

# Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Bill 2016*.

### Policy objectives and the reasons for them

#### *Implementing the National Injury Insurance Scheme*

In 2011, the Productivity Commission recommended a National Injury Insurance Scheme ("NIIS") alongside the National Disability Insurance Scheme ("NDIS"). The NIIS is intended to establish no-fault lifetime care and support arrangements for persons who sustain serious personal injuries across four main streams: motor vehicle accidents, workplace accidents, medical treatment injury and general (accidents at home and in the community, or assaults).

Under the May 2013 *Heads of Agreement between the Commonwealth and Queensland Governments on the NDIS*, Queensland is required to implement a NIIS for workplace accidents from 1 July 2016, or from 1 July 2016, meet 100 per cent of the costs of injured workers who enter the NDIS because a NIIS has not been implemented.

The purpose of this Bill is to ensure that workers who suffer particular serious personal injuries as a result of work-related events in Queensland, receive necessary and reasonable treatment, care and support payments, regardless of fault.

In its report dated 21 March 2016 on its inquiry into a suitable model for implementation of the NIIS for motor vehicle accidents, the Education, Tourism, Innovation and Small Business Committee recommended that the Government considers the NIIS for motor vehicle accidents serving as a platform for the other proposed NIIS arrangements.

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) provides the legislative framework for Queensland's workers' compensation scheme. The Bill proposes to amend the Act to implement a model for the NIIS for workplace accidents which is consistent with the NIIS for motor vehicle accidents under the *National Injury Insurance Scheme (Queensland) Act 2016*.

The Bill provides eligible seriously injured workers with a statutory entitlement to treatment, care and support payments.

Where certain seriously injured workers can establish that their employer was at fault in relation to their injury, they are able to elect to opt out of treatment, care and support payments and accept an award of treatment, care and support common law damages.

Seriously injured workers who cannot, or choose not to, opt out of treatment, care and support payments will continue to receive their treatment, care and support services through the workers' compensation scheme.

To support these arrangements, the Bill also gives workers' compensation insurers a legislative power to engage the National Injury Insurance Agency, Queensland (NIIA(Q)) established for the NIIS for motor vehicle accidents to perform their functions and exercise their powers in relation to treatment, care and support, by way of a contractual arrangement. Under these arrangements workers' compensation insurers will make payments to the NIIA(Q), to fund the provision of treatment, care and support services for workers and contribute to the NIIA(Q)'s operating expenses.

Disputes will be resolved using the existing dispute resolution mechanisms in the Act, including the medical assessment tribunals to resolve medical disputes, internal review by insurers, review rights to the Workers' Compensation Regulator and appeal rights to the Queensland Industrial Relations Commission where NIIS-related disputes do not involve purely medical matters.

**Attachment 1** contains a flowchart which sets out the process for a worker who has a serious personal injury to be assessed for eligibility for treatment, care and support payments, and to make an election about seeking treatment, care and support damages.

### ***Self-insurance legislative amendments***

The Act requires self-insurers to give a cash deposit or unconditional bank guarantee to the Workers' Compensation Regulator to ensure that the workers' compensation scheme is not financially exposed in the unlikely event of a self-insurer's insolvency. To provide self-insurers with greater flexibility for managing claims liabilities, including additional liabilities which may arise due to treatment, care and support payments for serious personal injuries, the Bill provides for an alternative form of self-insurance security in the form of an unconditional financial guarantee issued by general insurers. In addition, the Bill removes the minimum \$5M value for the security required from self-insurers and instead bases the security on a percentage of the self-insurer's estimated claims liability. This will free up cash collateral currently tied up in bank guarantees, encouraging self-insurers to invest further in Queensland, and will align Queensland's arrangements more closely with Comcare and schemes in New South Wales and South Australia.

The Bill will enable self-insurers who decide to return to a WorkCover Queensland insurance policy to return to self-insurance within five years under the same minimum employee criteria that applied at the time they originally became self-insurers. This change will also provide more flexibility for self-insurers.

### ***Legislative amendments to maintain the status quo in the workers' compensation scheme***

The Bill amends the Act to restore the original policy intent and intended interpretation of various provisions that have been or could be called into question by various recent Queensland court decisions, to provide certainty for insurers, employers, workers and the courts.

The Bill reverses the effect of the judgement in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269 by prohibiting the contractual transfer of liability for injury costs from principal contractors or host employers to employers with a workers' compensation insurance policy (such as subcontractors or labour hire employers) and providing that an insurer is not liable to indemnify an employer for a liability to pay damages incurred by a third party contractor under a contractual arrangement.

The Act currently provides that a fraud prosecution proceeding must commence within one year after the commission of the offence, or within six months after the commission of the offence comes to the knowledge of the Workers' Compensation Regulator or WorkCover Queensland. The Bill amends the Act in response to the Industrial Magistrates Court decision of *Simon Blackwood v Colin Hinder*, to provide that where certain prosecutions for offences against the Act are to be commenced by the Workers' Compensation Regulator, only the knowledge of the Workers' Compensation Regulator is relevant to the timeframe for commencing a fraud proceeding. To ensure that insurers respond promptly to fraud allegations, the Bill clarifies that they must immediately refer the allegations to the Workers' Compensation Regulator as soon as they have a reasonable belief that fraud has occurred. The Act will continue to provide authority for WorkCover Queensland to commence proceedings for certain offences and for the recovery of debts under the Act such as unpaid premium, additional premium, charges, penalties, levies, etc.

#### ***Legislative amendments to prevent financial hardship***

Finally, the Bill amends the Act to provide for an alternative indexation method for statutory compensation entitlements and common law damages entitlements under the Act.

To prevent financial hardship to those relying on workers' compensation payments, it is proposed to amend the Act to provide for an indexation method that will not result in a reduction to any payments or amounts as a consequence of a reduction in the value of Queensland Ordinary Times Earnings (QOTE) while ensuring indexation keeps alignment to QOTE.

## **Achievement of policy objectives**

The Bill will achieve its objective of implementing a National Injury Insurance Scheme (NIIS) for workplace accidents by amending the Act to implement a scheme for treatment, care and support for work related injury for eligible workers injured from 1 July 2016.

The Bill will achieve its objective of providing greater flexibility for self-insuring employers by amending the Act to allow general insurers to issue a security, and to set the minimum guarantee at 150 per cent of a self-insurer's outstanding claims liability. The Bill will also remove barriers for existing self-insured single employers seeking to insure with WorkCover Queensland by enabling them to switch back to self-insurance within five years under minimum employee criteria for self-insurance that applied when they first sought a self-insurance licence.

The Bill will achieve its objective of re-establishing the original policy intent of the Act and reversing the effects of the Supreme Court decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269 by amending the Act to expressly exclude from coverage under an employer's workers' compensation policy that employer's liability flowing from an indemnity granted to a third party in respect of that third party's liability to pay damages to a worker and ensure that liability is retained by a contributing third party.

In relation to the decision in *Simon Blackwood v Colin Hinder*, the Bill will achieve the objective of clarifying that fraud related prosecutions are the responsibility of the Workers' Compensation Regulator, and that the relevant timeframe for the commencement of fraud proceedings is one year after the commission of the offence or six months after the commission of the offence comes to the knowledge of the Workers' Compensation Regulator.

