WORKCOVER QUEENSLAND AND OTHER ACTS AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of legislation

The objective of the legislation is to provide for miscellaneous amendments to the *WorkCover Queensland Act 1996*, the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Industrial Relations Act 1999*.

The principal objectives of the amendments to the *WorkCover Queensland Act 1996* are to:

- Allow the WorkCover Board to accept applications for self-insurance from group employers who were licensed as self-insurers or who had lodged an application for self-insurance prior to 3 March 1999, in circumstances where as a result of restructuring, they do not meet the criteria for the number of workers as amended on 3 March 1999;
- Reduce the level of the unconditional bank guarantee for self-insurers who have elected a 5 year reassessment of their outstanding liability;
- Ensure payment to an injured worker on the day of injury;
- Improve the procedural efficiency of the Medical Assessment Tribunals; and
- Exclude reserves from the determination of solvency for WorkCover.

The principal objectives of the amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* are to:

- Improve benefits provided by QLeave, including a cash-out entitlement to all workers with ten years service and a pro-rata entitlement to all workers with seven years service;
- Broaden the QLeave scheme's coverage to include state and local government workers (including State and local government apprentices and trainees) and those who are supervisors of building and construction work; and
- Add to the purposes of the Act to include an additional primary function to act as a collection agent within the building and construction industry.

The objective of the amendment to the *Industrial Relations Act 1999* is to:

- Ensure that orders of the Queensland Industrial Relations Commission made in relation to persons employed under a labour market program are preserved.

Reasons for the Bill

The legislation will improve the operation of the workers' compensation and building and construction industry portable long service leave schemes.

The legislation will introduce a number of amendments that build on the Government's 1999 reforms to improve the operation of the workers' compensation scheme and to clarify the intent of existing provisions in the *WorkCover Queensland Act 1996.*

The *Building and Construction Industry (Portable Long Service Leave) Act 1991* has been in operation for eight years and the amendments herein are the result of a review conducted in 1999.

The legislation also clarifies that orders of the Queensland Industrial Relations Commission relating to a person employed under a labour market program made under the *Vocational Education, Training and Employment Act 1991* are preserved under section 140 of the *Industrial Relations Act 1999*.

Achieving the objective

The Bill is based on the following principles:

- A fair and equitable system of workers' compensation for workers and employers; and
- A fair and equitable system of portable long service leave for workers and employers in the building and construction industry.

Consistency of Bill with Fundamental Legislative Principles

The provisions of the Bill are consistent with the fundamental legislative principles provided under the *Legislative Standards Act 1992*.

Estimated Cost for Government Implementation

The amendments will not alter existing administrative costs for WorkCover or QLeave.

Consultation

Consultation has taken place with WorkCover Queensland, QLeave, Queensland Government Departments and key stakeholders including representatives of employers, self-insurers and workers.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides that the amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* commence on 1 January 2001.

Section 5 provides for changes to the levy for self-insurers and is to commence on 1 July 2001.

Section 6 and section 28 (to the extent it inserts sections 582 and 583 into the *WorkCover Queensland Act 1996*) are taken to have commenced on 17 October 2000. These sections provide for how a group employer may alter the membership of its licence and the consequences to a self-insurer and WorkCover of a group employer altering its membership.

Sections 7(2), 20 to 23, 27 (in so far as it inserts section 586 into the *WorkCover Queensland Act 1996*) and schedule 1, section 4 are to commence on a day to be fixed by proclamation so as to coincide with the appointment of tribunal members to specialty medical assessment tribunals.

The remaining provisions of this Bill commence on the day of assent. Sections 7(1), 8-13 will apply to injuries occurring after the day of assent.

PART 2—AMENDMENT OF *WORKCOVER QUEENSLAND ACT 1996*

Act amended in pt 2 and sch 1

Clause 3 states that part 2 of the Bill and schedule 1 amend the *WorkCover Queensland Act 1996*.

Amendment of s 5 (Workers' compensation scheme)

Clause 4 exempts reserves established under section 415 from the calculation of solvency. This allows reserves such as an investment fluctuation reserve to be excluded from the calculation of solvency.

Replacement of s 111 (Annual levy payable)

Clause 5 replaces section 111. This clause provides that a self-insurer must pay a levy for each financial year or part of a financial year of a licence.

This clause preserves the method of calculation of the levy, that is, by being prescribed under a regulation and that a self-insurer aggrieved by WorkCover's decision about the amount of the levy payable may apply to have the decision reviewed.

