

Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007*.

Policy Objectives

To implement a package of improved rehabilitation and return to work initiatives and miscellaneous workers' compensation, workplace health and safety, electrical safety and industrial relations legislative amendments.

Reasons for the Bill

Workers' compensation

Following a limited review of the Queensland workers' compensation scheme, the Government developed a package of improved worker benefits. The package was aimed at enhancing benefits for longer-term injured workers and reducing the duration of workers' compensation claims by better facilitating early return to work.

With an average premium rate of \$1.15 per \$100 wages paid, further reductions in workers' compensation scheme costs are desirable and can be achieved through a reduction in the duration of claims. That is, facilitating the earlier return of injured workers to work using a range of rehabilitation and return to work initiatives. 45,400 lost time claims were finalised in 2005-06 with average claim duration of 35.5 work days lost. If the average duration of those claims was reduced just by 2 days, the Queensland scheme would save approximately \$11.2M in weekly benefits over the life of those claims.

Workplace health and safety

A recent review of the disciplinary framework for occupational licences revealed that the current system does not provide a variety of disciplinary responses to suit the varied reasons that may be behind a licence holder failing to comply with occupational health and safety obligations. The Bill establishes a Licensing Review Committee to review the decisions of workplace health and safety inspectors regarding occupational licence holders and to decide appropriate disciplinary action against licence holders. The establishment of the Committee also brings the disciplinary system for occupational licences in line with that provided for in the *Electrical Safety Act 2002*.

Amendments are also required to the *Workplace Health and Safety Act 1995* to address limitations identified in relation to the capacity to share occupational safety and health information between jurisdictions. In an environment of mutual recognition and cross border activity, it is essential for information to be shared between jurisdictions.

The Bill also introduces a head of power for a future regulation to limit the approval of occupational licence holders to persons 18 years or over. This age limit is currently enforced through contractual arrangements related to the training of people in high risk occupations. These contractual arrangements will expire as a result of adoption of the *National Standard for the Licensing of Persons Performing High Risk Work*.

In addition, the Bill amends some construction-related provisions to align with amendments made in other jurisdictions in order to effect national harmonisation. At the same time the Bill makes necessary minor and technical amendments to ensure the continued efficient and effective operation of Queensland's workplace health and safety arrangements.

Electrical Safety Act 2002

A number of policy initiatives for improving the application of the *Electrical Safety Act 2002* are proposed. These are designed to clarify original policy intent and ensure legislative consistency.

Industrial Relations Act 1999

The Bill also amends existing provisions to clarify the obligations of employers to maintain time and wages records for former employees.

Achievement of Objectives

Workers' compensation

The Bill achieves its objectives by:

- removing the one and two year step-down of benefit entitlements and increasing the benefit to 75% of normal weekly earnings or 70% of Queensland Ordinary Time Earnings for the period from 26 weeks to five years;
- increasing the maximum additional lump sum compensation payable to \$218,400;
- increasing access to additional lump sum compensation by reducing the threshold level of work-related impairment from 50% to 30%.

The Bill also gives effect to a number of minor amendments to improve the operation of Queensland's workers' compensation scheme including breaking the nexus between statutory benefits paid and death benefits, and streamlining certain procedures for insurance, compensation and damages.

Workplace health and safety

The proposed Bill will achieve its objectives for workplace health and safety primarily by:

- establishing a new Licensing Review Committee;
- providing a head of power for future regulation for an 18 year age limit as provided by the *National Standard for the Licensing of Persons Performing High Risk Work*;
- clarifying the power of the Minister to amend a Code of Practice previously made under the *Workplace Health and Safety Act 1995*;
- introducing an information sharing power that sets out the circumstances in which information and documents may be disclosed to other corresponding authorities;
- amending the definition of "structure" to align it with definitions in other jurisdictions;
- removing the ten day requirement for lodgement of the form for appointment of principal contractor.

Other amendments

Industrial Relations Act 1999

Two minor amendments to the *Industrial Relations Act 1999* are proposed to clarify the obligations of employers for time and wages records as they apply to former employees.

Electrical Safety Act 2002

A number of policy initiatives for improving the application of the *Electrical Safety Act 2002* are proposed. These are designed to clarify original policy intent and ensure legislative consistency.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

WorkCover Queensland's actuary has costed the initiatives and advises that WorkCover can fund the initiatives without increasing the average premium rate. The rehabilitation and return to work initiatives will be met by WorkCover Queensland and Q-COMP from their existing budgets.

Costs associated with amendments to workplace health and safety, electrical safety and industrial relations legislation will be met from within existing departmental budgets.

Consistency with Fundamental Legislative Principles

This Bill raises no fundamental legislative principle issues. The Bill has been drafted with regard to the fundamental legislative principles prescribed by the *Legislative Standards Act 1992* and is considered to comply with these principles.