The Bill will achieve its objective of establishing an indexation method for compensation by amending the Act to provide for an indexation method that will not result in a reduction to any payments or amounts as a consequence of a reduction in QOTE.

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

There is no alternative way to achieve the policy objective other than by legislative amendment.

## **Estimated cost for government implementation**

While there are no direct cost implications to Government from the legislative reforms set out in the Bill, it is noted that WorkCover Queensland will meet the additional cost associated with funding treatment, care and support through employer premiums. It is expected that WorkCover Queensland will be able to absorb this cost in the short term within the existing premium structure. The additional cost will impact on individual employers' claims experience (i.e. affect their workers' compensation premium payable in future years if their worker sustains a serious personal injury).

There will be some financial impacts for self-insured employers who make up an estimated 9.5 per cent of claims within the Queensland scheme (2014-15). They will also be exposed to additional costs associated with funding treatment, care and support payments, although the extent of increase will vary across self-insurers.

The legislative amendment to reverse the effect of the *Byrne* decision and prohibit the contractual transfer of liability from principals to contractors will save WorkCover Queensland an estimated \$40 million per annum.

The changes to the indexation arrangements for compensation will not increase an insurer's current costs.

## **Consistency with fundamental legislative principles**

The fundamental legislative principles in the *Legislative Standards Act 1992* requires that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The Bill provides that the amendments required to implement the NIIS minimum benchmarks for workplace accidents will apply to all serious personal injuries sustained on or after 1 July 2016. This commencement date conforms to the May 2013 Heads of Agreement on the NDIS.

The Bill conforms with fundamental legislative principles, in that ensuring that workers who are injured on or after 1 July 2016 have coverage consistent with the NIIS minimum benchmarks for workplace accidents is beneficial to the rights and liberties of individuals. Limited retrospective operation will minimise impacts on scheme financial viability, premium volatility and individual premiums for affected employers.

The Bill provides that the amendments required to the indexation of QOTE will apply for the 2016-17 financial year. This is to prevent financial hardship to those relying on workers' compensation payments by avoiding a decrease in their payments as a result of negative indexation. The Bill conforms with fundamental legislative principles, in that ensuring that workers maintain existing statutory compensation entitlements is beneficial to the rights and liberties of individuals.

The Bill provides that the amendments to reverse the effect of the decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269 will apply to a claim for damages started before the commencement of the amendment provisions, if settlement or a legal proceeding has not occurred before the commencements. The Bill conforms with fundamental legislative principles by having sufficient regard to the rights and liberties of individuals, as the purpose of the amendments is to re-establish the Act's original policy intent and status quo concerning the indemnity provided to employers under workers' compensation insurance policies. The amendments will also result in savings to scheme, where otherwise scheme costs as a result of the *Byrne* decision may have potentially flowed to employers through increases to premium.

The Bill provides that the amendments clarifying the responsibility of the Workers' Compensation Regulator for prosecutions under the Act will apply to proceedings for offences committed before commencement, if they have not been finally dealt with before commencement. The Bill conforms with the fundamental legislative principles by having sufficient regard to the rights and liberties of individuals, as the purpose of the amendments is to re-establish the original policy intent and reflect the arrangements for proceedings as they have been conducted to date.

The fundamental legislative principles require a Bill to have sufficient regard to the institution of Parliament, including by authorising the amendment of an Act only by another Act. The Bill refers a number of matters concerning a worker's entitlement to treatment, care and support to be prescribed by regulation. This approach is consistent with the approach taken in the *National Injury Insurance Scheme (Queensland) Act 2016* for motor vehicle accidents. It is also consistent with the previous approach to drafting for the Act. The Bill has regard to the institution of Parliament by including amendments to the *Workers' Compensation and Rehabilitation Regulation 2014* in Part 3 of the Bill.

## Consultation

There was extensive public consultation on the NIIS through the Productivity Commission 2011 inquiry. The national minimum benchmarks for workplace accidents were also the subject of a Commonwealth Regulation Impact Statement (RIS) released on 5 March 2015, for which

12 submissions were received, including from legal associations, insurance industry representatives, unions and disability services.

In order to ensure appropriate consultation with Queensland workers' compensation industry stakeholders, a Stakeholder Reference Group was established with representatives from legal associations (Queensland Law Society, Bar Association of Queensland, Australian Lawyers Alliance,); employer groups (Chamber of Commerce and Industry Queensland, Australian Industry Group, Housing Industry Association); unions (Queensland Council of Unions, Australian Workers' Union); insurers (WorkCover Queensland and Association of Self-Insured Employers of Queensland); and the Motor Accident Insurance Commissioner. This group considered options and issues for implementing the workplace accidents NIIS, and the deliberations of the group have informed the amendments implementing the NIIS in the Act.

WorkCover Queensland and the Association of Self-insured Employers of Queensland have been consulted about the proposed changes.

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

The NIIS is proposed to operate as a federation of state and territory-based insurance schemes, with national minimum benchmarks ensuring consistency across jurisdictions for coverage, eligibility, level and structure of benefits and standards of care. The workplace accidents minimum benchmarks in the Bill align with those unofficially agreed by all states and territories, and are largely consistent with the NIIS motor vehicle accidents minimum benchmarks, subject to some jurisdictional differences.

In relation to self-insurer guarantees, New South Wales, South Australia and Comcare accept security guarantees issued by insurers. The current minimum security guarantee value is specified as \$5M or 150% of estimated claims liability (whichever is greater). Removing this minimum dollar value for the security guarantee will bring Queensland in line with the Northern Territory and New South Wales, whose schemes only require a minimum guarantee to the value of 150% of estimated claims liability. The other states and territories retain a minimum dollar guarantee amount, but they are all equal to or less than \$3M and most are \$1M or less.

In relation to indexation of compensation, the New South Wales and Victoria's workers' compensation schemes provide that in the event the average earnings fall, payments remain the same and are not reduced. Any reduction is also offset against any future increases so that over time there is still a correlation between the compensation payments and average earnings.

# Notes on provisions

## Part 1

### Short Title

Clause 1 provides that the Act may be cited as the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*.

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

### Act amended

Clause 2 provides that the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* amends the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

### Amendment of s 5 (Workers' Compensation scheme)

Chapter 1 Part 2 of the Act states the main objects of the Act. Section 5(1) states that the Act establishes a workers' compensation scheme for Queensland (the scheme).

Clause 3 amends section 5 to insert new subsection 5(2)(aa) which specifies that the main provisions of the scheme also provide for the implementation of the national injury insurance scheme for serious personal injuries resulting from workplace incidents connected with Queensland.

### Amendment of s 9 (Meaning of *compensation*)

Chapter 1 Part 4 of the Act specifies the meaning of basic concepts used in the Act.

Clause 4 amends section 9 which provides the meaning of compensation. The amendment adds a reference to new chapter 4A to include treatment, care and support payments for serious personal injuries provided for under that chapter within the meaning of compensation.

### Amendment of s 10 (Meaning of *damages*)

Clause 5 amends section 10.

