allows the chief executive officer the necessary level of autonomy.

Delegation by chief executive officer

Clause 402 replaces section 31 of the *Workers' Compensation Act 1990* and replicates section 100 of the *Government Owned Corporations Act 1993*. It allows the chief executive officer to delegate powers to any employee of WorkCover whom the chief executive officer deems appropriately qualified. The delegations of such powers are subject to the direction of the board.

Additional provisions relating to chief executive officer

Clause 403 replicates schedule 2, section 2 of the *Government Owned Corporations Act 1993*. It outlines acting arrangements to apply where the chief executive officer is unavailable. It also provides for the termination or resignation of the chief executive officer.

PART 7—OTHER EMPLOYMENT PROVISIONS

Appointment of senior executives

Clause 404 states the appointment requirements for senior executives of WorkCover. Senior executives will be appointed on contract with WorkCover, rather than under the *Public Service Act 1996*. Section 22 of the *Public Service Act 1996,* which enables WorkCover to adopt public service conditions in certain circumstances, is preserved e.g. appeals against appointments.

The appointment of senior executives is not subject to industrial instruments. However this clause recognises that the appointment of senior executives will be subject to provisions of the *Industrial Relations Act 1990*, i.e. the power to vary or void contracts (section 40) and unfair dismissal provisions (part 12, division 5).

Basis of employment generally

Clause 405 replaces section 29 of the *Workers' Compensation Act 1990*. It allows WorkCover to appoint staff it considers necessary for its operations. The *Public Service Act 1996* will not apply to WorkCover appointments. Section 22 of the *Public Service Act 1996,* which enables WorkCover to adopt public service conditions in certain circumstances, is preserved e.g. appeals against appointments. This clause enables WorkCover to determine the conditions of employment of its staff subject to any applicable industrial instrument under the *Industrial Relations Act 1990*.

This will enable WorkCover to attract the staff necessary for the organisation to operate in a commercial insurance environment.

The existing staff of the workers' compensation board will transfer to WorkCover under chapter 11, part 2, division 1.

Superannuation schemes

Clause 406 sets out the options and audit requirements for WorkCover in relation to superannuation arrangements for its employees.

Arrangements relating to staff

Clause 407 replaces section 33 of the *Workers' Compensation Act 1990* and.replicates section 169 of the *Government Owned Corporations Act 1993*. It allows WorkCover to arrange for the services of staff of government departments/agencies to be made available to it. Similarly, WorkCover can arrange for its own staff to be available to such bodies.

Employment and industrial relations plan

Clause 408.replicates sections 171(1) and (2).of the *Government Owned Corporations Act 1993* and requires WorkCover to develop an employment and industrial relations plan which specifies the major employment and industrial relations issues pertaining to WorkCover. This plan forms part of the statement of corporate intent.

EEO legislation is applicable

Clause 409 replicates section 170 of the *Government Owned Corporations Act 1993* and applies the provisions of the *Equal Opportunity in Public Employment Act 1992* to WorkCover.

PART 8—FINANCIAL PROVISIONS

Application of financial legislation

Clause 410 subjects WorkCover to the *Financial Administration and Audit Act 1977* and the.*Statutory Bodies Financial Arrangements Act 1982*,

as intended by sections 128 and 156 of the *Government Owned Corporations Act 1993.*

This clause provides for WorkCover to be regarded as a statutory body under the Acts specified.

The *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982* exist to ensure government bodies are engaging in prudent financial management practices. The workers' compensation board is currently exposed to these Acts as a consequence of being part of a government department.

Liability for State taxes

Clause 411 replicates section 154 of the *Government Owned Corporations Act 1993*. It establishes WorkCover's obligation to pay State taxes, such as payroll tax and stamp duty and a discretionary power for the Treasurer to exempt WorkCover from the payment of State taxes.

Liability for Commonwealth tax equivalents

Clause 412 establishes WorkCover's obligation to pay Commonwealth Tax Equivalents as required by section 155 of the *Government Owned Corporations Act 1993.* Commonwealth Tax Equivalents are the financial equivalents of Commonwealth taxes, such as company tax, that WorkCover would be liable to pay were it not a government body. These tax equivalents are to be paid to the State government rather than the Commonwealth government. WorkCover and similar Queensland government bodies are required to pay this taxation in line with an.agreement entered into between the State and Commonwealth governments.

Procedures for borrowing

Clause 413 replicates section 157 of the *Government Owned Corporations Act 1993*. It provides that WorkCover may borrow in accordance with the specified policies as outlined in its statement of corporate intent.

Funds and accounts

Clause 414 replaces section 36(1) to (4)(a)(b) and (d) of the *Workers' Compensation Act 1990*. It allows WorkCover to establish funds and accounts for the effective financial administration of the scheme.

Reserves

Clause 415 replaces section 40(2) of the *Workers' Compensation Act 1990*. It provides for WorkCover to establish financial reserves within the fund for purposes which it deems appropriate in the conduct of its business. These reserves are established to meet *Insurance Act 1973* (Cwlth) solvency requirements and for other appropriate purposes e.g. a catastrophe reserve and an investment fluctuation reserve.

Amounts payable by WorkCover on Minister's instruction

Clause 416 replaces sections 36(4)(c) and 36(5) of the *Workers' Compensation Act 1990*. It provides for the Minister to direct WorkCover to fund organisations or bodies that the Minister believes promote the interests of this legislation. For transparency purposes, any payments under this provision are required to be approved by the Governor in Council and published in the gazette.

Payment to consolidated fund

Clause 417 replicates chapter 3, part 14, division 3 of the *Government Owned Corporations Act 1993*. It allows WorkCover to make payments to the consolidated fund when a surplus is achieved over and above full funding. This provision is an alternative to a provision allowing WorkCover to pay dividends to the government. WorkCover is unable to pay dividends to the government as it has no share capital. A payment can only be made under this provision if the payment does not cause WorkCover to breach solvency or capital adequacy standards laid down under the *Insurance Act 1973* (Cwlth), section 29 or solvency as specified under a regulation which will mirror industry solvency standards.

Additional financial reporting requirements

Clause 418 requires WorkCover to engage an actuary on an annual basis to provide a report to government on the financial performance of the workers' compensation scheme. It is an additional accountability measure.

PART 9—OTHER PROVISIONS ABOUT WORKCOVER

WorkCover's seal

Clause 419 replaces section 24 of the *Workers' Compensation Act 1990* and replicates section 178 of the *Government Owned Corporations Act 1990.* It provides for the use of WorkCover's seal, which is the 'signature' of WorkCover and is used in formal documentation.

Authentication of documents

Clause 420 replaces section 26 of the *Workers' Compensation Act 1990* and replicates section 179 of the *Government Owned Corporations Act 1993*. It provides tests to establish whether documents can be taken to be a formal representation of WorkCover.

Judicial notice of certain signatures

Clause 421 replaces section 32 of the *Workers' Compensation Act 1990* and replicates section 180 of the *Government Owned Corporations Act 1993*. It assists in authenticating documents for judicial purposes.

Giving of documents to board

Clause 422 replaces section 186 of the *Government Owned Corporations Act 1993*. It allows documents required by the board to be given to the chairperson for convenience sake.

Application of various other Acts

Clause 423 contains references to the Corporations Law, the *Criminal Justice Act 1989, the Parliamentary Commissioner Act 1974* and the *Freedom of Information Act 1992.*

The clause exempts WorkCover from the Corporations Law. The Corporations Law is the main body of legislation for regulating corporate behaviour. It provides the 'rules' under which corporations have to trade, and establishes offences and penalties for unlawful corporate behaviour, such as trading when insolvent.

However, not all of the Corporations Law is appropriate for government bodies. Consequently the *Government Owned Corporations Act 1993* contains provisions under chapter 3, part 12 - (Duties and Liabilities of directors and other officers) which replicate much of the 'discipline' of the Corporations Law, and contains strict offence provisions for directors or staff of Government Owned Corporations who engage in wrongful corporate conduct.

The provisions are designed to provide a generic set of corporate rules for all Government Owned Corporations. Otherwise, the legislation of these bodies would need to state which provisions of the Corporations Law apply to each Government Owned Corporation.

Government Owned Corporations are subject to the corporate conduct provisions of chapter 3, part 12 of the *Government Owned Corporations Act 1993* as a minimum, and any or all of the Corporations Law, if appropriate.

Treasury Department and the workers' compensation board agree that the corporate conduct rules contained in chapter 3, part 12 of the *Government Owned Corporations Act 1993* are.appropriate to apply to WorkCover, rather than the Corporations Law. Hence, WorkCover is not subject to the Corporations Law, and will instead be subject to corporate conduct rules from the.*Government Owned Corporations Act 1993.* These can be found in part 3, division 5 of this chapter.

The clause provides for WorkCover to be subject to the *Criminal Justice Act 1989* and the *Parliamentary Commissioner Act 1974*. Just as the workers' compensation board is subject to these items of legislation, so will WorkCover.