The current provisions contained in the *WorkCover Queensland Regulation 1997* do not provide sufficient flexibility to make periodic adjustments to the levy rate as required to cover the proportion of scheme costs for self-insurers. This clause provides that adjustments to the levy rate be set each financial year and published in the Industrial Gazette.

The gazettal of the levy is consistent with the process of setting the premium method and rates for all other employers.

WorkCover must recommend the rate for each financial year to the Minister. It is expected that before recommending any rate WorkCover will consult with self-insurers.

The clause provides that the Minister approve the rate of the levy.

This clause allows for the calculation of the levy to take into consideration the cost of ambulance transportation of a self-insurer's workers by the Queensland Ambulance Service under section 237.

Insertion of new ch 2, pt 5, div 2A

Clause 6 establishes that if a self-insurer that is a group employer that intends to change the membership of the group it must, before the change, apply to WorkCover in writing to change the membership on the licence; and

WorkCover must approve the application if it is satisfied that the application meets the requirements for a group employer and satisfactory arrangements have been made in relation to the total of the residual liability and outstanding liability (total liability) of the member or members that are leaving (see section 118); and

It is declared that if there is a change in the membership of a self-insurer that is a group employer that each member of the group immediately before the change is taken to remain a member of the group for the purposes of the *WorkCover Queensland Act 1996* until WorkCover approves an application for a change in the group membership (see section 118B).

Where a member leaves a self-insurer that is a group employer either to become:

- Part of another self-insurer; or
- To become a new self-insurer; or
- Leaves the self-insurer and does not become part of another self-insurer; or
- A group employer becomes part of an existing group self–insurer

Section 118A establishes how the liability of self-insurers is to be assessed, who is to be liable to whom for such liability that may arise and when such liability arises.

Amendment of s 119 (Powers of self-insurers)

Clause 7 amends section 119(1)(a)(ii) to exclude section 237(2) relating to payment of costs for ambulance transportation by the Queensland Ambulance Service from the powers and functions of a self-insurer.

The clause also amends section 119(1)(a)(iv) by removing reference to section 450 (Assessment of additional compensation for prescribed disfigurement). Section 450 established the Prescribed Disfigurement Assessment Tribunal. This tribunal has been restructured as a specialty medical assessment tribunal. As section 119(1)(a)(iv) refers to specialty medical assessment tribunals, there is no need to reference section 450.

Amendment of s 147 (Entitlements of seafarers)

Clause 8 amends subsection 147(1)(b)(i) and (2) to provide coverage to employers of a Queensland ship and its workers where the principal place of employment of the workers is Queensland and the ship does not fall under the jurisdiction of, or has an approved exemption from, the *Seafarers' Rehabilitation and Compensation Act 1992* (Cwlth).

Amendment of s 152 (Entitlements for industrial deafness)

Clause 9 amends section 152(1) to allow WorkCover or a self-insurer to pay for a worker's travelling expenses where the worker is claiming industrial deafness and the insurer has referred the worker to a medical examination, examination by a registered person or a medical assessment tribunal.

Amendment of s 167 (Maximum entitlement)

Clause 10 amends section 167 of the *WorkCover Queensland Act 1996* to ensure that compensation paid under Part 7A (Compensation of the day of injury) is not included for the purposes of calculating whether maximum entitlement has been reached in relation to one injury sustained in one event.

Amendment of s 168 (Time from which compensation payable)

Clause 11 amends section 168 to clarify when an entitlement to compensation arises. This amendment addresses the situation when a worker is not entitled to be paid under an industrial instrument for the remainder of the day on which the worker stops work because of the injury.

Insertion of new ch 3, pt 7A

Clause 12 provides for the payment of compensation for the whole of the day on which the worker stops work where, because of an industrial instrument, the worker is not otherwise entitled to be paid.

The new part provides that the employer must pay the amount the worker would have otherwise been paid if the injury had not been sustained. This amount must be paid in addition to compensation payable under other provisions of the *WorkCover Queensland Act 1996*, including the amount of maximum compensation payable under section 167 and the excess paid by employers under chapter 2, part 3, division 4. To make it clear, section 168 still applies.

Amendment of s 237 (Extent of liability for travelling expenses)

Clause 13 amends section 237 to ensure that the costs of ambulance transportation for both subscribers and non-subscribers to the Queensland Ambulance Service are met. This does not impact or affect individual Queensland Ambulance Service arrangements for ambulance services with employers, eg. mining companies. Costs for ambulance transportation other than by the Queensland Ambulance Service will be paid by both WorkCover and self-insurers.