The effect is to restore the policy intention that an insurer is only liable to indemnify an employer for its legal liability to pay damages to the worker, which was overturned by the Queensland Supreme Court's decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269. This clause clarifies that an insurer is not liable to indemnify an employer for a liability to pay damages incurred by a third party contributor under a contractual arrangement.

### **Insertion of new ch 1, pt 4, div 3, sdiv 1A**

Clause 6 inserts a new subdivision 1A before chapter 1, part 4, division 3, subdivision 1. Consistent with the national minimum benchmarks for workplace accidents, new section 11A in the new subdivision expressly excludes compensation in the form of treatment, care and support payments from an entitlement to compensation for persons other than workers to which the division applies.

### **Amendment of s 71 (Issue or renewal of licence to a single employer)**

Chapter 2 of the Act deals with employer's obligations, and Part 4 deals with self-insurance.

Section 71 outlines the various criteria of which the Workers' Compensation Regulator must be satisfied to issue a self-insurance licence to a single employer, with s 71(1)(a) requiring that the number of full-time workers employed in Queensland by an applicant is at least 2000.

Clause 7 amends section 71(1)(e) to remove express reference to the different types of security that a single employer may provide to the Workers' Compensation Regulator. This amendment is consequent upon the Act's amendments to section 84 (see clause 8).

Clause 7 also amends section 71 to insert a new paragraph (3A) which enables the Workers' Compensation Regulator, in the prescribed circumstances, to issue a licence to be a self-insurer to a single employer notwithstanding the applicant fails to satisfy the criteria for the number of full-time workers employed in Queensland as specified in s 71(1)(a). To be eligible the employer needs to have been a former self-insured employer, the former self-insurance licence was not cancelled and the employer was not at any time a related body corporate with another employer for the purpose of the grant of a licence after the former licence ended. The Workers' Compensation Regulator may issue a licence if they are satisfied the number of workers employed in Queensland by the employer is at least the number of full-time workers that were required under s 71(1)(a) as it was in force when the former licence was issued. This amendment will have prospective application, and will only apply for those employers who obtained their licence under the previous criteria of 500 workers.

### **Amendment of s 84 (Bank guarantee or cash deposit)**

Section 84 sets out the requirements for a self-insurer's security to be made before a licence can be issued. This section has been amended to provide for a number of changes to security requirements that offer greater flexibility to self-insurers.

Clause 8 amends section 84 to remove the requirement that the security provided by a self-insurer must be at least \$5 million. The effect of this amendment is to alter the requirements for a self-insurer's security such that it must only be in favour of WorkCover Queensland and amount to 150% of the self-insurer's estimated claims liability.

Clause 8 also inserts a new form of security available to self-insurers. In addition to the current forms of security, being a cash deposit or an unconditional bank guarantee, a self-insurer can secure an unconditional financial guarantee from an insurance company. The insurance company must be an approved security provider as defined in the *Financial and Performance Management Standard 2009*, and the unconditional financial guarantee must be irrevocable and in favour of WorkCover Queensland.



Clause 8 provides that the cash deposit, unconditional bank guarantee and the unconditional financial guarantee are collectively referred to as “security”.

**Amendment of s 92 (Powers of self-insurers)**

Clause 9 amends section 92 to provide that a self-insurer has, in relation to the self-insurer's workers and for an injury sustained during the operation of this Act, the functions and powers set out under new chapter 4A for treatment, care and support payments for a serious personal injury.

**Amendment of s 92A (Powers of local government self-insurers)**

Clause 10 provides for consequential amendments resulting from clause 9.

**Amendment of s 107 (Meaning of QOTE)**

Section 107 of the Act provides the meaning of Queensland Ordinary Times Earnings (QOTE). Statutory compensation entitlements and common law damages entitlements under the Act are subject to indexation based on the value of QOTE.

Clause 11 amends section 107 to provide that if the value of QOTE decreases for a financial year then there will be no change in the value of QOTE for that financial year and the variation of QOTE will be 0 per cent. If the value of QOTE increase in the next financial year to a value above the current value, then the new amount of QOTE will apply and the variation will be the change from the current meaning of QOTE in the Act and the new amount of QOTE. This will ensure that the nexus between QOTE and statutory compensation entitlements and common law damages entitlements under the Act is maintained.

**Amendment of s 116 (Entitlement ends if compensated under corresponding laws)**

Chapter 3 of the Act deals with compensation. Part 2 deals with compensation entitlements of workers generally and division 4 deals with the relationship to other compensation.

Clause 12 amends section 116 to take account of the new chapter 4A which provides for treatment, care and support payments for serious personal injuries. Clause 12 inserts express provision that if payment is made to a person under an entitlements under another law relating only to payments corresponding to compensation under chapter 4A, the person's entitlement to compensation under chapters 4 and 4A stops but the person's entitlement to compensation under chapter 3 continues.

**Amendment of s 117 (Compensation recoverable if later paid under corresponding laws)**

Clause 13 amends section 117 to take account of the new chapter 4A which provides for treatment, care and support payments for serious personal injuries. Clause 13 inserts express provision that where payments made to a person correspond to payments under chapter 4A, an insurer may recover an amount paid as compensation to a person to the extent the compensation paid related to payments under chapter 4 and 4A.

**Amendment of s 118 (Condition on compensation application if compensation available under this Act and corresponding law)**

Clause 14 amends section 118 to provide for where the person's entitlement under the other law relates to payments that correspond only to compensation under chapter 4A. Clause 14 inserts a provision that if a person's entitlement under another law only relates to payments corresponding to payments under chapter 4A, the claimant will be required to provide a statutory declaration to the insurer about whether or not the claimant has made, or intends to make, a claim for payment under another law. Providing the statutory declaration will enable the application for compensation to be duly made and acted on under the WCR Act.

**Amendment of s 119 (Entitlement to compensation ends if damage claim is finalised)**

Clause 15 inserts new section 119(2A), which is a consequential amendment to ensure that an entitlement to treatment, care and support payments only ends when a damages settlement is agreed or judgement for damages is made that includes treatment, care and support damages, only if the treatment, care and support damages have been accepted (see new section 232ZC).

**Amendment of s 130 (Injuries caused by misconduct)**

Clause 16 amends section 130 to relocate the definition of *serious and wilful misconduct* under s 130(4) to the dictionary in schedule 6.

**Amendment of s 132A (Applying for assessment of DPI if no application made for compensation)**

Part 5 of chapter 3 deals with the compensation application and other procedures. Section 132A provides that workers can apply to the insurer to have the worker's injury assessed to determine if the injury has resulted in a degree of permanent impairment, without lodging an application for compensation for the injury. This provision enables a worker to seek damages for the injury without lodging an application for compensation.

Clause 17 inserts a new section 132A(1A) providing that the section does not apply to a worker who is or may be entitled to compensation under chapter 4A. This means that a worker who has sustained a serious personal injury that meets the eligibility criteria and has not lodged an application for compensation under s 132 will not be able to apply under s 132A to have the injury assessed to determine if it has resulted in a degree of permanent impairment, in order to enable the worker to seek damages for the injury without lodging an application for compensation. If a worker does not, or will not, have an entitlement to compensation under chapter 4A for the injury because of the operation of section 116, the worker will be able to apply under s 132A to have the injury assessed to determine if it has resulted in a degree of permanent impairment.