WorkCover will be exempt from the *Freedom of Information Act 1992*

for documents relating to its commercial activities and community service obligations. This is designed to protect WorkCover's intellectual property with respect to its commercial insurance business, to prepare WorkCover for likely competition in the future.

This does not imply restricted access to personal information relating to applications for compensation under the Bill. WorkCover will continue to provide claimants with the same standard of personal information provided by the workers' compensation board.

Claimants may still seek their claim information from WorkCover under the *Freedom of Information.Act 1992*, or may use WorkCover's administrative arrangement to distribute this information. There is a provision in chapter 10 of the Bill (Worker or claimant entitled to obtain certain documents).which further protects claimants' access to their personal records in relation to their application.

CHAPTER 7—MEDICAL ASSESSMENT TRIBUNALS

PART 1—OBJECTS

Object of ch 7

Clause 424 states that the object of chapter 7 is to provide a system—independent from WorkCover—of reviewing and assessing injuries and impairment sustained by workers.

PART 2—COMPOSITION AND PROCEEDINGS OF TRIBUNALS

Assessment tribunals to be maintained

Clause 425 replaces section 160 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. The clause outlines the seven medical assessment tribunals that are maintained under this Act.

General Medical Assessment Tribunal

Clause 426 replaces section 161(1) to (4) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause outlines the constitution of the General Medical Assessment Tribunal. The tribunal must consist of a chairperson and two other members to be appointed as prescribed in this clause.

Alternative panel

Clause 427 replicates section 161(5) and (6) of the *Workers' Compensation Act 1990*. It outlines that an alternative panel may be appointed in the same manner as the previous clause.

Conditions of appointment to panels

Clause 428 replaces section 162 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies the term that appointees hold their membership on a panel (or alternative panel).

Chairperson and deputy chairperson of General Medical Assessment Tribunal

Clause 429 replaces section 163 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause requires that the chairperson and the deputy chairpersons of the General Medical Assessment Tribunal are physicians. The deputy chairperson must act as the chairperson if the chairperson is unavailable to attend to the business of the tribunal.

Constitution of General Medical Assessment Tribunal for reference

Clause 430 replaces section 164 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies the requirements for the constitution of the

General Medical Assessment Tribunal when deciding a matter referred to it. The tribunal must comprise the chairperson and two members of the panel (or alternative panel) designated by the chairperson.

Specialty medical assessment tribunal

Clause 431 replaces section 165 of the *Workers' Compensation Act 1990*. It specifies the requirements for the constitution of specialty medical assessment tribunals. The tribunal must consist of three members who are medical practitioners and registered as specialists in the speciality with which the tribunal is concerned. The clause has been changed to remove the requirement for the general manager to nominate a member of the tribunal for consistency with the constitution of other tribunals and to update it according to current drafting practice.

Vacation of office as member or alternative member of specialty medical assessment tribunal

Clause 432 replaces section 166 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies the circumstances under which a vacancy is taken to occur on a specialty medical assessment panel (or alternative panel).

Constitution of specialty medical assessment tribunal in absence of members

Clause 433 replaces section 167 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. If a member of a specialty medical assessment tribunal is unavailable, the clause allows the secretary for the tribunal to designate an alternative member for a tribunal to act as a member of the tribunal.

Chairperson of specialty medical assessment tribunals

Clause 434 replaces section 168 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause requires the members of a specialty medical assessment tribunal to nominate a chairperson from their number. The chairperson must preside over the meeting of that tribunal.

Proceedings of medical assessment tribunals

Clause 435 replaces section 169 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies that WorkCover may appoint a secretary for each tribunal. The tribunals must decide the time and place of where they are to meet. If there is any disagreement amongst tribunal members as to their determination of a reference, the decision of the tribunal is that of the majority of the members.

PART 3—JURISDICTION OF TRIBUNALS

Definition for pt 3

Clause 436 replaces section 170 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause defines "tribunal" for this part as the General Medical Assessment Tribunal and each of the specialty medical assessment tribunals.

Reference to tribunals

Clause 437 amends section 171(1) of the *Workers' Compensation Act 1990*.

This clause allows WorkCover to refer the following matters to a tribunal:

- an application for compensation for an alleged injury
- a worker's capacity for work
- a worker's impairment or permanent impairment
- a worker's level of dependancy
- an application for a damages certificate by a worker or dependant.

Reference about application for compensation

Clause 438 replaces section 171(3) of the *Workers' Compensation Act 1990*. The clause applies to a reference to a tribunal of an application for compensation made for an alleged injury. However, it now also allows references for injuries caused by misconduct and the limitation of time for applying for compensation.

Reference about worker's capacity for work

Clause 439 replaces section 171(4)(a) and (b) of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It applies to a reference to a tribunal of the matter of the worker's capacity for work and whose claim for compensation under this Act has been allowed.

Reference about a worker's injury

Clause 440 applies to a reference to a tribunal to decide whether a worker, who has applied for a damages certificate, has sustained an injury. The matter is to be referred by WorkCover where a worker does not agree with WorkCover's decision that an injury was not sustained.

Reference about worker's impairment

Clause 441 applies to a reference to a tribunal of the matter of a worker's impairment when the worker has been in receipt of weekly benefits for two years. The clause only applies when WorkCover and the worker can not agree about the level of the worker's impairment. This reference is required under chapter 3, part 8 as part of the new benefit structure.

After being in receipt of weekly benefits for two years, if a worker's impairment could result in a work related impairment of 15% or less, their level of weekly benefits reduces to the Social Security single pension rate.

Reference about worker's permanent impairment

Clause 442 allows the tribunal to decide—from a reference about a worker's permanent impairment for the purpose of obtaining a lump sum payment or lump sum entitlement for common law access—the nature and

degree of the permanent impairment.

Reference about worker's level of dependency

Clause 443 requires the General Medical Assessment Tribunal, on a reference of a matter of a worker's level of dependency for the purposes of assessing an entitlement for the new gratuitous care lump sum, to decide the worker's level of dependency.

The tribunal will be referred these matters where WorkCover or the worker can not agree about the level of dependency. In making their assessment, the tribunal will use all available information including occupational therapists' assessments of the level of dependency. The tribunal is the appropriate forum to determine level of dependency, as it consists of medical specialists who have the skills to interpret and use information from health professionals such as occupational therapists.

Reference about application for damages certificate by dependant

Clause 444 requires a tribunal to decide whether a deceased worker sustained an injury and whether the injury caused their death. These references will be for the dependants of the deceased worker who have lodged applications for damages certificates where no statutory claim has previously been lodged by the worker.

Reference about review of worker's permanent impairment

Clause 445 applies when a worker has previously been assessed for lump sum compensation and provides fresh medical evidence about their level of impairment in order to seek damages. The tribunal is to decide, based on the fresh evidence, whether there has been a further material deterioration in the worker's permanent impairment and, if so, the degree of the further permanent impairment. Previously, this reference was contained in section 182E(7) of the *Workers' Compensation Act 1990.*

Limitation of tribunals' jurisdiction

Clause 446 replaces section 172 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. The clause specifies that a tribunal has no jurisdiction to decide whether a person to whom a claim relates, is or is not, or was or was not, a worker at any time material to the claim.

Power of tribunal to examine worker

Clause 447 replaces section 173 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause 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.

PART 4—PRESCRIBED DISFIGUREMENT ASSESSMENT TRIBUNAL

Tribunal to be constituted

Clause 448 replaces section 174 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies that an additional tribunal, called the Prescribed Disfigurement Tribunal, be constituted as occasion requires. The clause also details the composition of the tribunal. "Prescribed disfigurement" is defined as severe facial disfigurement or severe bodily scarring.

Proceedings of tribunal

Clause 449 replaces section 175 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It outlines the proceedings of the Prescribed Disfigurement Tribunal.

Assessment of additional compensation for prescribed disfigurement

Clause 450 replaces section 141 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. It allows WorkCover to refer an application for compensation that relates to prescribed disfigurement to the tribunal. The tribunal must assess—by way of personal examination of the worker—whether the disfigurement is sufficiently severe to be prescribed disfigurement. If so, the tribunal must express the severity of the disfigurement as a percentage.

When entitlement to additional compensation for prescribed disfigurement is not paid

Clause 451 replaces section 142 of the *Workers' Compensation Act 1990* and specifies what happens if a worker:

- fails to attend the tribunal on the day (and has been given at least seven days notice by the secretary to the tribunal)
- refuses to be examined by the tribunal or a member of the tribunal
- obstructs or attempts to obstruct the examination.

The entitlement (if any) is not paid until the worker undergoes the examination.

