

Criminal Law Amendment Bill (No. 2) 2012

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Criminal Law Amendment Bill (No. 2) 2012

Objectives of the Amendments

The objectives of the amendments are to:

1. omit the amendments to the *Corrective Services Act 2006*, the Criminal Code, the *Drug Court Act 2000*, the *Justices Act 1886*, the *Penalties and Sentences Act 1992* and the *Residential Tenancies and Rooming Accommodation Act 2008*, that relate to the cessation of the Drug Court;
2. insert the words '(corrective services)' into clause 47, new section 110G(7) to make it clear that the reference to 'chief executive' is a reference to the chief executive (corrective services);
3. implement recommendation 30 of the Finance and Administration Committee's report of the Inquiry into the Operation of Queensland's Workers' Compensation Scheme by amending the *Workers' Compensation and Rehabilitation Act 2003* to give greater discretion on the granting of self-insurance licences; and
4. amend the *Industrial Relations Act 1999* to ensure industrial organisations cannot avoid their obligations in regard to the requirements for spending for political purposes, to make technical amendments and to remedy drafting errors and omissions.

Achievement of the Objectives

The objectives are achieved by way of amendments to the Bill as described below.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The proposed amendment to section 579 (Powers of court on appeal) of the *Workers' Compensation and Rehabilitation Act 2003* allows appeals of decisions made by the Workers' Compensation Regulatory Authority (the Authority) regarding special circumstances; however the courts powers on appeal are limited so that they cannot use the special circumstance introduced in sections 71 and 72 to issue or renew a self insurance licence. However, an aggrieved employer relying on special circumstances has the right to appeal decisions of the Authority and the courts are able to confirm the decision of the Authority or setting aside the decision and return the matter to the Authority with the directions the court considers appropriate.

This is considered appropriate as the Authority is best placed to consider what a special circumstance is. When considering the special circumstances, the Authority would need to consider the consequences to the scheme if the application is approved. A licence issued by use of special circumstances should only be issued in very limited situations.

Further, the requirements for balloting have previously raised an issue of whether the legislation has sufficient regard to the rights and liberties of individuals and whether there is a breach of the implied doctrine of freedom of political communication and association. Similar concerns may be raised in relation to the amendment to extend the obligation to an associated entity of an industrial organisation. The public interest in the transparency and accountability of industrial organisations is seen to override this concern.

The remaining amendments are consistent with fundamental legislative principles.

Consultation

With regards to the amendments to the *Workers' Compensation and Rehabilitation Act 2003*, the Finance and Administration Committee (the Committee) recently tabled its report of the Inquiry into the Operation of Queensland's Workers' Compensation Scheme. The Committee received 246 written submissions from employer associations, individual employers, insurers, lawyers, unions, professional bodies, interest groups and individuals. The policy proposal reflected in the amendments to the *Workers' Compensation and Rehabilitation Act 2003* was raised with the Committee by a number of employers and self-insurers.

Consultation was not otherwise undertaken on the proposed amendments.

NOTES ON PROVISIONS

Clause 1 amends the short title to the Bill.

Clause 2 amends clause 2 of the Bill to omit subclause (2) which makes provision for the commencement of clauses relating to the cessation of the Drug Court; and amends clause 2 of the Bill to ensure the ‘associated entity’ provisions inserted into the *Industrial Relations Act 1999* under clause 8 will have effect from 1 September 2013.

Clause 3 omits clause 10 of the Bill.

Clause 4 amends clause 11 of the Bill consequential to the amendment to the short title to the Bill under clause 1.

Clause 5 omits clause 14 of the Bill.

Clause 6 omits clause 17 of the Bill.

Clause 7 omits part 5 of the Bill.

Clause 8 inserts, after clause 38, amendments to the *Industrial Relations Act 1999*.

New amending *clause 38A* indicates that this part amends the *Industrial Relations Act 1999*.

New amending *clause 38B* inserts new section 246BA to provide for the appointment of a person to act as the vice president.

New amending *clause 38C* amends section 341 to clarify that ‘determination’ means a determination under section 149 of the Act.

New amending *clause 38D* amends section 355 to clarify the documents that an inspector can require a person to produce. The amendment also makes it clear that if relevant information is stored or recorded by means of a device, a document that is a clear written reproduction of the stored or recorded information is to be produced for inspection by the inspector.