Clause 17 also inserts a new section 132A(7)(c) to provide that an insurer may reject an application under section 132A if satisfied that the worker is or may be entitled to compensation under chapter 4A because the worker has sustained a serious personal injury that meets the chapter 4A eligibility criteria and section 116 does not apply.

**Amendment of s 138 (Compensation not payable during suspension)**

Clause 18 inserts a note into section 138, referring to section 232ZH (see clause 30) in relation to the suspension of treatment, care and support payments.

**Amendment of s 140 (Maximum entitlement)**

Clause 19 inserts into section 140(4) a provision to clarify that in section 140(1), compensation does not include compensation in the form of treatment, care and support payments for the purpose of calculating the maximum amount of compensation payable.

**Amendment of s 141 (Time from which compensation is payable)**

Clause 20 inserts new subsection 141(2A) to provide when an entitlement to treatment, care and support payments under chapter 4A starts. An entitlement to treatment, care and support payments starts when the worker's eligibility period starts, which is when the insurer decides under section 232M that the worker is entitled to treatment, care and support payments for the injury. Also, an entitlement to treatment, care and support payments starts on the day the insurer decides to accept liability for treatment, care and support payments under section 232ZD. This aligns with the new section 232M (see clause 30) which provides for an insurer to assess and decide whether a worker has an entitlement to treatment, care and support payments for a serious personal injury.

Until the worker is entitled to receive treatment, care and support payments under chapter 4A, the worker will have an entitlement to compensation under chapter 4.

**Amendment of s 144A (When weekly payments of compensation stop)**

Section 144A provides for when a worker's entitlement to weekly payments of compensation stops. Subsection (2) provides that if a worker's entitlement to weekly payments of compensation stops because the worker has received weekly payments for the incapacity for five years, or compensation under chapter 3 part 8A reaches the maximum amount under chapter 3 part 6, the worker's entitlement to further compensation for the injury stops.

Clause 21 amends section 144A to provide that subsection (2) does not apply to treatment, care and support payments under chapter 4A.

**Amendment of s 168 (Review of compensation and associated payments)**

Clause 22 inserts a note into section 168 referring to review of entitlement to treatment, care and support payments under chapter 4A part 4.

**Amendment of s 173 (Redemption – worker moves abroad)**

Clause 23 inserts a new subsection (4) into section 173 to provide that ss 173(2) does not apply to compensation in the form of treatment, care and support payments. This means that if a worker's entitlement to compensation stops because the worker stops ordinarily residing in Australia, their entitlement to treatment, care and support payments under chapter 4A continues.

### **Amendment of s 176 (No compensation after redemption payment made)**

Clause 24 inserts new subsection (2) into section 176 to provide that subsection 176(1) does not apply to compensation in the form of treatment, care and support payments. This means that if a worker's entitlement to compensation stops because the worker receives a redemption payment, their entitlement to treatment, care and support payments under chapter 4A continues.

### **Amendment of s 190 (No further compensation after fixed time)**

Clause 25 inserts new paragraph 190(3)(c) to provide that section 190 does not limit a worker's entitlement to payment of treatment, care and support payments under chapter 4A. This means that if a worker's entitlement to compensation stops because the worker is given a notice of assessment and an offer of lump sum compensation, their entitlement to treatment, care and support payments under chapter 4A continues.

### **Amendment of s 205 (Variation of payments for injuries)**

Clause 26 provides for consequential amendments resulting from clause 11.

### **Amendment of s 207B (Insurer's charge on damages for compensation paid)**

Chapter 3A of the Act deals with an insurer's charge on damages for which an employer is not indemnified under the Act to recover compensation claim costs.

Clause 27 inserts new subsection 207B(2A) to clarify that subsection 207B(2) applies to compensation paid under chapter 4A only if the damages include treatment, care and support damages.

### **Amendment of s 209 (Application of pt 2)**

Chapter 4 of the Act deals with injury management and the payment of compensation for medical treatment, hospitalisation, rehabilitation and related expenses.

Clause 34 inserts a new subsection 209(2) to provide that part 2 does not apply, other than section 219, which provides for travelling expenses, to medical treatment or hospitalisation for a worker during the period for which they are entitled to treatment, care and support payments in relation to the injury (including any period for which entitlement is suspended under new section 232ZH (see clause 30)). This ensures that workers will not have overlapping entitlements under chapter 4 for the period they are entitled to treatment, care and support payments under chapter 4A, but preserves particular entitlements under chapter 4 that do not correspond with treatment, care and support payments under chapter 4A.

### **Insertion of new section 221A**

Clause 29 inserts a new section 221A into chapter 4, part 3, division 2, providing that division 2 does not apply to rehabilitation provided to a worker during the period for which they are entitled to treatment, care and support payments in relation to the injury (including any period for which eligibility is suspended under new section 232ZH (see clause 30)). This clarifies that rehabilitation expenses relating to a worker will be payable as treatment, care and support payments under chapter 4A for the period the worker is entitled to treatment, care and support payments under chapter 4A.

## Insertion of new chapter 4A

Clause 30 provides for the insertion of new chapter 4A into the Act, dealing with **Serious personal injuries**. This chapter provides for the implementation of the National Injury Insurance Scheme for workplace accidents. The provisions in this chapter are consistent with the arrangements for the National Injury Insurance Scheme, Queensland for motor vehicles accidents under the *National Injury Insurance Scheme (Queensland) Act 2016*, subject to jurisdictional differences between the workers' compensation and motor accidents schemes and the national minimum benchmarks for workplace accidents.

The new **part 1 of chapter 4A** deals with preliminary matters. New section 232H provides for the application and object of the chapter.

The chapter is intended to ensure that workers who sustain serious personal injuries receive necessary and reasonable treatment, care and support.

The chapter applies if a workers sustains an injury for which compensation is payable, except if the injury is sustained in the circumstances set out in section 34(1)(c) or 35 of the Act, or if the injury was caused by the worker's serious and wilful misconduct. Section 34(1)(c) deals with injuries arising while the worker is temporarily absent from the place of employment during an ordinary recess. Section 35 deals with injuries sustained on journeys to and from work. Section 130 provides that compensation is payable for an injury that is caused by a worker's serious and wilful misconduct only if the injury results in death or could result in a degree of permanent impairment of 50% or more. Consistent with the national minimum benchmarks for workplace accidents, serious personal injuries sustained in these circumstances are excluded from access to treatment, care and support payments. Workers who have an entitlement to compensation under these provisions but are excluded from treatment, care and support payments under chapter 4A, will still have an entitlement to other compensation under the Act, and may be able to access payments corresponding to treatment, care and support payments under the NDIS or other NIIS schemes.

New section 232I sets out definitions for chapter 4A. These definitions include the meaning of **treatment, care and support damages**, which are damages relating to a worker's treatment, care and support needs resulting from the worker's injury, and **treatment, care and support payments**, which are payments under the chapter for the worker's treatment care or support resulting from the injury.