PART 5—PROCEEDINGS FOR EXERCISE OF TRIBUNALS' JURISDICTION

Definition for pt 5

Clause 452 replaces section 177 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause defines "tribunal" for this part to mean the General Medical Assessment Tribunal, each of the specialty medical assessment tribunals and a Prescribed Disfigurement Assessment Tribunal.

Right to be heard before tribunals

Clause 453 replaces section 181 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting

practice. It gives the worker the right to be heard before the tribunal either in person or by a representative.

Further reference on fresh evidence

Clause 454 replaces section 179 of the *Workers' Compensation Act 1990*. The clause applies if a worker—whose claim (or a matter about whose claim) has been decided by a tribunal—produces medical evidence that may be relevant to the claim or matter to WorkCover within 12 months of the decision. This evidence must be factual medical data not known about the claimant at the time of the tribunal's decision.

A review panel determines whether the medical evidence fits the requirements and its decision is final. As the review panel is comprised of eminent medical specialists and the decision is medical in nature there is no professional body capable of making a more appropriate decision. If the medical evidence is accepted, then the claim is again referred to the original tribunal if practicable for rehearing.

The review of fresh medical evidence will determine if a worker has an entitlement to further lump sum compensation. However, the worker's entitlement does not extend to making another election in relation to seeking damages for their injury. A worker wishing to have their degree of permanent impairment reviewed for the purpose of seeking damages is allowed under chapter 5.

The process for constituting a review panel has been changed by this clause for consistency with the review panel procedure in chapter 5.

Deferral of decisions

Clause 455 replaces section 171(6) of the *Workers' Compensation Act 1990*. The clause allows a tribunal to defer its decision on a reference. However, a deferral must not be for longer than three months at any one time.

Finality of tribunal's decision

Clause 456 replaces section 180 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause specifies that a decision of a tribunal about a matter

before the tribunal in relation to a claim for compensation is final. The decision can not be questioned in a proceeding before a tribunal or court (except in the case of fresh medical evidence). The tribunal, consisting of three eminent specialists from relevant medical areas, is considered by the medical profession as capable of making an ultimate medical decision.

Decisions of tribunal

Clause 457 replaces section 178 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It requires a tribunal to provide a written decision (including reasons for the decision) for a matter referred to it.

CHAPTER 8—ENFORCEMENT

This chapter specifies enforcement matters and offences and includes the functions and powers of authorised persons.

PART 1—AUTHORISED PERSONS

Division 1—General

Function of authorised person

Clause 458 replaces section 63 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It specifies that authorised persons are able to conduct investigations, carry out inspections and monitor compliance.

Authorised person subject to WorkCover's directions

Clause 459 replaces section 64 of the *Workers' Compensation Act 1990*

and has not been changed except for being updated according to current drafting practice. It specifies that an authorised person must act under WorkCover's directions in exercising their powers.

Powers of authorised persons

Clause 460 replaces section 65 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It states an authorised person has the power given to them by this Bill or another Act.

Limitation on powers of authorised person

Clause 461 replaces section 66 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It specifies how the powers of an authorised person may be limited.

Division 2—Appointment of authorised persons and other matters

Appointment of authorised persons

Clause 462 replaces section 67 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. It outlines the way in which an authorised person is to be appointed.

Authorised person's appointment conditions

Clause 463 replaces section 68 of the *Workers' Compensation Act 1990* and has not been changed except for being updated according to current drafting practice. The authorised person's appointment conditions are stated in the instrument of appointment. The clause specifies how an authorised person ceases to hold the appointment.

Authorised person's identity card

Clause 464 replaces section 69 of the *Workers' Compensation Act 1990*. It outlines requirements in relation to an authorised person's identity card. Two minor changes have been made to this provision. Firstly, the chief executive officer is now required to sign each identity card as a further accountability measure. Secondly, a person who ceases to be an authorised person now has seven days to return their identity card, instead of 21 days. Seven days is a reasonable time frame for return of cards and minimises the potential for identity cards to be in the possession of non-authorised officers.

Display of authorised person's identity card

Clause 465 replaces section 70 of the *Workers' Compensation Act 1990* and has not changed. It requires an authorised person to display their identity card before exercising their powers.

Protection from liability

Clause 466 replaces section 71 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It protects an authorised person from civil liability in the exercise of their power.

Division 3—Powers of authorised persons

Entry to workplaces

Clause 467 replaces section 73 of the *Workers' Compensation Act 1990* and has not been changed except to reflect the Bill's definition of workplace. It allows an authorised person, at any reasonable time, to enter a workplace to inspect the workplace and documents to investigate required to be kept under this legislation. This entry power is required for such purpose as investigating claims and compliance of wages records with wages declared for the assessment of premium.

Power to require information from certain persons

Clause 468 replaces section 74 of the *Workers' Compensation Act 1990* with modifications. It allows an authorised person to require information relating to the major areas of WorkCover's operations from a person reasonably suspected of having the information.

If persons are unwilling to volunteer information WorkCover requires for the operation of this Bill, the clause will allow WorkCover to obtain the information it requires from persons via standard interview methods. This will minimise the need for WorkCover to inconvenience people by summonsing them to provide evidence in inconvenient and lengthy legal proceedings.

The clause recognises that a person has the right to fail to give information requested under this clause if the person has a reasonable excuse, ie if the giving of information or producing the document would tend to incriminate the person.

Keeping and inspection of documents

Clause 469 replaces section 75 of the *Workers' Compensation Act 1990*. This provision requires employers and contractors to keep documents about workers and contracts for the performance of work. It also allows authorised persons to inspect the documents. The clause has not been changed except to increase the maximum penalty from 20 to 50 penalty units to reflect the seriousness of noncompliance with this provision.

Audit of wages and contracts

Clause 470 replaces section 51 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. This clause allows WorkCover to engage the services of a person with appropriate qualifications and experience to carry out audits of wages and contracts.

Warrants for entry

Clause 471 replaces section 76 of the *Workers' Compensation Act 1990*

and has not been changed. It allows an authorised person to apply to a magistrate for a warrant for entry into a place.

Warrants—applications made other than in person

Clause 472 replaces section 77 of the *Workers' Compensation Act 1990* and has not been changed. It allows an authorised person to apply for warrants other than in person i.e. via telephone, fax, radio or other form of communication.

Power to seize evidence

Clause 473 replaces section 78 of the *Workers' Compensation Act 1990* and has not been changed. It allows an authorised person, who enters a place with a warrant, to seize evidence.

Receipt for seized things

Clause 474 replaces section 79 of the *Workers' Compensation Act 1990* and has not been changed. It requires an authorised person to provide a receipt to the person from whom evidence has been seized.

Access to seized things

Clause 475 replaces section 80 of the *Workers' Compensation Act 1990* and has not been changed. It requires an authorised person to allow the owner of a seized item access to inspect or make copies of the thing.

Return of seized things

Clause 476 replaces section 81 of the *Workers' Compensation Act 1990* and has not been changed. It requires the authorised person to return a seized thing to its owner at the end of six months or at the end of the prosecution and any appeal from the prosecution.

Division 4—Other enforcement matters

Authorised person to give notice of damage

Clause 477 replaces section 82 of the *Workers' Compensation Act 1990* and has not been changed. It requires an authorised person to give written notice to the owner about any damage to anything resulting from the exercise of their power.

Restitution

Clause 478 replaces section 83 of the *Workers' Compensation Act 1990* and has not been changed except for replacing the term 'compensation' with 'restitution' (as "compensation" has a specific meaning under chapter 1). This clause allows a person to claim restitution from WorkCover for any loss or expense incurred due to the exercise of power by an authorised person.

Costs of investigation

Clause 479 allows WorkCover to recover administrative costs incurred in investigating and preparing for the prosecution of offences in the case of a conviction.

Division 5 —Obstructing or impersonating authorised persons

Obstruction of authorised persons

Clause 480 replaces section 84 of the *Workers' Compensation Act 1990*. This clause specifies that a person must not obstruct an authorised person in the exercise of a power. It has not been changed except for an increase in the maximum penalty from 20 to 50 penalty units to reflect the seriousness of the offence.

Impersonation of authorised persons

Clause 481 replaces section 85 of the *Workers' Compensation Act 1990*. It specifies that a person must not impersonate an authorised person and has not been changed except to increase the maximum penalty from 20 to 50 penalty units to reflect the seriousness of the offence.

PART 2—FRAUD AND FALSE AND MISLEADING STATEMENTS

This part creates offences for fraudulent and misleading conduct with respect to the workers' compensation scheme. Fraud is regarded as a very serious offence, in view of the financial impost it places on the scheme and consequently all Queensland employers. The part contains penalties for persons convicted of fraud, to reflect the seriousness of the offence and to act as a deterrent to those considering fraudulent activity.

Offences involving fraud

Clause 482 replaces section 194 of the *Workers' Compensation Act 1990* with modifications.

The grounds on which fraud offences can be prosecuted have been simplified to an all encompassing provision which reflects section 194(1)(d) of the *Workers' Compensation Act 1990* as this is the provision most frequently used to prosecute fraud cases.