The amendment also provides that WorkCover is to pay the ambulance transportation costs that it accepts as reasonable in regard to the relevant table of costs, or if there is no relevant table of costs, the costs approved by WorkCover.

Amendment of s 243 (Employer's obligation to appoint rehabilitation coordinator)

Clause 14 inserts a new subsection, which provides that a rehabilitation coordinator is not civilly liable if a worker is injured or exacerbates an injury in the course of the Rehabilitation Coordinator giving effect to the employer's workplace rehabilitation policy and procedures.

The amendment, however, will not prevent an injured worker from taking action against the employer.

Amendment of s 425 (Assessment tribunals to be maintained)

Clause 15 amends section 425 to establish the Disfigurement Assessment Tribunal as a specialty medical assessment tribunal.

This clause ensures consistency of the composition of all specialty tribunals by removing the Prescribed Disfigurement Assessment Tribunal as a separate tribunal.

Amendment of s 426 (General Medical Assessment Tribunal)

Clause 16 amends section 426 to remove the limitation on the number of doctors that may be appointed to the General Medical Assessment Tribunal.

The amendment will allow for an increase in the number of tribunals that may be constituted. It is intended that this will decrease the waiting time for workers to have their matters heard by the General Medical Assessment Tribunal.

Omission of ss 427 and 428

Clause 17 deletes section 427 which established an alternative panel for the General Medical Assessment Tribunal. Section 427 is no longer required as the amendment to section 426 removes the restriction on the number of doctors that can be appointed to the General Medical Assessment Tribunal panel, therefore there is no need for an alternative panel.

The terms and conditions for these appointments are now specified in section 434. This clause removes section 428 which previously specified the conditions of appointment to the General Medical Assessment Tribunal panel.

Amendment of s 429 (Chairperson and deputy chairperson of General Medical Assessment Tribunal)

Clause 18 increases the number of deputy chairs who may be appointed to the General Medical Assessment Tribunal.

Amendment of s 430 (Constitution of General Medical Assessment Tribunal for reference)

Clause 19 deletes subsections 430(3) and (4). These subsections are no longer required as they refer to the alternative panel. The alternative panel has been removed by *Clause 17.*

Replacement of ss 431-434

Clause 20 replaces sections 431 to 434. This clause ensures the appointment process and constitution of the specialty medical assessment tribunal are consistent with the General Medical Assessment Tribunal. This clause also removes the reference to alternative members.

Section 431 also ensures that specialists in plastic and reconstructive surgery are appointed to the Disfigurement Assessment Tribunal. This is consistent with the constitution of all specialty medical assessment tribunals.

Section 432 provides for the Governor in Council to appoint a chairperson and at least one deputy chairperson to each specialty medical assessment tribunal panel. This ensures the appointment process and constitution of the specialty medical assessment tribunal are consistent with the General Medical Assessment Tribunal.

Section 433 provides that the specialty medical assessment tribunal is to be constituted by the chairperson and two members of the panel designated by the chair to that specialty medical assessment tribunal.

Section 434 provides for conditions of appointment for both the General Medical Assessment Tribunal and the specialty medical assessment tribunals. This section replaces sections 428 and 432.

Amendment of s 437 (Reference to tribunals)

Clause 21 inserts the terms of reference in relation to a worker's disfigurement. Subsection (1) of the clause also clarifies the terms of reference under section 437(e) in relation to permanent impairment and assessment of permanent impairment for a damages certificate.

Insertion of new s 445A

Clause 22 inserts section 445A. Section 445A replaces section 450 which specifies the terms of reference for prescribed disfigurement. It clarifies that the prescribed disfigurement is determined by assessing the degree of permanent impairment which results from the disfigurement.

This clause provides for the assessment of additional compensation for prescribed disfigurement and ensures that the wording of the clause is consistent with schedule 3 of the *WorkCover Queensland Regulation 1997*.

Omission of ch 7, pt 4 (Prescribed disfigurement assessment tribunal)

Clause 23 deletes Chapter 7, part 4 which has been replaced by the Disfigurement Assessment Tribunal which is included as a specialty medical assessment tribunal.

Replacement of s 467 (Entry to workplaces)

Clause 24 amends section 467 to complement sections 469 and 472A so as not to limit the operation of any provision under Chapter 8 Part 1. It allows an authorised person to enter a place at a reasonable time to give effect to monitoring and ensuring compliance with the *WorkCover Queensland Act 1996*.

Insertion of new s 472A

Clause 25 inserts a new section 472A in relation to powers of authorised persons entering a place.