New section 232J sets out the meaning of **treatment, care and support needs**. This definition is consistent with the national minimum benchmarks for workplace accidents and aligns with the definition contained in the *National Injury Insurance Scheme (Queensland) Act 2016*. The terms 'medical treatment', 'hospitalisation' and 'rehabilitation' have the meanings contained in the dictionary in schedule 6 and section 40 of the Act.

New section 232K sets out the meaning of **excluded treatment, care and support**.

The new **part 2 of chapter 4A** deals with an insurer's liability for treatment, care and support payments.

Section 232L provides that an insurer must pay for the worker's treatment, care and support arising from the worker's injury if the insurer decides, under section 232M, that the worker is entitled to treatment, care and support payments for the injury.

Section 232L also specifies that an eligible worker's entitlement to treatment, care and support payments applies to treatment, care or support resulting from the worker's injury provided to the worker during the eligibility period. The *eligibility period* is defined as starting when the insurer decides that the worker is entitled to treatment, care and support payments and ending when the worker stops being entitled under another provision of the Act, or if they die. A worker is not entitled to treatment, care and support payments when the worker's entitlement to compensation under chapter 3 is suspended under the Act or the workers' entitlement to treatment, care and support payments is suspended under the new section 232ZH.

Section 232M provides for an insurer to decide to assess a worker's injury or injuries for the purpose of deciding the worker's entitlement to treatment, care and support payments, as well as permitting a worker to request an insurer to make such an assessment. A worker is entitled to treatment, care and support payments for an injury if it is a serious personal injury that meets the eligibility criteria prescribed by regulation, or if the injury resulted from the same event as a serious personal injury. If a worker requests an assessment the insurer must conduct the assessment within 20 business days unless a longer period is agreed between the insurer and worker. Where the insurer has asked the worker to provide additional information to help them conduct the assessment, the 20 business day period (or longer agreed period) runs from the time the insurer is provided with the last of the additional information. Otherwise, the 20 business days runs from when the request from the worker is received.

Section 232M also sets out the decision an insurer must make after conducting an assessment of a worker's injury or injuries to determine their entitlement to treatment, care and support payments. The insurer must decide whether the worker is entitled, and if entitled, whether for an interim period or for the rest of the worker's life. The insurer must provide the worker with written notice of the decision within 10 business days after the decision is made.

Section 232M also specifies that where a worker has multiple injuries resulting from the same event, the insurer must make a decision about the period for which a worker is entitled to treatment, care and support payments for the serious personal injury, even though the worker has other injuries resulting from the same event for which the worker may not need treatment, care or support needs for the whole period.

The new **part 3 of chapter 4A** deals with assessing needs and payment options. The approach taken in these provisions is generally consistent with the *National Injury Insurance Scheme (Queensland) Act 2016*.

The new **division 1** deals with assessing needs.

Section 232N specifies that an insurer must consider, in deciding whether an eligible worker's treatment, care and support needs are necessary and reasonable in the circumstances, whether they are excluded treatment, care and support, and any other matter prescribed by regulation (see clause 50).

Section 232O provides that if an insurer decides that a worker is entitled to treatment, care and support payments for the worker's injury or injuries, the insurer must assess the worker's necessary and reasonable treatment, care and support needs resulting from the serious personal injury. The insurer must also assess any other treatment, care and support needed by the worker for the serious personal injury, and any necessary and reasonable treatment, care or support needed for any other injury resulting from the same event. The insurer must make a **support plan** that complies with requirements prescribed by regulation (see clause 50), after a worker's treatment, care and support needs have been first assessed. The support plan must be provided to the worker (subsection 232O(1)(c)).

An assessment of an eligible worker by an insurer must be carried out in the way, and at the intervals prescribed by regulation (see clause 50), may be carried out at other times the insurer considers appropriate, and may be carried out for the treatment, care or support needed by the worker for a particular period only.

An insurer may amend a worker's support plan to reflect the outcomes of any further assessment undertaken, or a decision about a service request under section 232P, or after a review of the support plan or approval of a service request under section 232ZG. Section 232O(5) provides that any amendment under this provision must comply with requirements prescribed by regulation (see clause 50).

Section 232P deals with deciding service requests. An insurer may approve a written request (a **service request**) to fund particular treatment, care or support (the **requested service**) in relation to an eligible worker's serious personal injury or other injury resulting from the same event for a particular period.

A service request may be made either before or after a support plan is made for the worker and may be made by the eligible worker, or the person providing the requested service to the worker. The insurer must decide whether to approve, with or without conditions, or refuse the service request within 20 business days after the request is received, unless the insurer asks for further information from the worker or the person providing the requested service within the 20 business days limit, in which case the insurer's decision must be made within 20 business days after the information is received. An insurer must consider the matters prescribed by regulation (section 232P(4) and see clause 50) and must give written notice of the decision to the person who made the request, and if that person is not the eligible worker, to the worker as well. The insurer must amend the worker's support plan if the insurer approves the service request, or ensure a copy of the written notice of the decision is attached to the worker's support plan if the insurer refuses the request.

The new **division 2** provides for payments in relation to the treatment, care and support of eligible workers. The payments available are generally consistent with the *National Injury Insurance Scheme (Queensland) Act 2016*.

Section 232Q provides that an insurer may make treatment, care and support payments under funding agreements to cover particular treatment, care and support expenses incurred in particular periods, or in response to an approved payment request for treatment, care and support expenses incurred.

Section 232Q(2) sets out when a *funding agreement* may be entered into by an insurer with a person. A funding agreement provides for the insurer to pay to the person an amount to cover particular expenses to be incurred by the person, in the stated period, for the treatment, care and support of an eligible person. During the period for which the insurer pays an amount to the worker, the worker is able to directly choose and pay for the treatment, care and support the worker considers best meets their needs. Section 232Q(2)(b) provides that a regulation may prescribe circumstances, or treatment, care or support, that may not be the subject of a funding agreement. Section 232R(2)(c) provides that a funding agreement must include the terms prescribed by regulation.

Section 232R(3) defines payment requests. Where a person incurs an expense for the treatment, care or support of an eligible worker the person may, by written notice (a *payment request*), ask the insurer to pay all or part of the amount of the expense, provided the payment request is made in the circumstances prescribed by regulation (see clause 50).

Section 232R deals with the insurer's decision about a payment request. The timeframe within which the insurer must respond is set out in s 232R(1). Further, a regulation may prescribe matters about an insurer deciding a payment request (see clause 50), and an insurer is not liable to pay an amount requested in a payment request, even if the request is approved, that exceeds an amount prescribed by regulation for the treatment, care or support. If a payment request is approved, the payment must be made within 20 business days. If the insurer refuses the payment request, the insurer must give written notice of the decision to the person who made the payment request and the eligible worker if they are not the same person.

The new **part 4 of chapter 4A** deals with the review of a worker's entitlement to receive treatment, care and support payments for an interim period only. The new section 232S provides that the insurer may review the worker's entitlement at any time during the interim period, but must carry out at least one review before the end of the interim period. The review must be carried out in the way prescribed by regulation (see clause 50).