The clause increases the maximum penalty for an offence from 200 penalty units or 12 months in prison to 400 penalty units or 18 months in prison, to reflect the seriousness of the offence and the cost of fraud to WorkCover, self-insurers and the community in general.

The clause also reflects section 194(5) of the *Workers' Compensation Act 1990* which outlines the provision for dealing with recurrent offences in a complaint.

False or misleading information or documents

Clause 483 replaces sections 86 and 87 of the *Workers' Compensation Act 1990.*The clause states that it is an offence to provide false or misleading information or statements to WorkCover. It also creates an offence of providing false or misleading information or statements to:

- self-raters
- self-insurers
- a registered person for the purpose of a claim for compensation or damages. A registered person is defined schedule 3 and includes such persons as medical practitioners.

The penalty for these offences has been increased from 50 penalty units to 150 penalty units and one year in prison to the reflect the seriousness of the offence.

Particular acts taken to be fraud

Clause 484 is intended to assist in detecting offences involving fraud under this part. It replaces sections 194(2) and (3) of the *Workers' Compensation Act 1990*.

The intent of the provision is to clearly state that persons applying for, or in receipt of, compensation for total or partial incapacity can not engage in a "calling" without first notifying either WorkCover, or their self-insured employer. The term "calling" is defined in schedule 3 of.the WorkCover Bill.

The clause specifies that a person applying for, or in receipt of, compensation for total or partial incapacity who engages in a calling without first notifying either WorkCover, or their self-insured employer, is taken to have defrauded or attempted to defraud WorkCover or the self-insurer.

Duty to report fraud

Clause 485 places a clear responsibility on employers, including self-insured employers, to report to WorkCover instances of workers' compensation fraud they reasonably believe are occurring so that

WorkCover may undertake investigations and prosecutions where appropriate. A maximum penalty of 50 penalty units applies under this clause.

Fraud and related offences end entitlement to compensation and damages

Clause 486 outlines the consequences to a person who, in relation to their claim for compensation or damages, is convicted of:

- defrauding or attempting to defraud WorkCover or a self-insurer
- an offence or an attempt to commit an offence against specific sections of the Criminal Code.

This clause:

- removes such person's entitlement to compensation or damages for the injury in connection with which.an offence in subsection (1) was committed
- allows WorkCover to apply to the court for repayment of compensation or damages paid to the person arising as a result of the commission of an offence in subsection (1) and.allows such payments to be recovered as a debt to WorkCover or the self-insurer
- allows WorkCover to recover costs incurred by WorkCover or self-insurer in relation to a proceeding for damages by a person whose claim for damages was the subject of an offence under subsection (1)
- allows specific circumstances whereby a person is convicted of an offence under subsection (1) in relation to their claim for compensation and damages, and may still retain their entitlement to compensation and damages. The specific circumstances are the person is taken to have:
    - attempted to defraud WorkCover or a self-insurer; or
    - defrauded WorkCover or a self-insurer of payments of not more than the equivalent of one week of the person's normal weekly earnings.

CHAPTER 9—REVIEWS AND APPEALS

This chapter allows for a review process for employers, self-insurers, claimants and workers.

The intent of the formal review process is to provide an efficient and cost effective system whereby employers, self-insurers, claimants or workers may apply to WorkCover to have decisions reviewed, instead of relying only on the legal system. An application for review carries no specific fee or charge to the individual employer, self-insurer, claimant or worker. It is designed to.provide a timely review decision and in many cases resolution of the dispute.

Employers, self-insurers, claimants and workers retain the right to appeal to a court if aggrieved by the review decision made by WorkCover.

This chapter enhances the appeal provisions of the *Workers' Compensation Act 1990* and locates those provisions in the one chapter. It also introduces a review and appeal mechanism for self-insurers and for employers in respect to a compensation claim for a worker.

PART 1—POLICIES AND PREMIUMS

This part provides for a system of review and appeal for employers aggrieved with decisions by WorkCover in relation to policies and premiums.

It replaces sections 55 to 58 of the *Workers' Compensation Act 1990* and section 15 of the *Workers' Compensation Regulation 1992*. Under the *Workers' Compensation Act 1990*, an employer had a right to object to the workers' compensation board and a subsequent right of appeal to an industrial magistrate. This part introduces a more formalised review process with an extended timeframe in which an employer may apply for review and places strict time limits on WorkCover to determine applications for review. It also provides for appeals against decisions relating to the issue or cancellation of a self-rater's registration.

Division 1—Internal review of decisions

Who may apply for review

Clause 487 allows an employer who is aggrieved with a decision made by WorkCover in relation to the charging of premiums to apply for formal review of the decision. These decisions are regarding:

- an amount of premium assessed by WorkCover for an employer's policy
- an amount of premium arising out of a reassessment by WorkCover of an employer's policy
- a decision by WorkCover not to waive or reduce a penalty imposed due to an employer being uninsured or underinsured
- an amount of premium arising out of a default assessment by WorkCover of an employer's policy, following WorkCover's consideration of the employer's objection to default assessment
- a decision by WorkCover to refuse to waive or reduce the imposition of an additional premium on an employer's policy
- an amount of annual premium assessed by WorkCover for a self-rater.

Applying for review

Clause 488 sets out the procedure an employer must follow when making an application for review. The application must be lodged within 35 days of the notice of a decision, which is the same period of time WorkCover has to review their decision. The employer must fully explain the reasons on which the employer seeks review on the approved form. It is not sufficient for an employer to simply say they are dissatisfied with a decision. The requirement for reasons to be detailed is similar to the requirements of section 54(1) of the *Workers' Compensation Act 1990*. The introduction of the approved form is to enable WorkCover to readily recognise the request for review and be provided with any information relevant to the review, in order to ensure WorkCover adheres to the timeframes for response.

Review of decision

Clause 489 outlines the review procedure WorkCover must follow after receiving an application for review including time frames and the action an employer may take if WorkCover does not notify the employer of its decision within the stated timeframe.

Division 2—Appeals

Appeal to industrial magistrate from decision on assessment

Clause 490 replaces section 55 of the *Workers' Compensation Act 1990*, which contained provisions for an employer to appeal to an industrial magistrate regarding assessment of premium. The clause now:

- includes provision for an employer, aggrieved with a decision by WorkCover to reject their application for a self-rater's registration or to cancel a registration, to appeal to an industrial magistrate. The review process for self-raters is included in chapter 2, part 4.
- allows employers to lodge the appeal in any magistrate's court which is agreed between the employer and WorkCover.

Appeal from industrial magistrate to Industrial Court

Clause 491 replaces section 56 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause allows WorkCover or an employer who is aggrieved with the industrial magistrate's decision to appeal to the Industrial Court and states the manner of appeal. The decision of the Industrial Court is final.

Powers of appellate courts

Clause 492 replaces section 57 of the *Workers' Compensation Act 1990.* It outlines the powers of the industrial magistrate and the Industrial Court in deciding an appeal. The clause has been updated according to current drafting practice and includes a provision to prevent an employer taking the magistrate's decision back to WorkCover for review.

Refunding overpaid premiums

Clause 493 replaces section 58 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It outlines that, if the premium paid by the employer as a condition of the appeal is more than the premium assessed by the industrial magistrate or the Industrial Court, WorkCover must refund the difference to the employer.

PART 2—ANNUAL LEVY AND LICENSING OF SELF-INSURERS

Division 1—Internal review of decisions

Review of annual levy

Clause 494 outlines that a self-insurer, who is aggrieved with the assessment of their annual levy by WorkCover, may apply to WorkCover to have the amount of the levy reviewed. The review process is the same as that for an employer in part 1 of this chapter. The reason the same process is used is because the way in which the annual levy is calculated is similar to the way in which premium for ordinary policyholders is calculated.

Division 2—Appeal to industrial magistrate

Who may appeal

Clause 495 allows a self-insurer, who is aggrieved with WorkCover's review decision regarding the annual levy, to appeal to an industrial magistrate. The appeal process is the same as that which applies under part 1 of this chapter. In determining an appeal, an industrial magistrate or Industrial Court may confirm, reduce or increase the amount of the self-insurer's annual levy.

Division 3—Appeal to court

Who may appeal

Clause 496 outlines that a self-insurer may appeal directly to the court with the appropriate jurisdiction if aggrieved by a decision of WorkCover in relation to the issue, renewal or cancellation of their self-insurer's licence. The review provisions in relation to these decisions are contained in the specific sections listed in this clause, as they have different time frames and other requirements.

Starting appeals

Clause 497 outlines the procedure a self-insurer is to follow when lodging an appeal—including the time in which to lodge an appeal and the appropriate court for hearing. The appeal court is specified to be Brisbane to avoid the appeal being lodged in an interstate court. Self-insurers are large employers who would normally have a registered office in Brisbane.