This clause allows the authorised person to do certain things after entering a place for the purpose of monitoring or enforcing compliance with the Act. This includes searching any part of the place and inspecting, examining, photographing or filming anything in or on the place. It allows the authorised person to take extracts from, or copy, a document and take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power pursuant to this provision.

Amendment of s 484 (Particular acts taken to be fraud)

Clause 26 amends section 484(1)(b) to clarify the original intent of the provision. 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.

Replacement of s 485 (Duty to report fraud)

Clause 27 clarifies that an employer or self-insured employer has a duty to report the provision of false and misleading information in addition to their duty to report fraud. This is consistent with section 482 and section 483 in relation to fraud and the provision of false or misleading information or documents.

Insertion of new ch 13

Clause 28 inserts a new chapter 13 for transitional arrangements for the *WorkCover Queensland and Other Acts Amendment Act 2000*.

PART 1—INJURIES

This clause inserts a new section 580 to provide that clauses 7(1) and 8-13 only apply to injuries sustained by a worker after the commencement of this section.

PART 2—SELF-INSURANCE

Division 1—Bank Guarantee

This clause applies to employers:

(a) Who were self-insurers or applicants as at 3 March 1999; and

(b) Have elected the interim payment option for outstanding liability under section 93 of the *WorkCover Queensland Regulation 1997*

These self-insurers must lodge an unconditional bank guarantee or cash deposit for $5M or 100% of the outstanding liability and 150% of residual liability (whichever is the greater).

This clause applies until the self-insurer's outstanding liability is re-assessed within 5 years from the date liability is assumed.

The bank guarantee at the rate of 150% has no application to past liabilities until the 5-year point has been reached, as WorkCover still bears the liability for any payment over the original estimation.

There are financial savings to self-insurers to maintain the bank guarantee for the outstanding liability at 100% rather than 150%.

Section 113 of the Act continues to apply other than section 113(2).

Division 2—Application by related bodies corporate group employer

Clause 28 provides for a new division 2 which establishes that the WorkCover Board may accept applications (before 3 March 2002) for self-insurance from group employers who were licensed as self-insurers prior to 3 March 1999, in circumstances where as a result of restructuring, they do not meet the criteria for the number of workers as amended on 3 March 1999. The applicant must meet the Occupational Health and Safety requirements of a group employer's licence within 6 months of being granted a self-insurance licence.

This amendment ensures continuity in the application of the criteria that applied at the time such self-insurers were licensed.

PART 3—MEDICAL ASSESSMENT TRIBUNALS

Section 428 continues to apply for the remainder of the term of appointment for all current and alternative members of the General Medical Assessment Tribunal.

The new section 584 (General Medical Assessment Tribunal) ensures that members and alternative members appointed to the General Medical Assessment Tribunal become members of the General Medical Assessment Tribunal upon the commencement of this section.

This clause also ensures that matters which have been part heard by the General Medical Assessment Tribunal prior to the commencement of this section will be completed as though this amendment had not been enacted. This amendment ensures continuity of the decision making process for matters that have already started to be considered by a tribunal.

The new section 585 (Specialty medical assessment tribunals) also ensures that matters which have been part heard by the specialty medical assessment tribunal or by the Prescribed Disfigurement Assessment Tribunal prior to the commencement of this section will be completed as though this amendment had not been enacted. This amendment ensures continuity of the decision making process for matters that have already started to be considered by a tribunal.

Amendment of sch 3 (Definitions)

Clause 29 deletes the definition of insurance and superannuation commission from schedule 3 because the commission has been abolished by the *Insurance Act 1973* (Cwlth).

This clause also amends the definition of table of costs to include a reference to ambulance transportation.

PART 3—AMENDMENT OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

Act amended in pt 3 and sch 2

Clause 30 provides for part 3 and schedule 2 to amend the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of title

Clause 31 provides for amendment of the title of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* to add the ability to perform other purposes. This clause links with *Clause 35* which adds to the primary function to act as an agent in collecting fees and charges payable under other Acts.

Amendment of s 3 (Definitions)

Clause 32 provides for the omission of the definitions and creates a dictionary in a schedule to define particular words in the *Building and Construction Industry (Portable Long Service Leave) Act 1991*. This amendment is consistent with current drafting practice. The clause also omits the definition for "State" as this term is defined under the *Acts Interpretation Act 1954.*

In addition, the clause provides for the insertion of a new meaning of "building and construction industry" as prescribed in section 3AA and the "cost" of building and construction work as prescribed in section 73.

Insertion of new s 3AA

Clause 33 provides for the insertion of a new meaning of "building and construction industry".