An insurer must make a decision about whether or not the worker is still entitled to receive treatment, care and support payments in relation to the worker's injury or injuries; and if yes, whether or not the insurer is satisfied that the worker's serious personal injury is likely to continue to meet the eligibility criteria for the injury after the interim period ends. The insurer's decision must be made before the end of the interim period.

If the insurer is satisfied the worker's serious personal injury is likely to continue to meet the eligibility criteria for the injury after the interim period ends, the insurer must decide that the worker is entitled to receive treatment, care and support payments for the injury or injuries for the rest of the worker's life.

Section 232S also specifies that where a worker has multiple injuries resulting from the same event, the insurer must make a decision about the worker's entitlement to treatment, care and support payments for the serious personal injury, even though the worker has other injuries resulting from the same event for which the worker may not need treatment, care or support for the rest of the relevant period.

If the insurer is not satisfied that the worker's serious personal injury is likely to continue to meet the eligibility criteria for the injury after the interim period ends, the insurer must decide



that the worker's entitlement to treatment, care and support payments for the injury or injuries ends when the interim period ends, or on an earlier date the insurer decides.

An insurer must give the worker written notice of their decision within 10 business days after making a decision.

The new **part 5 of chapter 4A** deals with the relationship with treatment, care and support damages and is consistent with the approach taken in the *National Injury Insurance Scheme (Queensland) Act 2016*. Section 232T provides that part 5 applies if a worker may seek treatment, care and support damages in relation to the injury. Under part 5, if the worker gives the insurer a notice of claim for damages, the worker is able to notify the insurer about whether they intend to elect to be awarded treatment, care and support damages.

Section 232U sets out definitions for part 5 of chapter 4A.

The new division 2 of new part 4 of chapter 4A sets out the process for a worker electing to seek or treatment, care and support damages, or not to seek these damages and continue to be entitled to treatment, care and support payments.

Section 232V provides that if a worker makes a claim for damages under chapter 5, they must state in the notice of claim under section 275, whether they elect to seek treatment, care and support damages in relation to their serious personal injury. If the worker is entitled to treatment, care and support payments for multiple injuries resulting from the same event, the worker must make the election for all the injuries. Section 232V specifies that if the worker does not make the election or it is taken not to have been made under section 232W, the worker is not entitled to seek treatment, care and support damages for the injury.

Section 232W lists circumstances in which a worker's election to seek treatment, care and support damages in accordance with section 232V will be taken not to have been made. These include where a court decides not to sanction the election under section 232X, the court makes an order preventing the worker from being awarded treatment, care and support damages under section 232Y, or where damages to which the worker would be entitled would be reduced as a result of the worker's contributory negligence by 50% or more.

Section 232X requires, in the stated circumstances, a court order sanctioning a worker's election to seek treatment, care and support damages. The circumstances relate to a worker considered to be under a legal disability.

Section 232Y enables an insurer to apply to the court for an order preventing a worker (who is entitled to treatment, care and support payments) from being awarded treatment, care and support damages under a final judgement or order of a court or a binding settlement.

The new division 3 of new part 5 of chapter 4A sets out a worker's entitlement to treatment, care and support payments in circumstances where a worker also seeks common law damages for the injury.

Section 232Z provides that a worker's entitlement to treatment, care and support payments for the injury continues for the remaining eligibility period, if the worker does not elect to seek treatment, care and support damages for the injury.

Section 232ZA applies if a worker is entitled to receive treatment, care and support payments only for an interim period, and elects to seek treatment, care and support damages. Judgment for damages cannot be awarded and settlement for damages cannot be agreed until first of the following happens: the interim period ends, the insurer decided under section 232S that the worker is entitled to receive treatment, care and support payments for the rest of the worker's life, or the worker stops being entitled to receive treatment, care and support payments as a result of a review under section 232S or another provision of the Act.

Section 232ZB applies if the worker elects to seek treatment, care and support damages in relation to the serious personal injury. If the worker is awarded damages that do not include treatment, care and support damages; or they are awarded treatment, care and support damages but they do not accept the awarded damages within the acceptance period, the insurer must make treatment, care and support payments for the worker's injury for the remaining eligibility period. If the worker does not accept the awarded treatment, care and support damages within the acceptance period, the insurer or employer is not liable to pay the amount of the damages awarded for treatment, care and support.

Section 232ZC covers the situation where a worker elects to seek treatment, care and support damages in relation to the serious personal injury, is awarded treatment, care and support damages, and accepts those damages. The insurer must make treatment, care and support payments for the worker's injury until the awarded treatment, care and support damages are accepted by the worker. The worker's entitlement to treatment, care and support payments stops when the worker accepts the awarded treatment, care and support damages.

Section 232ZD deals with treatment, care and support payments if treatment, care and support damages are accepted and paid to the worker, and are later considered to be insufficient, and is consistent with the approach taken in the *National Injury Insurance Scheme (Queensland) Act 2016*. Section 232ZD applies if a period of at least five years (as prescribed by regulation) has passed since a worker accepted awarded treatment, care and support damages and the worker considers the amount of damages to be no longer sufficient to meet their necessary and reasonable treatment, care and support needs resulting from the serious personal injury. In these circumstances, the worker may apply to the insurer for additional treatment, care and support payments for the injury.

The insurer may, having regard to the matters prescribed by regulation, accept liability to make treatment, care and support payments to the worker if the insurer is satisfied the amount of awarded damages is not sufficient to meet the worker's necessary and reasonable treatment, care and support needs resulting from the worker's serious personal injury. In any event, the insurer must make a decision within 20 business days after the application is made and give the worker written notice of their decision.

The new **part 6 of Chapter 4A** deals with a worker who is receiving treatment, care and support payments from an insurer and leaves Australia, and while the worker is absent from Australia, expenses are, or are likely to be, incurred for the worker's treatment, care or support and the insurer did not consider the need for treatment, care or support to be provided outside Australia, in deciding the approved services for the worker.

Under section 232ZF, the worker must provide written notice to the insurer at least one month before leaving Australia (unless they have a reasonable excuse). The provisions do not apply where a *service request* is made or a *funding agreement* entered into for treatment, care and support to be provided outside Australia. These provisions are consistent with the approach taken in the *National Injury Insurance Scheme (Queensland) Act 2016*.

Where a support plan has been made for the worker, or a service request approval has been given, and the support plan or service request approval relates to the period when the worker is, or intends to be absent from Australia, the insurer may review the documents and make any amendments the insurer considers appropriate (s232ZG).

Section 232ZH enables an insurer to suspend a worker's entitlement to treatment, care and support payments if the insurer considers the worker's absence from Australia will, or is likely to, adversely affect either the worker's condition as a result of the injury, or the worker's prospects of improvement or rehabilitation. The insurer must provide the worker with written notice of the decision stating the period of suspension; noting that it may start on the day the person left Australia, even if the information notice is given after that day.

The new **part 7 of Chapter 4A** provides that an insurer may engage the NIIA (Q) to perform the insurer's functions or exercise the insurer's powers under chapter 4A. The engagement is by way of an agreement under section 60 of the *National Injury Insurance Scheme (Qld) Act 2016* (section 232ZI) and does not transfer liability under this Act.