Consultation

Workers' compensation

The Department of Justice and Attorney-General, the Department of Health, Treasury Department, Department of the Premier and Cabinet, Queensland Council of Unions, Australian Workers' Union, Australian Industry Group, Commerce Queensland, Queensland Master Builders' Association, Queensland Law Society, Insurance Council of Australia,

Housing Industry Association, WorkCover Queensland and Q-COMP were consulted on the workers' compensation proposals.

Workplace health and safety

The new occupational licensing compliance framework was endorsed by the Workplace Health and Safety Board. The Department of Justice and Attorney-General, the Department of Public Works (including QBuild), the Department of Main Roads, QLeave, Ports Corporation (Queensland), Port of Brisbane, Port of Bundaberg, Cairns Port Authority, Central Queensland Port Authority, Port of Rockhampton, Port Alma, Mackay Port Authority and Townsville Port Authority were consulted on the workplace health and safety proposals. In addition, the Department of Employment and Industrial Relations has consulted with the following stakeholders:

Unions

Queensland Council of Unions

Australian Workers' Union (Queensland)

Construction, Forestry, Mining and Energy Union (Queensland)

Builders' Labourers Federation

Electrical Trades Union

Australian Manufacturing Workers' Union

Australian Services Union

Employer Associations and employers

Australian Industry Group

Commerce Queensland

Housing Industry Association

Queensland Master Builders Association

National Retail Association

Queensland Rail

Australian Sugar Milling Council

Energex

Ergon Energy

Powerlink

CS Energy

Local Government Association of Queensland

Queensland Farmers' Federation

Canegrowers (Queensland)

Farmsafe Queensland

AgForce Queensland

Electrical Safety

Consultation on the proposed amendments to the *Electrical Safety Act 2002* was undertaken with the tripartite Electrical Safety Board and committees.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title of the Act.

Clause 2 specifies that the provisions of the Act, other than sections 34, 47 and 61, commence on 1 January 2008. Sections 34 (Insertion of new ss 57AA–57AC in the *Electrical Safety Act 2002*) and 47 (Insertion of new ss 205A and 205B in the *Electrical Safety Act 2002*) commence on 1 March 2008. Section 61 (Amendment of s 122 (Power to require production of certain documents) of the *Workplace Health and Safety Act 1995*) commences on a day to be fixed by proclamation.

Part 2 Amendment of Workers' Compensation and Rehabilitation Act 2003

Clause 3 provides that the *Workers' Compensation and Rehabilitation Act 2003* is amended in this Part.

Clause 4 amends section 5(4)(a)(ii) to refer to reasonable cost levels for employers. The current wording refers to the scheme ensuring "reasonable premium levels for employers". This reference excludes self-insurers who no longer pay premiums.

Clause 5 amends section 41 to facilitate the inclusion, under a Regulation, of a recertification process for rehabilitation and return to work coordinators. Under existing practice, registration as a coordinator is granted administratively by the Workers' Compensation Regulatory Authority for three years. Prior to the end of the third year, the Authority requires the coordinator to successfully complete a one day recertification course to maintain registration. A Regulation will prescribe this administrative standard for recertification.

Clause 6 amends section 50 to remove an ambiguity regarding the obligation to insure. The current wording of the Act suggests that a contravention of the obligation to insure only occurs if the employer does not provide a wages declaration and does not pay premium on time. This situation undermines compliance whereby if an employer supplies a wages declaration on time, but does not pay the premium, they are not in contravention. The amendment removes this ambiguity by widening the meaning of a contravention of the obligation to insure by failing to satisfy either requirement instead of both.

Clause 7 amends section 134 to reduce decision timeframes for all statutory claims to 20 business days. The current decision timeframes for statutory claims are 40 days for physical injuries and 60 days for psychological/psychiatric injuries.

Clause 8 amends section 150 to remove the one and two year step-down of benefit entitlements for workers whose employment is governed by an industrial instrument, and increases the benefit to the greater of 75% of normal weekly earnings (NWE) or 70% of Queensland Ordinary Time Earnings (QOTE) for the whole period from 26 weeks to two years. The benefit continues at this rate from the end of 2 years to the end of 5 years if

a worker demonstrates to the insurer that the injury could result in a work related impairment (WRI) of more than 15%.

Clause 9 amends section 151 to remove the one and two year step-down of benefit entitlements for workers whose employment is not governed by an industrial instrument, and increases the benefit to the greater of 75% of normal weekly earnings (NWE) or 70% of Queensland Ordinary Time Earnings (QOTE) for the whole period from 26 weeks to two years. The benefit continues at this rate from the end of 2 years to the end of 5 years if a worker demonstrates to the insurer that the injury could result in a work related impairment (WRI) of more than 15%.