The meaning of "building and construction industry" has been amended to capture more clearly works and activities within the industry. The new definition includes deconstructing, relocating, spas and swimming pools, works for solid waste disposal, earthworks and land clearing or site preparation other than for farming, works for subdividing or developing land, flood mitigation, works for conveying products, by-products or materials.

These components were previously captured within the definition of "building and construction industry" but have now been specifically identified for clarification purposes. The meaning has been further clarified by omitting Part (b) within the definition of "building and construction industry" and inserting a specific provision for a thing that is not ordinary stock for sale, is constructed, deconstructed, reconstructed, renovated, altered, demolished, relocated, maintained or repaired in accordance with working drawings, whether on site or elsewhere. The clause also inserts a specific provision for structures, fixtures or other works (but not including earthworks for farming or fences on farms) for clarification purposes.

Amendment of s 3A (Meaning of "eligible worker")

Clause 34 amends the meaning of "eligible worker" to include subcontractors who perform work that is labour only or substantially labour only.

Examples have been provided that clearly demonstrate what can and can not be supplied in order to be eligible for the scheme. The previous definition was too limiting in its application whereas this definition provides a clear and concise description of the classification that ensures coverage for subcontractors who are labour only and supply tools and minor materials.

The *Building and Construction Industry (Portable Long Service Leave) Act 1991*, in its definition of foreperson, sub-foreperson or like position excluded workers who were not supervising eligible workers as opposed to a range of workers. The amendment allows for the inclusion of workers performing such a role and who supervise a type of work for which an eligible worker would normally accrue service.

Workers who are employed by a person who is not substantially engaged in the industry have been excluded from eligibility as their primary role is not considered as building and construction work.

State and local government workers will be included in the scheme. Their exclusion from eligibility has been removed as these workers are considered to be part of the building and construction industry.

As a consequence of the Act excluding workers who are employed by a person who is not substantially engaged in the industry, it has been necessary to prescribe as eligible those persons who are engaged with a labour hire agency that arranges for persons to perform building and construction work. This has meant the term "arrangement" has needed to be defined to allow for ease of interpretation.

The meaning has also been expanded to include safety officers as such workers are from a trade background and should not be discriminated against by not being included in the scheme.

Amendment of s 9 (Authority's functions)

Clause 35 provides for an additional primary function, being to act as an agent in collecting fees and charges.

Amendment of s 37 (Authority to keep register of workers)

Clause 36 provides for automatic entry of a worker into the register of workers on receipt of a certificate of service from the employer or other information that satisfies the authority that they are an eligible worker.

This clause recognises and rectifies the problem of many workers not formally applying for registration in the belief that they are registered when they receive a copy of a certificate of service from their employer. Such workers are not registered and ultimately miss out on a benefit and employers may not be entitled to reimbursement for a benefit they have paid as a result of their obligations under the *Industrial Relations Act 1999*.

Replacement of s 40 (Date of registration)

Clause 37 provides for the omission of section 40 and inserts a new section 40 as a consequence of automatic entry of a worker into the register.

Specifically, the clause stipulates that the backdating of registration be limited to a period of time no earlier than the commencement of two financial years prior to the financial year in which an application is lodged or in which information about a person is received.

Examples are provided that clearly highlight the allowable backdating period for situations as they arise. The membership start date for all new eligible classifications will be restricted to 1 January 2001 and no backdating before this date will occur for these members.

Amendment of s 43 (Application for registration)

Clause 38 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage non-compliance with registration as an employer.

Amendment of s 45 (Employer to notify authority of any change in circumstance)

Clause 39 provides for a new maximum of 40 penalty points. The clause is necessary to further discourage non-compliance, ie. failure to notify changes in circumstances.

Insertion of new s 46A

Clause 40 provides for the insertion of a new section which allows the authority to request by written notice that a person it believes, on reasonable grounds, to be an employer provide information or documents that will assist in deciding whether or not that person is an employer within the building and construction industry. The person will have to provide the information or documents within the time specified within the notice unless the person has a reasonable excuse.

In the event that a court finds that a person has contravened the request to provide information and documents without reasonable excuse, this clause also allows for the court to impose not only penalties but also any further orders it considers appropriate. This mechanism will provide for further enforcement mechanisms allowing the court, through an order, to demand compliance with the statute and will act as a deterrent to further contravention of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

This clause also provides for a new maximum of 40 penalty units and is necessary to further discourage non-compliance, ie. failure to comply with a notice.

Amendment of s 47 (Certificate of service to be supplied by employers)

Clause 41 provides for a new maximum of 40 penalty points. The clause is necessary to further discourage non-compliance, ie. failure to provide certificates of service.