Powers of court on appeal

Clause 498 provides the powers of the court in deciding an appeal and describes the decisions the court may make.

Effect of decision of court on appeal

Clause 499 clarifies that if a court substitutes a decision, the substituted decision has the same effect as if it is WorkCover's decision.

PART 3—RETURN OF BANK GUARANTEE OR CASH DEPOSIT

Who may appeal

Clause 500 allows a former self-rater, or former self-insurer, who is aggrieved by WorkCover's decision about the return of the balance of their cash deposit or bank guarantee, to appeal to the court with the appropriate jurisdiction.

Starting appeals

Clause 501 outlines the procedure a former self-rater or former self-insurer is to follow when lodging an appeal including the time in which to lodge an appeal and the appropriate court for hearing. The appeal court is specified to be Brisbane to avoid the appeal being lodged in an interstate court. Self-raters and self-insurers are large employers who would normally have a registered office in Brisbane.

Powers of court on appeal

Clause 502 provides the powers of the court in deciding an appeal and describes the decisions the court may make.

Effect of decision of court on appeal

Clause 503 clarifies that if a court substitutes a decision, the substituted decision has the same effect as if it is WorkCover's decision.

PART 4—COMPENSATION AND ENTITLEMENTS

This part provides for persons aggrieved with decisions relating to applications for compensation and worker's entitlements under chapters 3 and 4 by specifying:

- a system of review by WorkCover
- a continuing right to be heard by an industrial magistrate
- a continuing right to appeal to the Industrial Court.

It also now includes provision for an employer, aggrieved with a decision made by WorkCover relating to a claim, to request review of that decision.

Under the *Workers' Compensation Act 1990*, claimants or workers aggrieved with decisions on claims only had a right of appeal to an industrial magistrate. Sections 98, 104, and 119 of the *Workers' Compensation Act 1990* relating to appeals on claims decisions have been replaced by this part. Under these sections, a period of 60 days was allowed for the person to request a hearing. This time frame has been reduced due to the introduction of the formal review process and to provide a prompt review of a matter and reduce the delay before a hearing in the.magistrates' court.

Division 1—Internal review of decisions

Who may apply for review

Clause 504 states that a claimant, worker or employer may apply for review of a decision made by WorkCover to:

- allow or reject an application for compensation under chapter 3
- terminate, suspend, increase or decrease a weekly payment of compensation under chapters 3 or 4
- allow or refuse an entitlement, under chapter 4, in respect of:
  - the provision of a prosthesis for a worker
  - hospitalisation of a worker
  - payment of travelling expenses of a worker
- refuse to vary the amount of a redemption made under chapter 3
- apply a penalty to an employer for failing to provide rehabilitation for a worker under chapter 4.

Workers of self-insurers may apply for review of the above decisions made by self-insurers except for the application of a rehabilitation penalty.

The clause also applies to decisions made by WorkCover to refuse to waive or reduce a penalty imposed on an employer for the non-payment of an excess payment, under chapter 2.

WorkCover, or the self-insurer, must give written reasons for the original decision. A person aggrieved with the decision may apply to WorkCover for the decision to be reviewed and reviews are only to be conducted by WorkCover.

Applying for review

Clause 505 outlines the procedure for a person to follow when making an application for review. Reasons for WorkCover's or the self-insurer's decision must be supplied prior to the person applying for review. When applying for review the person must fully explain their reasons as it is not sufficient for a person to simply say they are dissatisfied with a decision. The introduction of the approved form is to enable WorkCover to readily recognise the request for review and be provided with any information relevant to the review, in order to ensure WorkCover adheres to the timeframes for response. WorkCover may allow further time for a person to apply if there are reasonable circumstances.

Review of decision

Clause 506 outlines the procedure WorkCover must follow after receiving an application for review. It sets out the decisions that can be made upon review, who may undertake a review and the time frames.

Division 2—Hearing by industrial magistrate

Purpose of div 2

Clause 507 outlines the purpose of this division i.e. to provide a process for the hearing of a matter under chapters 3 and 4, whether the matter was

subject to review or otherwise. However, a decision made about an out of time application can only be reviewed by WorkCover and can not be heard by an industrial magistrate.

Who may apply for hearing

Clause 508 allows a person who is aggrieved by a decision described in the previous clause to apply for hearing. An industrial magistrate hears and decides a matter based on the evidence provided at the hearing. The person may ask that the matter be heard by an industrial magistrate. For the purpose of natural justice, it is intended that where an employer requests hearing of a decision (e.g. WorkCover's decision to allow a claim for compensation), the claimant or worker may participate in the court process if they wish, as it is their rights which are in dispute.

Applying for hearing

Clause 509 outlines the procedure (including time frames) that a person must follow when making a request for hearing and WorkCover's responsibilities if a request for hearing is received. It incorporates the provisions in sections 98, 104 and 119 of the *Workers' Compensation Act 1990* relating to the procedure for lodging an appeal.

Notice of time and place for hearing

Clause 510 replaces section 27 of the *Workers' Compensation Regulation 1992*. It requires the registrar of the court to give the parties to the hearing (i.e. WorkCover and the person applying for hearing) written notice of the time and place for the hearing of the matter. The clause also outlines WorkCover's responsibility to provide the registrar with the information specified in the clause. It has been updated according to current drafting practice and changed to include a provision to ensure that information provided is consistent with the rules of evidence.

Exchanging evidence before hearing

Clause 511 outlines the requirements for the exchanging of evidence by the parties before the hearing.

Adjourning hearing

Clause 512 replaces section 29 of the *Workers' Compensation Regulation 1992* and has not changed except for being updated according to current drafting practice. The clause outlines the powers of the industrial magistrate to adjourn a hearing.

Additional medical evidence

Clause 513 replaces section 28(1) of the *Workers' Compensation Regulation 1992* and has not changed except for being updated according to current drafting practice. The clause outlines that an industrial magistrate may request a claimant or worker to undergo a personal medical examination.

Correcting defects in proceedings

Clause 514 replaces section 30 of the *Workers' Compensation Regulation 1992* and has not changed except for being updated according to current drafting practice. The clause allows the industrial magistrate to order anything necessary to be supplied, or any defects or errors to be corrected, for the proper hearing of the matter.

Powers of industrial magistrate

Clause 515 outlines the powers of an industrial magistrate in deciding a hearing.

Decision of industrial magistrate

Clause 516 replaces section 28(2) of the *Workers' Compensation Regulation 1992* and has not changed except for being updated according to current drafting practice. The clause requires the industrial magistrate to give their decision in a hearing in an open court and give each party a written copy of the decision.

Recovery of costs

Clause 517 replaces section 32 of the *Workers' Compensation Regulation 1992* and has not changed except for being updated according to current drafting practice. The clause outlines the circumstances to apply when an industrial magistrate makes an order for costs and allows for enforcement of the order.

Appeal from industrial magistrate to industrial court

Clause 518 replaces section 105 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. The clause allows a party aggrieved with the industrial magistrate's decision to appeal to the Industrial Court and outlines the procedure for lodging the appeal. The decision of the Industrial Court is final.

CHAPTER 10—MISCELLANEOUS

This chapter contains miscellaneous provisions including those relating to:

- information retrieval and dissemination
- proceedings for offences against this legislation.

PART 1—INFORMATION

Workers or claimant entitled to obtain certain documents

Clause 519 allows workers access to their personal information regarding their workers' compensation claim. Currently workers can obtain this information from the workers' compensation board under the *Freedom of Information Act 1992.*

To facilitate a more responsive service to claimant requests for personal information, the workers' compensation board established an administrative process to distribute personal information to claimants. This process is used to meet the majority of requests for personal information.

This provision is designed to:

- formalise WorkCover's provision of information to a claimant about their claim via an administrative process, without in any way limiting right of access to personal information through the *Freedom of Information Act 1992*
- ensure workers of self-rated and self-insured employers can access the same personal information from their employer as would be obtained currently from the workers' compensation board under the *Freedom of Information Act 1992.*

Documents are exempted if they:

- are protected by legal professional privilege
- are related to suspected fraudulent activity
- meet the requirements of part 3, division 2 of the *Freedom of Information Act 1992* which includes protection for whistleblowers and for the worker if medical advice suggests that the information would be detrimental to them.

Any documents that contain passages exempted may be released with those passages omitted.

This clause reduces the time limit to supply information to 28 days whereas under the *Freedom of Information Act 1992* 42 days is allowed. This will provide for more timely access to information for workers. Administratively, the majority of requests are processed well within 28 days.

Disclosure of information

Clause 520 replaces section 202 of the *Workers' Compensation Act 1990*. It outlines who may disclose information to WorkCover and to whom WorkCover may disclose information. The clause has been changed according to current drafting practice and to clarify the departmental

reference for the sharing of workers' compensation information (e.g. injuries and employer statistics) with the area responsible for workplace health and safety.