Clause 10 amends section 152 to remove the one and two year step-down of benefit entitlements for certain contract workers, and increases the benefit to the greater of 75% of normal weekly earnings (NWE) or 70% of Queensland Ordinary Time Earnings (QOTE) for the whole period from 26 weeks to two years. The benefit continues at this rate from the end of 2 years to the end of 5 years if a worker demonstrates to the insurer that the injury could result in a work related impairment (WRI) of more than 15%.

Clause 11 amends section 157 to remove the one and two year step-down of benefit entitlements for persons other than a worker, student or an eligible person, and increases the benefit to the greater of 75% of normal weekly earnings (NWE) or 70% of Queensland Ordinary Time Earnings (QOTE) for the whole period from 26 weeks to two years. The benefit continues at this rate from the end of 2 years to the end of 5 years if the person demonstrates to WorkCover Queensland that the injury could result in a work related impairment (WRI) of more than 15%.

Clause 12 amends section 159 to remove the one and two year step-down of benefit entitlements for eligible persons, and increases the benefit to the greater of 75% of the amount stated in the person's contract of insurance or 70% of Queensland Ordinary Time Earnings (QOTE) for the whole period from 26 weeks to two years. The benefit continues at this rate from the end of 2 years to the end of 5 years if the person demonstrates to WorkCover Queensland that the injury could result in a work related impairment (WRI) of more than 15%.

Clause 13 amends section 160 to update cross references to sections 150, 151, 152, 157 and 159.

Clause 14 amends section 174 to provide that the amount of a redemption payment that the insurer may pay to a worker is an amount that is not more than 156 times 70% of QOTE, minus the total weekly payments already

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paid to the worker. The percentage of QOTE has been increased from 60% in line with other calculations for entitlements in the Bill.

Clause 15 inserts a new division in Chapter 3, Part 10 to allow insurers to advance amounts on account of lump sum compensation to workers experiencing financial hardship. Insurers currently have the power to advance statutory claims payments under section 146, but not lump sums. The clause specifies that acceptance by the worker of such amounts does not constitute an election not to seek damages for the injury.

Clause 16 amends section 192 to increase access to additional lump sum compensation by reducing the threshold level of work related impairment (WRI) from 50% to 30%.

This clause also increases the maximum additional lump sum compensation payable to \$218,400 (from \$182,620) in line with the base maximum lump sum compensation entitlement.

Clause 17 amends section 194 to insert a new subsection (2) removing application of Part 11 (Compensation on worker's death) to workers who have received a payment of compensation for a latent onset injury prior to their death. This amendment is a consequence of the repeal of section 203 in clause 18. Workers with latent onset injuries are entitled to additional lump sum benefits under section 128B, less the amounts specified in section 128C. This benefits structure is not intended to be affected by the repeal of section 203.

Clause 18 repeals section 203 (Reduction of amount payable on death) whereby any amounts paid to a worker's dependants under section 200(2)(a) or 201(2)(a) are to be reduced by the amount of payments already made in respect of weekly compensation, a redemption payment or lump sum compensation.

Clause 19 inserts a new Chapter 3A to replace the current Chapter 3, Part 13. The chapter allows an insurer to recover from a person a reasonable proportion of reasonable costs incurred by the insurer in obtaining reports in relation to a claim in which an injury to a worker has created a legal liability in the person to pay damages independent of the Act. Reports covered by this provision do not include those of a legal nature, such as advice provided by an insurer's lawyer. The notes on this clause should be read in conjunction with the notes on clause 24.

Clause 20 specifies that a worker in Chapter 3A includes a person to whom compensation is payable under this Act for injury. This extends an insurer's indemnity to include situations where persons other than workers, for

example eligible persons, are entitled to compensation and also pursue a personal injury damages claim against another person independent of the Act.

Clause 21 inserts a new section 235A in Chapter 5 to provide that, for the application of the chapter in relation to an injury sustained by a worker that happens over a period, other than a latent onset injury, the date of injury is the date on which the worker first consulted a doctor about the injury. This clause is intended to clarify that the procedural requirements surrounding a claim for damages under the Act are tied to a single date. To remove doubt, the clause does not limit the period of limitation under the *Limitation of Actions Act 1974*.

Clause 22 amends section 245 in relation to claimants with more than one injury from an event. If a claimant has received a notice of assessment for an injury resulting from a single event and has a WRI of 20% or more, or has already elected to seek damages, the clause provides that a claimant can not have, and the insurer can not decide to have, an additional injury assessed for a further degree of permanent impairment.

Section 245 already specifies the assessment does not give the claimant any further entitlement to lump sum compensation.

Clause 23 repeals section 246 which provides the process for seeking an assessment of permanent impairment for an additional injury relating to a single event. Clause 22 removes the option to ask for such an assessment under section 245, making section 246 unnecessary.