Insertion of new s 51A

Clause 42 provides for the insertion of a new section to allow those workers who sustain an injury within the meaning of the *WorkCover Queensland Act 1996* while working for an employer (and who are subsequently unable to perform building and construction work and the authority is not provided with certificates of service) to accrue service while injured for a period of up to 6 months or until resuming full-time employment, whichever comes earlier.

A worker can continue to accrue service if the employer continues to provide service particulars for a worker who has sustained an injury within the meaning of the *WorkCover Queensland Act 1996*.

Amendment of s 52 (Limitations on service credits)

Clause 43 provides for the omission of irrelevant words and for the omission of subsections 52(6) and (7).

This will remove the restriction on service accrual if a worker receives a payment of long service leave for permanently stopping or intending to stop work in the building and construction industry. This lockout period did not apply to the 5 year service pro-rata claims and was considered irrelevant to other payments on equity grounds.

This clause will allow workers to continue working within the industry or return to the industry and recommence accruing service after payment.

Amendment of s 56 (Application for entitlement to long service leave)

Clause 44 now provides for not only taking leave but also a cash payment entitlement after 10 years service.

This latter part of the clause is limited to those workers who have accrued 10 years service and who take a cash payment entitlement, and limits the taking of additional cash payment entitlements to multiples of 10 years service (that is, at 10 years service and then not again until 20 years service and so on). This clause will provide flexibility for payment and leave.

Amendment of s 57 (Entitlement to long service leave)

Clause 45 provides that a worker may be entitled to a pro-rata benefit on the accruing of 1540 days service (the equivalent of seven years service), or on being registered for at least 7 years and accruing 1155 days, on the condition the worker intends to permanently leave the industry or dies.

The 1155 days provision provides for a part-time entitlement recognising that a number of workers do not work a full year that equates to 220 days service. The entitlement (payment) to long service leave under the clause is a pro-rata entitlement that is a period that bears to 8.67 weeks the proportion that the worker's service bears to 10 years service.

Omission of s 58 (Workers not to carry out certain building and construction work during leave)

Clause 46 provides that workers may take long service leave and still be able to continue to work within the building and construction industry. Section 58 has been omitted as a result of *Clause 44*, which allows workers to take their long service leave as a cash payment entitlement. The amendment allows workers to take their entitlement in cash and continue to work in the industry.

Amendment of s 59 (Amount of long service leave payment)

Clause 47 provides that the authority will pay the worker for any public holiday that falls during the period of time the worker is on long service leave.

The inclusion of this entitlement has been made as public holidays are a component of the worker's leave. This payment to workers is reciprocated for employers in *Clause 4*

Amendment of s 62 (Payments to employers)

Clause 48 provides that an employer will be paid for any public holidays that happen during a period of long service leave paid to a worker. This clause is necessary as the employer would have paid the public holidays and they are a component of the leave, thus the employer should be reimbursed.

This clause will also give the authority power to accept, on reasonable grounds, an application from an employer for reimbursement within two years of the worker being paid rather than one year. This amendment will provide for more equity and reasonable time limits.

Insertion of new s 62A

Clause 49 provides for the insertion of a new section that allows payment to workers or personal representatives instead of the employer if an employer becomes insolvent or an externally-administered body corporate.

The authority may pay to any registered worker or their personal representative, the difference between the amount that represents the value of the worker's service and the amount received from or on behalf of the employer for the worker.

Currently, the legislation allows the authority to work with employers in financial difficulties to pay out their workers if a proportion is paid by the employer. There is no provision that allows the authority to assist workers who often face significant financial loss due to the proportionate entitlement they are able to receive from the insolvent estate of the employer.

This clause allows the authority to pay the worker directly that part of their entitlement that would have been reimbursed to the employer. The worker will have to have had an entitlement in the first instance and will only be paid the balance of the amount due after deducting the sum that they have already received as a result of the insolvency or external administration.

Amendment of s 67 (Notification of building and construction work)

Clause 50 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage non-compliance with notification of building and construction work.

Amendment of s 68 (Offence for failure to pay levy)

Clause 51 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage non-compliance with payment of the levy.

Insertion of new s 68A

Clause 52 provides the authority with the power to decide who the person is for whom the building and construction work is being done by requesting documents or anything else, via written notice, from a person in order to establish the person's identity and responsibility.

This clause is important from a compliance perspective and will allow the authority to establish who is liable for the levy.

This clause also provides for a maximum of 40 penalty units for non-compliance with the notice.