Information from Commissioner of Police Service

Clause 521 allows WorkCover to request information from the Commissioner of the Police Service regarding a person who WorkCover reasonably suspects of committing or attempting to commit an offence against this legislation. The Commissioner may provide the information and the information can not be used for any purpose other than the investigation of the alleged offence.

These provisions allow WorkCover to obtain information from the Queensland Police Service for the effective investigation and prosecution of possible fraudulent activity against WorkCover. The Queensland Police Commissioner has no objection to a provision to achieve this aim being included in the Bill.

Information use immunity

Clause 522 is designed to protect employers, witnesses and other persons from legal action resulting from statements made by them to WorkCover, or a self-insurer, in the course of the administration of a statutory compensation or a damages claim. It specifies that any information obtained under this legislation may only be used in a proceeding under another Act where the information is alleged to be false or misleading.

WorkCover's information not actionable

Clause 523 replaces section 203 of the *Workers' Compensation Act 1990* and has been changed according to current drafting practice and to apply the provision to self-insurers and self-raters. It prevents actions for damages or any other proceedings from being brought by any person claiming to be aggrieved as a result of the disclosure of information held by WorkCover or a self-insurer or self-rater. It protects the staff of WorkCover, or a self-insurer or self-rater, as well as these organisations.

PART 2—PROCEEDINGS

Proceedings for offences against ch 6

Clause 524 outlines the way in which proceedings are to be taken for offences by directors of the board or officers of WorkCover against any of the provisions of chapter 6. The accountability provisions of the *Government Owned Corporations Act 1993* have been replicated in chapter 6 and WorkCover Queensland is bound by these provisions. Consequently, the proceedings provisions of the *Government Owned Corporations Act 1993* have been replicated in this clause to deal with offences against chapter 6.

Summary proceedings for offences other than against ch 6

Clause 525 replaces section 196 of the *Workers' Compensation Act 1990* and has not changed.except for being updated according to current drafting practice. The clause specifies that offences (other than chapter 6 offences) are to be taken by way of complaint and summons before an industrial magistrate.

Recovery of debts under this Act

Clause 526 replaces section 197 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. This clause allows WorkCover to recover any debts arising out of the enforcement of this Act.

Self-insurer recovery of debts

Clause 527 allows a self-insurer to recover a debt owed to the self-insurer because of payments made by the self-insurer in relation to claims for compensation. This mirrors the recovery power given to WorkCover in chapter 3, part 8. The recovery may be made by complaint under the *Justices Act 1886* before an industrial magistrate or by action for debt. The recovery may include.a debt from a worker or private provider.

Powers of industrial magistrate

Clause 528 replaces section 199 of the *Workers' Compensation Act 1990*. It outlines the powers of an industrial magistrate in relation to matters arising under this legislation. The clause has been expanded to permit witnesses to be summonsed for all proceedings before an industrial magistrate and updated according to current drafting practice.

Evidence

Clause 529 replaces section 200 of the *Workers' Compensation Act 1990.* It has had minor changes and been updated according to current drafting practice. The clause allows for WorkCover to issue a certificate attesting to certain facts where proceedings are brought by WorkCover in relation to an offence under this legislation. This clause allows an industrial magistrate to regard the certificate as evidence of the facts attested.

An evidentiary provision has been included at the end of this clause to allow the receipt of an application for compensation to be linked to the applicant named on the application. This will assist in the prosecution of fraud.

PART 3—REGULATIONS

Regulation-making power

Clause 530 replaces section 207(1) of the *Workers' Compensation Act 1990.* The clause allows the Governor in Council to make regulations under this legislation. The provisions for regulations have been moved to schedule 1.

PART 4—OTHER PROVISIONS

Entitlements to compensation under industrial instrument prohibited and void

Clause 531.replaces section 201 of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It outlines that the Industrial Relations Commission can not include in awards any provision for payment of an amount for accident pay or other payment on account of a worker sustaining injury.

Approval of forms

Clause 532 replaces section 206A of the *Workers' Compensation Act 1990* and has not changed except for being updated according to current drafting practice. It allows WorkCover to approve forms for use under this legislation e.g. notice of assessment or application for compensation.

Service of documents

Clause 533 extends the provision under the *Acts Interpretation Act 1954* where legal documents can be served to include a postal address. A significant number of workers' compensation clients transact their mail through post office boxes, and this is often the only way of contacting them.

Repeal

Clause 534 specifies that the *Workers' Compensation Act 1990* is repealed.

Consequential amendments in sch 2

Clause 535 outlines that the other Acts, set out in schedule 2, are to be amended. The other Acts have been changed as a result of the provisions contained in this Bill.

CHAPTER 11—TRANSITIONAL PROVISIONS

This chapter contains once-off bridging arrangements which allow for:

- staff employed by the workers' compensation board to be transferred to WorkCover
- policies of insurance held with the workers' compensation board to be transferred to WorkCover
- the medical assessment tribunals to be maintained
- the provisions of the repealed Act to be maintained until the date of proclamation
- financial closure of the accounts of the workers' compensation board.

PART 1—INTERPRETATION

Definitions

Clause 536 defines terms commonly used in this chapter which have specific meanings within this chapter.

Other savings preserved

Clause 537 outlines that this chapter does not limit section 20 of the *Acts Interpretation Act 1954* regarding saving of the operation of repealed Acts.

PART 2—TRANSFER TO WORKCOVER

Division 1—Staff

Transfer of staff to WorkCover

Clause 538 transfers all staff from the Division of Workers' Compensation within the Department of Training and Industrial Relations

to WorkCover. On transfer, these staff cease to be public service employees and become employees of WorkCover.

All entitlements (e.g. sick leave, recreation leave) accrued as a public service employee will be treated as if they were accrued as an employee of WorkCover. That is, WorkCover is responsible for honouring those accrued entitlements not used. Long service leave entitlements are specified to ensure that WorkCover calculates a person's long service leave as if the person's service with the Queensland public service was service with WorkCover.

Preserved employment conditions of transferred person

Clause 539 states that on transfer employees are to continue to receive the same rate of salary and the same conditions of employment that applied immediately prior to the transfer until such time as other arrangements are entered into under chapter 6. Terms and conditions are unaffected by any changes that occur in the public service after the date of transfer.

Other preserved rights

Clause 540 provides that for a period of three years after the date on which WorkCover is established employees of the public service who are transferred from that date shall retain the following public service rights and privileges:

- the right to appeal against public service appointments which they would have had as public service officers
- the ability to transfer at level from WorkCover to departments of the public service in accordance with public service policy applicable at the time
- the right to participate in the public service redeployment arrangements applicable at the time of redeployment (should redeployment be necessary because of redundancy).

Public service officers' superannuation on becoming WorkCover employees

Clause 541 provides that where WorkCover does not have its own superannuation fund, persons who are members or contributors to State superannuation schemes and transferred to WorkCover, may continue as members of, or contributors to, the State superannuation funds listed in this clause. This clause is required as, on its commencement, WorkCover will not have its own superannuation arrangement.

WorkCover may offer an alternative superannuation fund to its staff at a later date. In this case, a person who has continued to be a member or contributor to a State superannuation fund may, at their discretion, cease being a member or contributor to the relevant State superannuation fund and join the fund offered by WorkCover. This option to change funds would be achieved through a regulation prepared under the relevant State superannuation fund legislation.

Division 2—Legal succession

WorkCover is the legal successor

Clause 542 outlines that WorkCover is the legal successor to the workers' compensation board and any other provisions in this division do not limit the succession.

First corporate plan and statement of corporate intent

Clause 543 requires WorkCover, within six months of being established, to prepare and submit a draft corporate plan and draft statement of corporate intent to the Minister. Under chapter 6, these documents have to be prepared at least 2 months before the end of the financial year. In this clause, the time frame has been extended to allow WorkCover enough time to prepare these initial documents.

If the abovementioned drafts have not been submitted, the Minister may, by written notice, direct the board of WorkCover to take any specified steps or make any specified modifications to the draft plan with which the board must immediately comply.

Assets and liabilities etc.

Clause 544 outlines that any assets and liabilities of the workers' compensation board become assets and liabilities of WorkCover. Anything under the control of the workers' compensation board becomes under the control of WorkCover.

Proceedings

Clause 545 outlines that if a proceeding has been taken which has not ended, or a proceeding could have been taken by or against the workers' compensation board, the proceeding may be continued or taken by or against WorkCover.

References generally

Clause 546 outlines, in all cases, if the context permits:

- that in an Act, instrument or document reference made to the workers' compensation board constituted under a former workers' compensation Act may be taken as a reference to WorkCover
- a reference to the board of the workers' compensation board under a former workers' compensation Act may be taken as a reference to WorkCover's board
- a reference to the insurance commissioner or the State Government Insurance Office as it relates to accident insurance under the *Workers' Compensation Act 1916* may be taken as a reference to WorkCover
- a reference to the State Insurance Accident Fund or to the workers' compensation fund may be taken as a reference to the WorkCover fund.