Clauses 22 and 23 do not prevent additional injuries from a single event being considered during the course of a damages claim, however the claimant must still satisfy the insurer that he or she has sustained an Act “injury” and was a “worker” when the injury was sustained. If a damages claim is made for a new event, this will be subject to the normal assessment process.

Clause 24 relocates and renumbers section 272 from Chapter 5 to Chapter 3A as section 207B. Section 272 prescribes an insurer’s first charge on damages for compensation paid to a worker. The relocation of this section to Chapter 3A extends this right of recovery to include situations where persons other than workers, for example eligible persons, are entitled to compensation and also pursue a personal injury damages claim against another person independent of the Act.

Section 272 is currently in Chapter 5 and is limited to workers. Persons other than workers do not have a right to damages under the Act (but may

have a right independent of the Act) so it is appropriate to move the section to Chapter 3A (Compensation claim costs and third parties). Clause 20 inserts a new section 207AA to specify that a “worker” in Chapter 3A includes a person to whom compensation is payable under the Act for injury.

Clause 25 amends section 330 to specify that the Workers' Compensation Regulatory Authority's general functions include the administration of scheme-wide rehabilitation and return to work programs.

Clause 26 amends section 364 to clarify that the Authority may pay out of an Authority fund amounts for scheme-wide rehabilitation and return to work programs for workers.

Clause 27 amends section 479 to specify that the Authority must make payments to organisations or bodies that the Minister considers will help in scheme-wide rehabilitation and return to work programs for workers. A payment must be approved by the Governor in Council by industrial gazette notice before it is made. The Minister must cause a copy of the approval to be tabled in the Legislative Assembly within 14 sitting days after it is given.

Clause 28 amends section 586 to clarify that WorkCover's chief executive officer may approve forms in relation to contracts of insurance for use under this Act. Other forms under the Act may be approved by the Authority's chief executive officer.

Clause 29 inserts a new Chapter 21 for transitional provisions for the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2007*.

The clause provides that section 134 as in force immediately before 1 January 2008 continues to apply to an application for compensation made before 1 January 2008. An application for compensation made on or after 1 January 2008 will be subject to the shortened decision timeframes of 20 business days.

The clause provides that sections under Chapter 3, Part 9, Division 4 (Entitlement for total incapacity) as in force immediately before 1 January 2008 continue to apply in relation to an injury sustained by a worker before 1 January 2008. The amended provisions regarding weekly compensation in sections 150, 151, 152, 157, 159 and 160 will apply in relation to an injury sustained by a worker on or after 1 January 2008.

The clause provides that section 192 (Additional lump sum compensation for certain workers) as in force immediately before 1 January 2008

continues to apply in relation to an injury sustained by a worker before 1 January 2008. The lowered threshold of 30% work related impairment for entitlement to additional lump sum compensation, and the increased maximum additional lump sum amount will apply in relation to an injury sustained by a worker on or after 1 January 2008.

The clause provides that the amendment to Chapter 3, Part 11 (Compensation on worker's death) and the omission of section 203 (Reduction of amount payable on death) in the amending Act apply only in relation to an injury sustained by a worker that results in the death of a worker on or after 1 January 2008.

The clause provides that sections 245 (Claimant with more than one injury from an event) and 246 (Claimant may ask for injury to be assessed for permanent impairment) as in force immediately before 1 January 2008 continue to apply in relation to an injury sustained by a worker before 1 January 2008.

The clause provides that Chapter 13, Part 13 (Compensation claim costs and third parties) as in force immediately before 1 January 2008 continue to apply in relation to an injury sustained by a worker before 1 January 2008.

Part 3 Amendment of Electrical Safety Act 2002

Clause 30 provides that the *Electrical Safety Act 2002* is amended in this Part.

Clause 31 clarifies section 12(b) (*Meaning of dangerous electrical event*) by specifying that the two circumstances listed are to be considered together, and not separately, in order for the definition of a "dangerous electrical event" to apply.

Clause 32 amends section 44 (*Code of practice about discharging electrical safety obligation*) to include reference to amending an existing code of practice as well as to making a new one. Other changes specify the commencement date of a code and an amendment, the notification of an amendment and its availability for inspection.

Clause 33 amends section 56 (*Requirement for electrical contractor licence*) by deleting the word 'building' from 'building work' in section 56(3)(b) and clarifying the latter reference to 'work' in that paragraph to read 'the electrical work'. This amendment removes ambiguity about what might constitute 'building work', especially in relation to sub-contracted electrical work activity carried out by a licensed electrical contractor - often associated with work such as tiling, plumbing and air-conditioning, and clarifies this exemption from the requirement to hold an electrical contractor licence.