The Workers' Compensation Regulator may monitor the performance of functions or the exercise of powers for which an insurer has engaged the NIIA (Q), and may impose conditions on a self-insurer's licence.

### **Insertion of new s 236B (Liability of contributors)**

Chapter 5 of the Act deals with access to damages. Part 1 deals with interpretation and application.

Clause 31 inserts new section 236B dealing with liability of contributors in relation to damages. The amendment ensures that an agreement between an employer and a third party, under which the employer indemnifies the third party as indicated, does not prevent the insurer from adding the third party as a contributor. Further it provides that the agreement is void and that the third party cannot recover the amount of an award or settlement, made against them from the employer.

The effect is to restore the common law principle that an insurer will not be liable to indemnify an employer for a liability to pay damages incurred by a third party contributor under a contractual arrangement. This principle was overturned by the Queensland Supreme Court's decision in *Byrne v People Resourcing (Qld) Pty Ltd & Anor* [2014] QSC 269.

It also furthers the objects of the Act by encouraging improved health and safety performance by employers, ensures reasonable cost levels for employers and provides for the protection of employers' interests in relation to claims for damages for workers' injuries.

**Amendment of s 237 (General limitation on persons entitled to seek damages)**

Part 2 of Chapter 5 deals with entitlement conditions for a worker's access to damages.

Clause 32 amends section 237(2) to provide that a worker's entitlement to seek damages is also subject to the provisions of chapter 4A, in relation to the worker's election about seeking treatment, care and support damages under section 232V. .

**Amendment of s 268 (Provision of rehabilitation)**

Part 3 of Chapter 5 deals with mitigation of loss in relation to claims for damages and the worker's duty to satisfactorily participate in rehabilitation.

Clause 33 amends section 268, which deals with the insurer making rehabilitation available to the worker, to provide that this section does not apply in relation to a worker for any period the worker is entitled to compensation under chapter 4A, including any period for which entitlement is suspended under section 232ZH.

**Amendment of s 270 (When damages are to be reduced)**

Part 4 of Chapter 5 deals with reduction of recoverable damages.

Clause 34(1) inserts new 270(1A), with the effect that section 270(1) will only operate to reduce the amount of damages an employer is legally liable to pay to a claimant for an injury by the amount paid or payable by an insurer by way of compensation paid or payable by way of treatment, care and support payments, if the damages include treatment, care and support damages.

**Amendment of s 275 (Notice of claim for damages)**

Part 5 of Chapter 5 deals with pre-court procedures.

Claimants must give a notice of claim under section 275 within the period mentioned in section 302(1). Clause 35 inserts a note into section 275(4) to refer to new section 232V about the requirements for a worker's election to seek treatment, care and support damages.

**Insertion of new s 305K (Application of contributory negligence for particular injuries)**

Part 8 of Chapter 5 deals with civil liability. Division 4 deals with contributory negligence.

Clause 36 inserts new section 305K with the effect, notwithstanding any other provisions in division 4, treatment, care and support damages cannot be reduced for contributory negligence of a worker who is entitled to treatment, care and support payments under chapter 4A for the injury.

**Amendment of s 306V (Indexation of particular amounts)**

Clause 37 provides for consequential amendments resulting from clause 11.

### **Amendment of s 500 (Reference to tribunals)**

Chapter 11 of the Act deals with medical assessment tribunals. Part 3 of Chapter 11 deals with the jurisdiction of tribunals.

Clause 38 amends section 500(1) to insert three paragraphs after paragraph (f) to include matters concerning serious personal injury. This enables an insurer to make a referral to a tribunal to determine certain matters under chapter 4A which relate to matters of a medical nature only.

### **Insertion of new ss 506A-506C (On reference to tribunal)**

Clause 39 inserts three new sections into the Act to deal with references to tribunals in accordance with the referral of matters under chapter 4A (see clause 39).

New section 506A specifies that on a reference to a tribunal under s 500(1)(fa), the tribunal must decide whether the worker's serious personal injury meets the eligibility criteria under section 232M for the injury.

New section 506B specifies that on a reference to a tribunal under s 500(1)(fb), the tribunal must decide whether the worker's injury is likely to continue to meet the eligibility criteria under section 232M for the injury after the interim period ends.

New section 506C specifies that on reference to a tribunal under s 500(1)(fc), the tribunal must decide whether the particular treatment, care or support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances.

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

Clause 40 omits the reference to 'doctor' from section 510(1)(b) and replaces it with 'registered person'. This term is defined in schedule 6. This enables a tribunal to also arrange for the examination of a worker by a registered person other than a doctor, including an occupational therapist.

### **Amendment of s 536 (Duty to report fraud or false or misleading information or documents)**

Chapter 12 of the Act deals with enforcement. Part 2 of chapter 12 deals with fraud and false and misleading statements.

Clause 41 amends section 536(3), (4) and (5) to insert 'without delay' after 'must', to clarify that a person must give the relevant information to WorkCover Queensland or the Workers' Compensation Regulator promptly.

### **Amendment of s 538 (Internal review by insurer)**

Chapter 13 of the Act deals with Reviews and appeals. Part 1 deals with internal reviews and Part 2 deals with Regulator reviews.

Clause 42 amends section 538 to insert additional decisions concerning entitlement to treatment, care and support payments for a serious personal injury of which the insurer is required to conduct an internal review.

### **Amendment of s 540 (Application of pt 2)**

Clause 43 amends 540(1) to ensure that part 2 of chapter 13 applies to decisions, and a failure to make a decision, by WorkCover Queensland and self-insurers concerning entitlement to treatment, care and support payments for a serious personal injury.

Clause 43 also inserts a new provision that the reasons for a decision must address the matters prescribed by regulation and be accompanied by information about the rights of review under the Act for the decision.

### **Amendment of s 578 (Proceedings for offences against ch 8)**

Chapter 14 of the Act deals with miscellaneous matters. Part 3 deals with proceedings.

Clause 44 inserts the new section 578(1AA) to deal with summary proceedings for an offence against chapter 8. The effect of the amendment is to clarify that, subject to current subsection (2) to (4), a proceeding for an offence is to be taken in a summary way before an industrial magistrate on the complaint of either the Workers' Compensation Regulator, a person authorised for the purpose of the Workers' Compensation Regulator, or the Attorney-General.

### **Amendment of s 579 (Summary proceedings for offences other than against ch 8)**

Clause 45 amends section 579(1A) to provide that proceedings for an offence committed under section 486B(2) and chapter 12, part 2 (fraud and false and misleading statements) are taken in a summary way before an industrial magistrate on the complaint of either the Workers' Compensation Regulator, a person authorised for the purpose of the Workers' Compensation Regulator, or the Attorney-General. This change aligns with the requirement under section 536 of the Act for insurers to refer matters of suspected fraud and false and misleading statements to the Workers' Compensation Regulator for investigation and potentially to commence a complaint. The change is also in response to the Industrial Magistrates Court decision of *Simon Blackwood v Colin Hinder* and provides that where certain prosecutions for offences against the Act are to be, or have been, commenced by the Workers' Compensation Regulator, only the knowledge of the Workers' Compensation Regulator is relevant to the timeframe for commencing a fraud proceeding.