This is to preserve continuity in the administration and management of accident insurance in Queensland.

PART 3—INSURANCE

Policies

Clause 547 allows for the continuity of any previous workers' compensation policy on transfer to WorkCover. It also clarifies that merit bonuses or demerit charges as applied under the *Workers' Compensation Act 1990* continue to apply to premium assessments for periods of insurance prior to the commencement of the new premium setting provisions.

Other contracts of insurance

Clause 548 replicates the provisions in the above clause for contracts of insurance, other than policies of accident insurance e.g. contracts of insurance to cover persons other than workers as outlined in chapter 1.

Previous non-policy compensation arrangement with State

Clause 549 allows WorkCover to continue their non-policy arrangements with government departments. Claims costs for injuries which were sustained before the premium based system for government departments was introduced on 1 July 1995 are recovered directly from departments with the.addition of an administrative charge.

References to self-raters and self-insurers

Clause 550 clarifies that the provisions of the Bill relating to self-rating and self-insurance have no effect until the date of commencement of the provisions.

PART 4—COMPENSATION

Compensation for injury

Clause 551 outlines that if a worker sustains an injury before the commencement of this legislation, the application for compensation, regardless of when it is lodged, is to be decided and any entitlement paid, under the workers' compensation Act in force at the time of injury.

If the injury is sustained before 1 January 1996, the person is entitled to every increase in the prescribed base rate. If the injury is sustained after 1 January 1996 the person is entitled to every increase in QOTE.

PART 5—INJURY MANAGEMENT

Appointment of rehabilitation coordinator

Clause 552 specifies the transitional arrangements for employers who must appoint a rehabilitation coordinator under chapter 4. It allows employers 12 months after the commencement of that chapter to appoint a rehabilitation coordinator. This time allows for the coordinator to be trained through a WorkCover accredited workplace rehabilitation course.

Workplace rehabilitation policies and procedures

Clause 553 specifies the transitional arrangements for employers who must have workplace rehabilitation policies and procedures under chapter 4. It allows employers 12 months after the commencement of that chapter to have their policies and procedures approved by WorkCover.

PART 6—MEDICAL ASSESSMENT TRIBUNALS

Continuation of tribunals

Clause 554 outlines that the medical boards established under the *Workers' Compensation Act 1916* and medical tribunals established under the *Workers' Compensation Act 1990* are continued as tribunals under this legislation.

PART 7—FINAL ACCOUNTS

Final accounts

Clause 555 outlines that WorkCover is to prepare the final accounts of the workers' compensation board as per the provisions of the *Financial Administration and Audit Act 1977* and the Auditor-General must audit the accounts.

PART 8—OFFENCES

Offences

Clause 556 outlines that proceedings for an offence against a former workers' compensation Act may be started or continued under this legislation.

PART 9—SAVING OF REPEALED ACT PROVISIONS

Transitional application of repealed provisions

Clause 557 specifies various provisions of the *Workers' Compensation Act 1990* which are still to apply until the corresponding provisions are proclaimed.

How to apply provisions of former Acts

Clause 558 outlines how provisions of the former Act are to be applied after the commencement of this legislation.

SCHEDULE 1

REGULATIONS

The clauses contained in this schedule replace section 207(2) of the *Workers' Compensation Act 1990.* It gives the power to create provisions in a regulation other than those provided for elsewhere in this legislation. The clause has been changed to:

- remove superfluous regulation making powers due to:
  - lack of use of the provision
  - the power now being given under sections of the Bill
  - the regulation provision being moved into the Bill
- incorporate a regulation making power required for common law claim management
- increase the maximum penalty for contravention of a provision in the regulation, from 4 to 20 penalty units for consistency with the general penalty that could be imposed under section 196(1) of the *Workers' Compensation Act 1990* for contravention of that Act.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

This schedule contains complementary amendments to other Acts required due to changes made in this Bill.

Except for the listed below, all Acts in this schedule replace references to the *Workers' Compensation Act 1990* with the *WorkCover Queensland Act 1996* or the workers' compensation board of Queensland with WorkCover Queensland, as well as updating the sections where necessary according to current drafting practice.

The exceptions are the:

- *Coal Industry (Control) Act 1948* where the provision that deemed the mine owner to be an employer for the purposes of workers' compensation has been clarified to specify that the mine owner must take out a contract of insurance with WorkCover.
- *Coal Mining Act 1925* where provisions have been removed that deemed a mine officer to be a worker under the *Workers' Compensation Act 1990*. The owner of the mine must now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these officers.
- *Corrective Services Act 1988* where the provisions has been removed that deemed a person undertaking community service to be a "worker" under the *Workers' Compensation Act 1990* and also deemed the weekly earnings of the person for the purpose of the entitlement to weekly compensation. This deemed rate did not align with any other rate in the *Workers' Compensation Act 1990* and resulted in higher benefits being paid. These persons undertaking community service are covered as persons entitled to compensation in this Bill under chapter 1. This new provision gives these persons similar entitlements as a "worker" (except for entitlement to damages).
- *Credit Act 1987* where reference to a worker has been removed as the change to the definition of a "worker" in chapter 1 of this Bill means that the reference is no longer appropriate.
- *Family Services Act 1987* where provisions have been removed that deemed an honorary officer to be a "worker" under the *Workers' Compensation Act 1990*. These honorary officers may now be covered under a contract of insurance in chapter 1 of this Bill. In addition, the clause specifies that the chief executive officer must take out a contract of insurance with WorkCover to insure these officers.

- *Hospitals Foundations Act 1982* where the provisions have been removed that deemed an honorary research worker to be a "worker" under the *Workers' Compensation Act 1990*. The body corporate may now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these officers.
- *Intellectually Disabled Citizens Act 1992* where the provisions have been removed that deemed a panel member to be a "worker" under the *Workers' Compensation Act 1990*. The chief executive officer may now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these members.
- *Juvenile Justice Act 1992* where provisions have been removed that deemed a child performing community service under a community service or immediate release order to be a "worker" under the *Workers' Compensation Act 1990*. These children are now covered under a contract of insurance as persons entitled to compensation in chapter 1 of this Bill.
- *Local Government Act 1993* where reference to the definition of injury has been removed as the provisions in this Bill made it unnecessary. Insurance coverage for councillors in the section has been clarified but the intent of the coverage has not changed.
- *Metropolitan Water Supply and Sewerage Act 1909*, where the term "an industrial disease", which was previously defined in the *Workers' Compensation Act 1916* but no longer exists, is replaced by the intent of the previous definition i.e. the disease silicosis or anthraco-silicosis.
- *Mines Regulation Act 1964* where the provision has been removed that deemed a workers' representatives to be a "worker" under the *Workers' Compensation Act 1990*. The Crown or owner of the mine must now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these representatives.
- *Public Safety Preservation Act 1986* where the provision has been removed that deemed a person under the control of an incident coordinator to be a "worker" under the *Workers' Compensation Act 1990*. The commissioner must now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these persons.

- *Queensland Institute of Medical Research Act 1945* where the provision has been removed that deemed an honorary research worker to be a "worker" under the *Workers' Compensation Act 1990*. The council may now take out a contract of insurance with WorkCover, as specified in chapter 1, to insure these research workers.
- *State Counter-Disaster Organisation Act 1975* where provisions have been removed that deemed a counter disaster volunteer to be a "worker" under the *Workers' Compensation Act 1990*. These volunteers are now to be covered under a contract of insurance as persons entitled to compensation in chapter 1 of this Bill. In addition, the clause specifies that the State Emergency Service must take out a contract of insurance with WorkCover to insure these volunteers.

SCHEDULE 3

DEFINITIONS

This schedule introduces a dictionary of."definitions" as referred in chapter 1 of the Bill. It includes a number of terms and phrases retained from the *Workers' Compensation Act 1990* and section 4 of the *Workers' Compensation Regulation 1992,* as well as a number of.new definitions.

Where the term 'retains' is used in the following notes, it indicates that the meaning of.the word or phrase has not changed from that in the *Workers' Compensation Act 1990* and the *Workers' Compensation Regulation 1992*. However, in some instances, the definitions have been changed in accordance with current drafting practice.

This schedule:

- inserts a definition of "aircraft" used in the definition of."vehicle" for the purpose of journey claims.