Clause 34 amends Part 4, Division 1 (*Requirements for electrical licences*) by introducing two new provisions which apply to an employer or self-employed person who conducts a business or undertaking that includes the performance of prescribed electrical work. These amendments clarify existing obligations relating to the possession of current relevant electrical work licences and provide a new mechanism for compliance with licensing requirements (through an obligation to keep and maintain a register of licensed workers), including recognition of and changes to, licensing conditions and/or restrictions. A further new provision relates to the requirement for an electrical worker to notify the employer or self-employed person of any changes to their electrical work licence or other particulars.

Clause 34 inserts a new section 57AA (*Employer or self-employed person must ensure workers are appropriately licensed*) whereby the employer or self-employed person must ensure that prescribed electrical work is performed and/or supervised by a person who holds an appropriate work licence to perform that work or an exempt person for the work. A maximum penalty of 400 penalty units has been assigned.

Clause 34 also inserts a new section 57AB (*Employers and self-employed persons must keep register of licensed workers*) that introduces a requirement for the employer or self-employed person to keep and update a record of the prescribed details of licensed electrical workers they employ and to keep the prescribed details for the period the electrical worker is employed by the employer or self-employed person or for at least 5 years after the licensed electrical worker ceases employment with the employer or self-employed person. Updates to the register must be made within 7 days of notification. The commencement date for this provision is 1 March 2008, with a maximum penalty of 100 penalty units for failure to keep or failure to update this register of licensed workers.

Clause 34 also inserts a new section 57AC (*Licence holder engaged by employer or self-employed person must notify particular changes*) requiring a person engaged to perform or supervise electrical work to notify in writing the relevant employer, within 14 days, if there are changes to the licence, its status or its conditions or if there are other non-licence changes required for the purpose of an employer or self-employed person fulfilling their obligation to keep and maintain a register of licensed workers. Two maximum penalties have been assigned – one for circumstances where a change of licence status would directly affect entitlement to conduct electrical work (40 penalty units) and the other for failure to notify other changes (10 penalty units).

Clause 35 provides for a minor amendment to section 64A(1) (*Chief executive may ask for further information or documents from licence holder*) for clarity and consistency with other similar provisions.

Clauses 36, 37, 38, 39 and 40 amend sections in Part 9, Division 2 (*Types of disciplinary action*) to increase the range of remedies available to the Electrical Licensing Committee with respect to holders of electrical licences, and to holders of electrical contractor licences no longer in force.

Clause 36 amends section 109 (*Electrical licence issued by chief executive*) to extend and clarify the range of disciplinary actions available to the Electrical Licensing Committee to include disqualification from being a qualified technical person for the holder of an electrical contractor licence; disqualification from holding an electrical work licence or electrical contractor licence or both; and to provide, that while the disqualification applies, a licence cannot be renewed or reinstated, or a new licence issued.

Clause 37 inserts a provision into section 110 (*External licence*) giving the Electrical Licensing Committee the ability to take more than one of the listed disciplinary actions, where appropriate against the holder of an electrical licence.

Clause 38 replaces sections 111 and 112 by renumbering and amends section 111 (*Penalties*) to allow a penalty to be imposed on a person who is no longer the holder of an electrical contractor licence. It also clarifies the range of disciplinary actions that may be taken. The section is relocated and renumbered as 112.

Clause 38 creates section 111 (*Electrical contractor licence issued by chief executive but no longer in force*) through renumbering. This amendment increases the range of disciplinary options available to include provisions to be consistent with existing and amended provisions of section 109. The

Electrical Licensing Committee may take more than one disciplinary action against a person who is the holder of an electrical contractor licence when electrical work was performed, but is no longer the holder of the licence. The range of disciplinary actions against persons who were the holders of an electrical contractor licence no longer in force are extended to include reprimand, caution, penalty and disqualification from holding an electrical licence and to provide that, while the disqualification applies, a licence cannot be renewed or reinstated, or a new licence issued.

Clause 39 amends section 116 (*Disciplinary hearing notice*) to clarify that the person is given all information about appearing and giving information/submissions.

Clause 40 amends section 120 (*Licensing committee to keep record of disciplinary hearing*) to clarify that in this section 'evidence' has a wider meaning than the usual use on proceedings before a court, tribunal or other body.

Clause 41 inserts section 136A (*Chief executive may ask for further information or documents from accredited auditor*) in Part 10, Division 2 (*Accredited auditors*), which authorises the chief executive to require information or a document that shows that a person continues to be appropriately qualified or continues to satisfy the conditions of office as an accredited auditor. The person is allowed a reasonable period of at least 21 days to provide the information or document. This provision is similar to the current provision regarding licence holders, section 64A (*Chief executive may ask for further information or documents from licence holder*). A person who does not comply with the notice without reasonable excuse may have their appointment revoked.

Clauses 42, 43, 44, 45 and 46 relate to seizure of unsafe electrical equipment and forfeiture or return of seized things found to be not electrically safe.