### **Insertion of new ch 33 (Transitional provisions for *Worker's Compensation and Rehabilitation (National Injury Insurance Scheme) Act 2016*)**

Clause 46 inserts new chapter 33 into the Act after chapter 32.

New section 718 provides definitions for the purpose of the new chapter.

New section 719 specifies that the amendments made under clause 7 to section 71(4) apply to a single employer who stops holding a licence to be a self-insurer after the commencement.

New section 720 specifies that section 84 as amended applies to a self-insurance licence application made before the commencement that has not been decided at the commencement.

New section 721 specifies the amount of QOTE and the variation of QOTE for the 2016-2017 financial year.

New section 722 voids any published amount, or variation of, QOTE made prior to the commencement of the Amendment Act.

New section 723 provides that if an insurer has made ex gratia compensation payments to a worker, or a claimant such as dependent children of a deceased worker, for the purpose of maintaining current compensation amounts from 1 July until the commencement of this amendment Act, then those ex gratia payments are taken to have been paid to the person as compensation. This provision is required to facilitate insurers maintaining current amounts of compensation and having those ex gratia payment deemed to be compensation on commencement of the amendment Act.

New section 724 provides that the amendments relating to treatment, care and support payments for serious personal injury apply in relation to a serious personal injury sustained by a worker on or after 1 July 2016. This aligns with the nationally agreed minimum benchmarks.

New section 725 provides the transitional arrangements relating to the liability of contributors for the purpose of new section 236B (see clause 31).

New section 726 provides the transitional arrangements relating to offences committed before the commencement and proceedings for an offence started before the commencement.

### **Amendment of schedule 6 (Dictionary)**

Clause 47 omits the existing definition of '*bank guarantee*' from schedule 6, and inserts a definition for '*section 84 security*' (see clause 8). Clause 47 also inserts definitions relating to treatment, care and support payments for serious personal injury into schedule 6. These definitions include the meaning of *serious personal injury*, which is consistent with the national minimum benchmarks for workplace accidents and the definition contained in the *National Injury Insurance Scheme (Queensland) Act 2016*.

## **Part 3 Amendment of Workers' Compensation and Rehabilitation Regulation 2014**

### **Amendment of regulation**

Clause 48 provides that the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* amends the *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation).

### **Amendment of s 22 (Conditions of licence – Act s 83)**

Clause 49 amends section 22 of the Regulation which provided for conditions of a self-insurers licence and removes the requirement for unconditional bank guarantees which has been moved to the Act (see clause 10).

### **Insertion of new pt 5A Treatment, care and support payments**

Clause 50 provides for the insertion of new part 5A into the Regulation after existing section 117. These provisions are consistent with the approach taken in the *National Injury Insurance*

*Scheme (Queensland) Act 2016 and National Injury Insurance Scheme (Queensland) Regulation 2016.*

Division 1 of new part 5A deals with assessing entitlement.

New section 117A specifies definitions for the division.

New section 117B notes that the purpose of the subdivision 2 is to set out the eligibility criteria for particular serious personal injuries (see new section 232L).

New section 117C sets out the eligibility criteria for permanent spinal cord injury.

New section 117D sets out the eligibility criteria for traumatic brain injury.

New section 117E sets out the eligibility criterion for amputation of a leg through or above the femur.

New section 117F sets out the eligibility criteria for the amputation of more than 1 limb or parts of different limbs.

New section 117G sets out the eligibility criteria for a full thickness burn to all or part of the body.

New section 117H sets out the eligibility criterion for an inhalation burn resulting in a permanent respiratory impairment.

New section 117I sets out the eligibility criterion for permanent blindness caused by trauma.

New subdivision 3 of division 1 of new part 5A deals with assessing eligibility criteria under new section 232M of the Act. New section 117J sets out the requirements for using a functional independence measure instrument or a childrens functional independence measure instrument to assess injuries.

New division 2 of new part 5A deals with assessing worker's needs under new chapter 4A part 3 division 1 of the Act. Subdivision 1 concerns requirements of the assessment process. New section 117K prescribes the requirements under new section 232O of the Act about assessing an eligible worker's treatment, care and support needs in relation to a serious personal injury, necessary and reasonable treatment, care or support resulting from another injury resulting from the same event as the serious personal injury, and any other treatment, care or support needed by the worker for the serious personal injury or another injury resulting from the same event as the serious personal injury.

New section 117L prescribes the intervals for carrying out assessments under section 232O of the Act.

New subdivision 2 of division 3 part 5A concerns necessary and reasonable treatment, care and support needs for new section 232N of the Act.



In particular, new section 117M states that the purpose of subdivision 2 is to prescribe matters the insurer must consider in deciding whether a worker's treatment, care and support needs resulting from a serious personal injury are necessary and reasonable in the circumstances.

New section 117N(1) states that an insurer must consider whether providing the treatment, care and support for, or relating to the worker's treatment, care and support needs, is likely to maximise the worker's independence, participation in the community and employment; and assist the worker in managing the injury. New section 117N(2) lists matters that the insurer must have regard to in considering the matters in section 117N(1).

New section 117O states that an insurer must consider whether the treatment, care and support for, or relating to the worker's treatment, care and support needs is appropriate within the context of the considerations listed.

New section 117P provides that the insurer must consider the appropriateness of the provider of treatment, care and support.

New section 117Q provides for the insurer to consider the cost-effectiveness of treatment, care and support.

Subdivision 3 of division 3 part 5A deals with other matters relating to assessing treatment, care and support needs under the new chapter 4A part 3 division 1 of the Act.

New section 117R prescribes requirements for assessing a worker's needs for, or relating to home modification, vehicle modification, workplace modification or attendant care and support services.

New section 117S prescribes treatment, care or support that must be provided by a registered provider for the definition of *excluded treatment, care or support* under section 232K of the Act.

Subdivision 4 of division 3 part 5A deals with support plans and service requests under the new chapter 4A part 3 division 1 of the Act.

New section 117T prescribes the requirements for a worker's support plan.

New section 117U prescribes the requirements for amending a worker's support plan.

New section 117V prescribes the matters an insurer must consider in deciding a service request.

Division 4 of new part 5A concerns payment options under the new chapter 4A part 3 division 2 of the Act.

New section 117W sets out when payment requests may be made.

New section 117X prescribes matters about an insurer deciding a payment request.

New section 117Y prescribes the amount payable under a payment request.

Division 4 of new part 5A deals with review of entitlement.

New section 117Z prescribes the matters for a review of a worker's entitlement to treatment, care and support payments, and notes that the insurer must give at least 20 business days written notice before carrying out the review.

**Amendment of s 143 (Constitution of composite medical tribunal)**

Clause 51 amends section 143 to provide that for referrals about serious personal injuries under chapter 4A of this Act or the *National Injury Insurance Scheme (Queensland) Act 2016*, the chairperson of the General Medical Assessment Tribunal is the chairperson of a composite tribunal.

Clause 52 inserts definitions into schedule 13.

Clause 53 inserts a schedule of minor or consequential amendments.

**Attachment 1 – Flowchart for entitlement to treatment, care and support payments for serious personal injuries**