Replacement of ss 73-75

Clause 53 provides for a concise meaning of the "cost" of building and construction work under section 73, clearly detailing that the cost involved is the total of all the costs relating, directly or indirectly, to the work.

Specifying that all costs may be ascertained with regard to the contract price, if more than 1 contract the total of the contract price and if there is no contract price or the authority is not satisfied that the contract price accurately establishes the total of all costs, the costs may be determined by the authority.

The clause provides clarity regarding the application of the levy on the total work thereby alleviating the compliance difficulties associated with levy collection on some works or particular costs.

The clause also provides for the omission and insertion of section 74 stating that the levy must be paid for Commonwealth work by the

contractor engaged by the Commonwealth, for local government or government entity or non-Queensland government entity work by the local government or entity. If the work requires a development permit for building work, plumbing or drainage work, or operational works under the *Integrated Planning Act 1997*, then the applicant under the *Integrated Planning Act 1997* for the development permit.

This provision will be far more effective in operation from a compliance perspective than under the present legislation in that it will capture more work including not just building work but plumbing or drainage work, or operational work for which an application is made under the *Integrated Planning Act 1997.*

The clause also provides for the omission and insertion of section 75, which provides that the levy is payable before a development permit is given under the *Integrated Planning Act 1997* for building work, plumbing or drainage work, or operational work, or before the work is started if no permit is given, or at a later time allowed by the authority. This clause will ensure equity and provide flexibility for levy-payers prior to the work commencing.

Amendment of s 76 (Government entity to notify of building and construction work)

Clause 54 provides that government entities must now provide notification of the work prior to work commencing. Previous provisions allowed for a 3-month delay in notification and payment. However, for reasons of equity and fairness, government entities must notify at the same time as the private sector and other liable parties.

This clause also allows for clarification by amending the section heading.

Amendment of s 77 (Duty of assessment manager to sight approved form)

Clause 55 provides that the assessment manager may give a development permit under the *Integrated Planning Act 1997* not only for building work, but also for plumbing or drainage work, or operational work if the assessment manager has seen an approved form issued by the authority signifying, for the work:

- payment of levy; or
- payment of the first instalment of levy; or
- an exemption from payment of levy; or
- an exemption from immediate payment of levy.

This provision will promote compliance more effectively as it will capture, through a compliance mechanism utilising assessment managers, more building and construction work. An approved form will need to be sighted by the assessment manager on issue of a development permit made under the *Integrated Planning Act 1997*.

The clause also provides for a new maximum of 40 penalty units for contravention of the requirement by an assessment manager. The clause is necessary to further discourage non-compliance, ie. not sighting approved forms prior to issuing development permits.

Omission of s 78 (Building and construction work for public authority)

Clause 56 provides for the omission of section 78. This will place liability for payment of the levy on government bodies, similar to other liable entities.

Amendment of s 80 (Additional provisions about levy)

Clause 57 provides for expansion of the provision to allow for information or documents to be requested from anyone else the authority reasonably believes has information or documents about work. This clause will permit the obtaining of such information and documents from any person who has relevant information thus providing the authority with a simple but effective means of enhancing compliance.

In the event that a court finds that a person has contravened the request to provide information and documents without reasonable excuse, this clause also allows for the court to impose not only penalties but also any further orders it considers appropriate. This mechanism will provide for further enforcement capabilities and will act as a deterrent to non-compliance with the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

This clause also gives the authority the power to give written notice for payment of any additional levy to the person for whom any of the work was, or is, to be done.

The clause also provides for a new maximum of 40 penalty units for contravention of the section. This is necessary to further discourage non-compliance with the notice.

Amendment of s 82 (Payment of levy by instalments)

Clause 58 provides for a levy payer who may meet specified criteria (that is a project is over $1M in costs and will be undertaken over a period of more than 12 months as is declared by Regulation) to formally apply in writing for permission to pay the levy via instalments. The previous provision did not require formal application and this proved to be cumbersome in operation and led to difficulties in compliance.

Amendment of s 84 (Interest on, and extension of time for payment of, levy)

Clause 59 provides that interest will be compounding interest at the prescribed rate rather than normal interest on a monthly basis. This clause is necessary to further discourage non-compliance with payment of the levy.

Amendment of s 92 (Keeping, and inspection, of books and records)

Clause 60 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage non-compliance with keeping of books and records and making available the books and records for inspection and permitting copying of books and records.

Amendment of s 95 (Authorised officers)

Clause 61 provides for a new maximum of 40 penalty units. The clause is necessary to ensure consistency with the other penalty provisions.