Clause 42 amends section 146 (*Inspector's powers to seize unsafe electrical equipment*) to clarify that an inspector may seize the electrical equipment at the entered place.

Clause 43 inserts a new section 146A (*Inspector's power to seize other unsafe electrical equipment*) which authorises an inspector to seize a thing at an entered place that they have taken for analysis or testing under section 144(3)(c) (*General powers after entering place*), and the results of which show that the thing is not electrically safe. This provision is a legislative

solution to allow consistency and continuity across the taking, testing and seizure powers under this Act.

Clause 44 amends section 150 (*Forfeiture of seized thing*) to include an added provision that a seized thing is forfeited to the State if the inspector who seized it reasonably believes it to be not electrically safe and the owner of the thing does not require its return. For example where, having regard for the thing's nature, condition and value, making the thing electrically safe would cost more than replacing the thing and the thing does not have any antique or sentimental value.

Clause 45 inserts a new subsection in section 151 (*Return of seized thing*) to allow that the requirement to return a seized thing that has not been forfeited to the State does not apply if it would be impracticable or unreasonable to return it given the thing's nature, condition and value.

Clause 46 inserts section 151A (*Returning seized electrical equipment that is not electrically safe*) in Part 11, Division 6 (*Other enforcement matters*) to allow for return to the owner of seized electrical equipment that is not electrically safe and has not been forfeited under section 150(1). The inspector may return the equipment to the owner and, by written notice, require the owner to have the equipment repaired, altered in a stated way or take other stated action in relation to the equipment that is reasonable in the circumstances. This may include making the equipment incapable of operation. The owner must comply with the notice, unless they have a reasonable excuse for not complying, for example, if they choose to destroy the equipment instead of complying with the requirement. A maximum penalty of 40 penalty units is assigned.

Clause 47 inserts in Part 14, Division 2 (*General*) two new sections prohibiting disclosure of information, except in certain circumstances, and authorising disclosure of information, on request, to another State or Commonwealth electrical safety agency. Employees of that agency must not disclose that information, except in the same circumstances as applying to the agency responsible for administering the Act. These amendments are intended to protect information gained, but to recognise that in circumstances where electrical safety compliance or administration needs justify it, the information may be disclosed to another relevant entity, whether within Queensland or in another Australian jurisdiction.

Section 205A (*Confidentiality*) sets out a requirement for the protection of information or a document acquired in the course of administering or being involved with administering the Act. With certain exceptions, disclosure of information or the contents of, or information contained in, the document is

prohibited. A maximum penalty of 100 penalty units applies. The exceptions to the prohibition on disclosing information are where a person about whom the information refers has given their consent, or for the purpose of implementing the provisions of the Act, or implementing the provisions of another Act if this is in the interests of public safety, or in court proceedings, or as required or authorised under an Act.

Section 205B (*Giving information to corresponding entity*) authorises the chief executive to give information or a document to another State or Commonwealth electrical safety entity, on request by that entity. It is intended that such information be given in accordance with an arrangement between the chief executive and the entity, such as an exchange of letters or memorandum of understanding that outlines the requirements for the use and confidentiality of the information or document.

Similar information protection provisions to those contained in section 205A apply to section 205B, as well as a maximum of 100 penalty units for unlawful disclosure of information acquired from the chief executive. Similar exceptions to section 205A are listed to the prohibition on disclosing information.

Clause 48 amends section 210 (*Regulation-making power*) to provide authority for future consideration of a Regulation mandating requirements for signs or other advertising material relating to the hire or sale of electrical equipment.

Clause 49 amends Schedule 2 (*Dictionary*) to include the definition of 'prescribed details'. The term refers to the new requirements for employers and self-employed persons to keep a register of licensed workers (section 57AB).

Part 4 Amendment of Industrial Relations Act 1999

Clause 50 provides that the *Industrial Relations Act 1999* is amended in this Part.

Clause 51 amends section 366 to clarify that employers must keep time and wages records for their existing and former industrial instrument employees. This is particularly so in view of the definition of employee in

section 5(f) of the Act which, for proceedings for payment or recovery of amounts, is stated to include a former employee.

Clause 52 amends section 367 to clarify that employers must keep time and wages records for their existing and former non-industrial instrument employees. This is particularly so in view of the definition of employee in section 5(f) of the Act which, for proceedings for payment or recovery of amounts, is stated to include a former employee.

Part 5 Amendment of Workplace Health and Safety Act 1995

Clause 53 provides that the *Workplace Health and Safety Act 1995* is amended in this Part..

Clause 54 amends s 12A that provides the definition for a 'client' for construction work. The clause expands the exemption of this definition so it does not apply if the construction work is also associated with a class 10a building under the Building Code of Australia, namely a non-habitable building being a private garage, carport, shed, or the like.