- inserts a definition of "aggravation" to include acceleration in the definition of injury in chapter 1.
- retains the definition of "authorised person" which is used in chapter 8 to specify those persons who have the authority to conduct investigations and inspections to monitor compliance.
- defines "board" as the WorkCover Board under chapter 6.
- inserts a definition of "calling" for use in chapters 3 and 8.
- inserts a definition of "chief executive officer" to mean the chief executive officer of WorkCover.
- inserts a definition of "claimant" for reference in chapters 3, 7 and 9 to incorporate those persons who have lodged an application for a statutory claim but have not yet been determined as a "worker".
- inserts a definition of "classification group employer" for use in the definition of "group employer" relating to employers applying for self-rating or self-insurance. It describes a type of group of employers who may apply for a self-rating registration or a self-insurance licence.
- retains the definition of "coaster" which is used in the definition of "Queensland ship". For this definition, a coaster is a vessel that operates solely within Queensland waters.
- inserts a definition of "contract of service" to include an apprenticeship agreement in relation to the definition of "worker".
- inserts a definition of "contractor" in relation to persons required to maintain documents about workers and contracts for the performance of work.
- inserts a definition of "conviction" for reference in chapter 8 for the purposes of fraud.
- inserts a definition of "court" for reference in chapters 5 and 9 in relation to matters referred to a court.
- inserts a definition of "deemed premium" for reference in chapter 2 in relation to self-rating and self-insurance.
- retains the definition of "director". This word is used in chapter 1

in relation to the meaning of "worker" and contracts of insurance for eligible persons.

- inserts a definition of "doctor" to avoid repeating the phrase 'registered medical practitioner' throughout the Bill.
- inserts a definition of "due date" for reference in chapter 2 in relation to the payment of premium.
- inserts a definition of "employee" of WorkCover for reference in chapters 6, 7, 8, 10 and 11.
- inserts a definition of "employs 30 or more workers" for reference in chapter 4 for the purposes of establishing an employer's responsibility to appoint a rehabilitation coordinator and to have workplace rehabilitation policy and procedures.
- inserts a definition of "former Act" for reference in chapter 11 in relation to transitional issues.
- retains a definition of "government entity" which applies.in chapters 1, 3 and 11 for the purpose of workers' compensation insurance.
- retains the definition of "government worker" which applies to workers' compensation insurance arrangements for government entities.
- inserts a definition of "group employer" for reference in chapter 2 in regard to self-insurance and self-rating. It is used to establish the make-up of groups of employers that are able to apply for group self-rating or group self-insurance.
- retains the definition of "hospitalisation" for reference in chapter 4 in relation to the extent of a worker's hospitalisation for the injury.
- retains the definition of "household worker" which applies in chapter 2 in relation to the exemption of employers of household workers from the employer excess.
- inserts a definition of "industrial deafness" for reference in chapter 3 in relation to claims for industrial deafness.

- inserts a definition of “industrial instrument” for use in chapters 3 and 6. The term replaces the references to “award” and “industrial agreement” and has been expanded to include all certified and registered employment arrangements.
- inserts a definition of “Industrial Relations Act” for reference in chapters 6 and 10.
- inserts a definition of “Insurance and Superannuation Commission” for reference in chapter 2 in relation to the approved reinsurers for self-insurance.
- retains the definition of “medical treatment” which has been modified for the purpose of clarity. This phrase is used in chapter 4 in relation to workers’ medical treatment.
- inserts a definition of “motor vehicle” used in the definition of.“vehicle” for the purpose of journey claims.
- inserts a definition of “notice of assessment” used in the notification of permanent impairment in chapter 3.
- inserts a definition of “notice of claim” used as part of the pre-proceeding process for damages for injury in chapter 5.
- inserts a definition of “NWE” to simplify reference to normal weekly earnings used in chapter 3 in relation to weekly payments of compensation to workers.
- inserts a definition of “payable amount” for reference throughout the Bill.
- retains the definition of “period of insurance” which applies to policies of insurance in chapter 2.
- retains the.definition of.“personal injury” which relates to the definition of “injury” to include damage to a worker’s prosthetics or assistive devices.
- retains the definition of “place of employment” which is used in relation to where a worker’s injury was sustained.
- retains the definition of “policy” and deletes any reference to ‘other insurance’ as this is no longer relevant as a “policy” relates to a policy of.accident insurance.

- retains the definition of "port".
- inserts a definition of "pre-existing stable business relationship" for reference to the definition of "classification group employer" in this schedule.
- retains the definition of "premium notice" which is used in chapter 2 in relation to a policy of accident insurance.
- retains the definition of "prescribed disfigurement" which is used in chapters 3 and 7 in relation to workers' entitlements and assessment for lump sum compensation.
- inserts a definition of "Public Service Act" for reference in chapter 6 in relation to employment conditions for WorkCover employees.
- retains the definition of "Queensland ship". This phrase is used in chapter 3 in relation to seafarers and their entitlements.
- inserts a definition of "redemption payment" used in the payment of redemptions in chapter 3.
- retains the definition of "registered" which has been amended to include audiologists for the purposes of performing hearing tests for industrial deafness and references self-raters for the purpose of registration under chapter 2. This term is used in chapters 2, 3, 4 and 7 in relation to self-rating and medical treatment and assessment of workers.
- retains the definition of "registered person" which is used in relation to medical treatment of workers.
- inserts a definition of "related bodies corporate group employer" for reference in the definition of "group employer" that relates to group employers applying for self-rating or self-insurance.
- inserts a definition of "related bodies corporate" for reference in chapter 2 in relation to self-insurance and self-rating.
- inserts a definition of "self-insurer" for reference in chapter 2 to an employer or group of employers who has been licenced as a self-insurer.

- inserts a definition of "self-rater" for reference in chapter 2 to an employer or group of employers who has been registered as a self-rater.
- retains the definition of "ship". This phrase is used in chapter 3 in relation to seafarers and their entitlements.
- inserts a definition of "single employer" for reference in chapter 2 in relation to self-insurance and self-rating.
- inserts a definition of "single pension rate" for reference in chapter 3 in relation to weekly payments of compensation after two years.
- inserts a definition of "specialist" to avoid repeating the phrase 'medical practitioner who is registered under the *Medical Act 1936* as a specialist' in chapter 7 in relation to the constitution of medical assessment tribunals.
- inserts a definition of "State ship" to replace the definition of "Crown ship". This phrase is used in chapter 3 in relation to seafarers and their entitlements.
- retains the definition of "statutory maximum compensation". This term is used in relation to the maximum amount of compensation payable.
- inserts a definition of "suspects" for references in chapter 6 in relation to the interaction of the board of WorkCover and the Minister.
- inserts a definition of "table of costs" for reference in chapter 4 in relation to medical treatment and rehabilitation of workers.
- retains the definition of "table of injuries". This phrase is used in relation to assessing permanent impairment for the purpose of determining lump sum compensation.
- inserts a definition of "this Act" specifically for use in chapter 5 to include reference to former workers' compensation Acts.
- inserts a definition of "vehicle" used in chapter 1 in relation to journey claims.

- retains the definition of "wages". This word is used in chapters 2 and 3 in relation to employers' premium and weekly payments to workers.
- inserts a definition of "WorkCover" for reference throughout the Bill in relation to WorkCover Queensland.
- inserts a definition of "workplace" in relation to employers' responsibility for rehabilitation and for compliance.
- inserts a definition of "WRI" to simplify references to work related impairment throughout this Bill.

Amendments agreed to in Committee

1. Clause 23—

At page 38, lines 25 and 26, 'in relation to an activity or program that is not performed under a detention order'—

omit, insert—

'other than an activity or program performed while in the custody of the Queensland Corrective Services Commission'.

2. Clause 26—

At page 40, lines 15 and 16—

omit, insert—

‘**26**. WorkCover must enter into a contract of insurance for this subdivision with an eligible person who wishes to enter into a contract of insurance with WorkCover for this subdivision.’.

3. Clause 38—

At page 47, lines 18 and 21—

omit, insert—

‘(ii) while in control of a vehicle, contravenes the Traffic Act 1949, section 16, if the contravention is the major significant factor causing the event; or

(iii) contravenes the Criminal Code, section 328A; or’.

4. Clause 489—

At page 266, line 8, ‘7 days’—

omit, insert—

‘14 days’.

5. Clause 505—

At page 273, line 16, ‘7 days’—

omit, insert—

‘28 days’.

6. Clause 505—

At page 273, line 28, ‘7 days’—

omit, insert—

‘14 days’.

7. Clause 506—

At page 274, line 17, ‘7 days’—

omit, insert—

‘14 days’.

8. Clause 509—

At page 275, line 16, ‘7 days’—

omit, insert—

‘28 days’.

9. Clause 509—

at page 275, line 23, ‘7 days’—

omit, insert—

‘14 days’.

10. Chapter 11, part 4—

At page 296, lines 1 to 8—

omit, insert—

‘PART 4—INJURY BEFORE REPEAL OF REPEALED ACT

‘**Injury under repealed or other former Act**

‘551.(1) This section applies if a worker sustains an injury before the repeal of the repealed Act.

‘**(2)** The repealed Act applies in relation to the injury as if the repealed Act had not been repealed.’.

11. Clause 551—

At page 296, line 10, ‘the former Act’—

omit, insert—

‘a former Act’.