Amendment of s 97 (Entry and search—monitoring compliance)

Clause 62 provides for the insertion of a new provision that permits an authorised officer to only enter a place when they reasonably believe that a person has information about workers or building and construction work. This will allow the authorised officer to conduct audits at any place other than at building sites, where information is rarely kept in the normal course of business.

Amendment of s 99 (General powers of authorised officer in relation to places)

Clause 63 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage a person from not giving reasonable assistance to an authorised officer in exercising their powers and ensures consistency with other penalty provisions.

Amendment of s 102 (Obstruction etc. of authorised officers)

Clause 64 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage a person from hindering or resisting an authorised officer in exercising their powers and ensures consistency with other penalty provisions.

Amendment of s 103 (False or misleading statements)

Clause 65 provides for a new maximum of 40 penalty units. The clause is necessary to further discourage a person from making false or misleading statements to an authorised officer and ensures consistency with other penalty provisions.

Amendment of s 106 (Certain persons liable for offences by unincorporated bodies)

Clause 66 provides for a new maximum of 40 penalty units. The clause is necessary to ensure consistency with other penalty provisions.

Amendment of s 111 (Protection of worker from dismissal)

Clause 67 provides for a new maximum of 40 penalty units. The clause is necessary to ensure consistency with other penalty provisions.

Insertion of new s 111A

Clause 68 states that any monetary penalties recovered for an offence are to be paid to the authority. This will ensure that as the authority is a statutory body, and not under the auspices of the consolidated fund it will recover penalties for offences. Previously penalties were not made to the authority but were paid to the consolidated fund.

Insertion of new pt 11, div 3

Clause 69 provides for the insertion of a transitional provision regarding the inclusion of state and local government building and construction industry apprentices and trainees into the scheme. These workers will be entitled to membership with the scheme if they cease employment with state or local government and begin service in the private sector. The period of their indenture with the state or local government entity will be recognised on the provision of proof and service will be backdated for the indenture period. This backdating will be limited to 1 January 2001.

PART 4—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

Act amended in pt 4

Clause 70 states that part 4 of the Bill amends the *Industrial Relations Act 1999.*

Amendment of s 725 (Orders and determinations under the *Vocational Education, Training and Employment Act 1991*)

Clause 71 amends section 725 to provide clarification that orders of the Queensland Industrial Relations Commission (the "Commission") relating to a person employed under a labour market program made under the *Vocational Education, Training and Employment Act 1991* are preserved under section 140 of the *Industrial Relations Act 1999*.

When the *Industrial Relations Act 1999* commenced it repealed the industrial relations provisions of the *Vocational Education, Training and Employment Act 1991*. The industrial relations provisions from the *Vocational Education, Training and Employment Act 1991* were incorporated into the *Industrial Relations Act 1999* (see sections 136 and on of the *Industrial Relations Act 1999*).

The transitional provisions of the *Industrial Relations Act 1999* saved decisions of the Commission made under the former industrial relations provisions of the *Vocational Education, Training and Employment Act 1991* (see section 725 of the *Industrial Relations Act 1999*).

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS OF WORKCOVER QUEENSLAND ACT 1996

1. Section 115(6), 'Insurance and Superannuation Commissioner'—

Clause 1 amends the name of the body approving insurers to be consistent with changes made to the *Insurance Act 1973* (Cwlth).

2. Section 280(2)(a), before 'a notice'

Clause 2 inserts a comma between "the self-insurer" and "a notice" to improve the readability of the subsection and clarify the interpretation of the provision.

3. Section 442(1), after '437(e)'-

Clause 3 inserts a reference to a new subsection in section 437.

4. Section 452, definition "tribunal", paragraph (c)-

Clause 4 omits the reference to the Prescribed Disfigurement Assessment Tribunal.

5. Section 486(1)(b), from '427' to '489'-

Clause 5 amends references to various sections of the Criminal Code to be consistent with changes to this Code.

6. Section 489(1)(a)(vi), 'annual levy'-

Clause 6 amends the reference to annual levy to provide for the payment of a levy on a financial year basis.

7. Schedule 3, heading-

Clause 7 omits the reference to definitions and inserts heading "Dictionary". This is consistent with current drafting practice.

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

1. Section 41(3A), after '57(1B)'-

Clause 1 provides for a minor and consequential amendment as a result of *Clause 45* that provides for a pro-rata entitlement. The provision will reflect the outcome of such a payment being cancellation of registration.

2. Part 11, heading-

Clause 2 provides for the omission and insertion of a new heading "Part 11—Transitional Provisions".

3. After part 11

Clause 3 provides for the insertion of a schedule comprising the dictionary.