Clause 55 amends s 12B that provides a definition for a 'project manager' for construction work in the same way that clause 54 amends s 12A.

Clause 56 clarifies the principal contractor provision in the case of residential construction. The person in control of the construction work is the principal contractor.

Clause 57 amends s 30B in the same way that clauses 54 and 55 amend s 12A and s 12B respectively.

Clause 58 amends s 38 which provides for the regulation making power of the Act. The clause introduces a new provision that clarifies the head of power for the regulation to prescribe for occupational licensing of certain high work and activities.

The clause also inserts a new provision to provide a head of power for a possible future regulation to limit the approval of occupational licence holders to persons aged 18 year of age or over as provided by the *National Standard for Licensing of High Risk Work*. This does not affect training of persons commencing at an earlier age. In addition, the clause clarifies the anti-discrimination issues in relation to the age limitation introduced.

Clause 59 amends s 41 which provides that the Minister may make a code of practice and must notify the making of a code of practice. The clause clarifies the power of the Minister to amend a code of practice previously made under the Act.

Clause 60 inserts a new division in Part 6 to provide for the Licensing Review Committee.

The new s 64A establishes the Licensing Review Committee.

The new s 64B describes the functions of the Licensing Review Committee. The committee can provide advice and make recommendations to the Workplace Health and Safety Board and the department about occupational licences. It also allows the committee to take disciplinary action against current and previous holders of occupational licences. This section also sets out the methods by which the committee can discharge its functions.

The chief executive is required to provide administrative and other support to enable the committee to perform its functions efficiently and effectively. This could include providing access to technical advice or expertise.

The new s 64C sets out the composition of the licensing review committee. The chairperson and members are to be appointed by the Minister. The committee will have one representative for employers, workers and community groups. The Minister must seek to appoint both men and women as members of the committee.

The new s 64D sets out the conditions of membership to the committee including appointment for a term of not longer than 3 years. It also sets out the circumstances in which a member's appointment may be ended. This includes a power for the Minister to end a member's appointment at any time for any reason, without stating a reason.

The new s 64E allows the Minister to approve leave of absence for a member of the committee. Where leave of absence is approved, the Minister may appoint an acting member for the duration of the leave. In appointing an acting member the Minister must consider the composition requirements of the committee.

The new s 64F provides that members are appointed on a part-time basis and that they are entitled to be paid.

The new s 64G provides that the committee may hold meetings whenever it considers necessary. The Minister is able to call a meeting at any time.

The new s 64H explains how a committee meeting should be conducted, the number of members required for a quorum and the voting rights of members. The section permits the passing of valid resolutions outside of committee meetings, subject to certain conditions.

The new s 64I requires committee members to disclose any professional or commercial advantage they may have in relation to an issue being considered by the committee. Disclosure is required when a member has, or should have, reason to believe that the interest could provide a possible professional or commercial advantage to the member or to an entity associated with the member. The member must not be present during committee consideration or decision about the matter unless the committee directs otherwise.

The new s 64J requires the committee to keep minutes of its proceedings.

The new s 64K requires the committee to report the performance of the committee's functions within 4 months of each financial year.

The new s 64L establishes the grounds on which disciplinary action may be taken by the committee against a licence holder, namely that work was being conducted under the licence in an unsafe and risky manner or the person performing the work is negligent or incompetent.

The new s 64M explains that this division establishes the types of disciplinary actions the licensing committee may take.

The new s 64N sets out the types of disciplinary actions that may be taken by the committee against occupational licence holders. The committee may cancel or amend the licence. It may also suspend or disqualify the licence for a set period or until specified conditions are met (eg retraining). The committee can also reprimand the licence holder or impose a penalty of up to 40 penalty units. A suspended or disqualified licence cannot be renewed or reinstated while suspended.

The new s 64O sets out the disciplinary action that may be taken against previous holders of occupational licences. The committee may reprimand or caution the person, impose a penalty of up to 40 penalty units, or disqualify the person from holding a licence for a set period or until certain conditions are met. A person cannot be issued an occupational licence while they are disqualified.

The new s 64P sets out the disciplinary action that may be taken against holders of corresponding occupational licences. The committee may either recommend to the recognised official who issued the licence to take certain disciplinary action, or disqualify the person from holding a licence for a set

period or until certain conditions are met. Disqualification will prevent the licence holder from obtaining an occupational licence while disqualified.

The new s 64Q sets out the disciplinary action that may be taken against previous holders of corresponding occupational licences. These actions are the same as in s 64P above.

The new s 64R deals with penalties. A penalty may be imposed by the committee in addition to another form of disciplinary action. This section also provides that where a penalty has been imposed against a licence holder and that penalty has not been paid within the permitted timeframe, the committee may take further disciplinary action. The penalty may be recovered as a debt owed to the State.

The new s 64S advises that this subdivision sets out the procedures for taking disciplinary action against a person.

The new s 64T requires the committee to inform a person in writing (preliminary notice) that grounds may exist for possible disciplinary action against that person. The section also sets out the matters to be addressed in the preliminary notice and requires the committee to consider a response received within a specified timeframe.

The new s 64U provides that the committee may hold a disciplinary hearing to decide whether grounds exist for disciplinary action. The section specifies that the committee may only hold a disciplinary hearing after considering all information provided by the person or that the committee decides to consider.

The new s 64V requires that written notice must be given to the person advising them of the intention to hold a disciplinary hearing. The section also specifies the information to be included in the disciplinary notice and the written material that must accompany the notice.

The new s 64W provides that disciplinary hearings are held as meetings of the committee and that provisions relating to the holding of committee meetings also apply to disciplinary hearings.

The new s 64X sets out the requirements for the conduct of disciplinary hearings. In particular, the section requires the committee to observe natural justice, and to act quickly with as little formality and technicality as is consistent with appropriate consideration of the issues. The committee is not bound by the rules of evidence and may inform itself of anything in a way it considers appropriate.

The new s 64Y allows the committee to receive in evidence a transcript taken before a disciplinary body or a court, tribunal or other constituted entity during a disciplinary hearing. The committee may adopt any decisions, findings, judgements or reasons for judgements.

The new s 64Z requires the committee to keep a record of the evidence given in disciplinary proceedings but does not require it to keep transcripts of hearings.

The new s 64ZA sets out the process to be followed once the committee has completed a disciplinary hearing. The committee must decide if grounds exist for taking disciplinary action and if so, whether any action is to be taken. A written information notice must be given to the person concerned detailing the decision and any sanction being imposed.

Clause 61 amends s 122 to exclude the application of sub-sections (2) and (3) to the production of an occupational licence or corresponding licence where an inspector requires these documents to be made available. Occupational licences will be subject to a more specific requirement under regulations to be developed that will include an obligation for a holder to carry their licence or certificate, as the case may be, and produce it when required.

Clause 62 amends s 147A to include decisions made by the licensing review committee can be appealed in the Industrial Court.

The clause inserts a definition of 'licence holder' as being a person holding a Queensland licence or a licence issued in another jurisdiction. The clause also inserts a definition of 'review entity' that includes the chief executive or the licensing review committee established under clause 60.

Clause 63 amends the heading of Part 11 Division 2 to take into account the amended nature of the review process due to the introduction of the Licensing Review Committee.

Clause 64 amends s 149 by removing references to the 'chief executive' and replacing with the 'review entity' introduced in clause 62.

Clause 65 amends s 150 to reflect new references to the 'review entity' as introduced in the earlier clause 62.

Clause 66 amends s 161 to insert reference to 'licence' as additional evidence of a matter.

Clause 67 amends the definition of 'official' in s 171 to include reference to the licensing review committee as established in the earlier clause 60.

Clause 68 amends the definition of 'official' in s 172 to include reference to the licensing review committee as established in the earlier clause 60.

Clause 69 amends the definition of 'official' in s 183 to include reference to the licensing review committee as established in the earlier clause 60.

Clause 70 removes the 10 day requirement for the lodgement of the form for appointment of a principal contractor to the chief executive and the principal contractor.

Clause 71 amends s 185C which provides that information acquired under s 122 or s 185A must not be disclosed by an official unless the disclosure is made with the consent of the person who provided the information, for the administration of the Act, or in a proceeding under the Act.

The clause broadens the scope to this section outside of information acquired under s 122 or s 185A and ensures that where an official gains information or access to information as part of administering the Act or otherwise that this information cannot be disclosed except under the conditions already prescribed in this section.

Clause 72 inserts a new s 185D which allows the chief executive to provide information to another corresponding jurisdiction to assist them in exercising their powers under a corresponding law, regardless of the operation of s 185C. The clause also describes the circumstances surrounding disclosure of this information to other parties and is consistent with s 185C. In addition the clause introduces a number of definitions to specify what is considered as a corresponding entity, law and official.

This clause will be particularly valuable in relation to sharing information on plant and occupational licensing issues, for example, OHS authorities will be able to share information about incidents involving amusements devices that travel throughout Australia on the show circuit.

Clause 73 inserts a new Part 17, Division 4 for transitional provisions for the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2007*.

Clause 74 inserts various definitions. In particular the clause:

- Inserts a new definition of 'associated class 10a building', 'class 10a building', 'corresponding occupational licence', 'licence show cause notice', 'licensing review committee', 'occupational licence' and 'recognised official'; and
- Amends the definition of 'structure' to remove reference to 'steel and reinforced concrete'.

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