New amending *clause 38E* amends section 372B as follows:

- Subsection 1 – The heading of the section is changed to make it clear that the employer’s notice may be made in response to: (i) a notice to inspect records; or (ii) to exercise any other power under section 373. In other words, an employer’s notice may be provided in response to any power to be exercised in an entry notice made under section 372A.
- Subsection 2 – Makes it clear that section 372B allows an employer’s notice to be provided in response to any power (inspection of records, or any other power in section 373) to be exercised in an entry notice made under section 372A.
- Subsection 3 – Allows for an employer’s notice to state a particular place, which may be a part of the workplace, or a particular route to be used to access the place, stated in the entry notice. An example of parts of a workplace is provided.

- Subsection 4 – Makes it clear that subsections 372B(3)(a) and (c) have general application (with respect to inspection of records, or any other power in section 373). The change to subsection 372B(3)(b) only applies in response to an entry notice to inspect records.

New amending *clause 38F* amends section 373 to change the heading.

New amending *clause 38G* amends the heading of Chapter 12 to include ‘and associated entities’.

New amending *clause 38H* clarifies that ‘spouse’ does not include a former spouse of the officer.

New amending *clause 38I* inserts a new section 530G to clarify who may inspect a statement of interests, at any time.

New amending *clause 38J* inserts a new section 553DA to identify when an entity is an associated entity of another entity. This provision applies section 50AAA of the *Corporations Act 2001* (Cth). In addition, the provision provides further situations where an entity is considered an associated entity of the principal.

New amending *clause 38K* amends section 553F to include the words ‘by organisation’ to clarify that the application of section 553F is to industrial organisations.

New amending *clause 38L* inserts a new section 553FA. This new section prescribes that particular spending for political purposes by an associated entity of an industrial organisation must be first authorised by an expenditure ballot. The section also requires that the industrial organisation has an obligation to take all reasonable steps to ensure that an associated entity conducts an expenditure ballot before spending the amount for a political purpose.

The purpose behind this section is to ensure that an industrial organisation is not able to circumvent the requirement to conduct a ballot of its members and gain approval before spending money for a political purpose, by creating, or using, entities associated with it to spend money for political purposes.

New amending *clause 38M* amends section 570 to clarify the process required to present, file and publish audit reports and financial disclosure statements.

New amending *clause 38N* amends Schedule 2, Part 1A, section 4C to make it clear that an associate may also be appointed to the president.

New amending *clause 38O* amends Schedule 5 to include the term ‘associated entity’ in the Dictionary.

New amending *clause 38P* amends Schedule 5 to make refer to the definition of ‘spouse’ as applied under Chapter 12, Part 9, Division 5, s530C(1).

Clause 9 omits part 7 of the Bill.

Clause 10 amends new section 110G(7) of the *Penalties and Sentences Act 1992* as inserted by clause 47 to clarify that the reference to ‘chief executive’ is a reference to the chief executive

(corrective services). The chief executive (corrective services) is uniquely placed to comply with the statutory duty created by the provision and holds the necessary information to do so.

Clause 11 omits clause 64 of the Bill.

Clause 12 omits part 10 of the Bill.

Clause 13 inserts new clauses 78A to 78E to amend the *Workers' Compensation and Rehabilitation Act 2003*.

New amending *clause 78A* provides that the Act amends the *Workers' Compensation and Rehabilitation Act 2003*.

New amending *clause 78B* amends section 71 to include new subsections that will provide, in circumstances where a single employer does not meet one or more of the requirements of section 71(1)(a) to (g), that the Workers' Compensation Regulatory Authority (the Authority) has the discretion to issue or renew a licence if satisfied that special circumstances exist that warrant the single employer being issued a licence or warrant the renewal of a licence. In addition to the special circumstances, the Authority would need to be satisfied that the single employer is fit and proper to be a self-insurer, can appropriately perform the functions and exercise the powers of a self-insurer and meet the obligations of a self-insurer. The amendment further provides, without limitation, two examples of special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a single employer.

New amending *clause 78C* amends section 72 to include new subsections that will provide, in circumstances where a group employer does not meet one or more of the requirements of section 72(1)(a) to (h), that the Workers' Compensation Regulatory Authority (the Authority) has the discretion to issue or renew a licence if satisfied that special circumstances exist that warrant the group employer being issued a licence or warrant the renewal of a licence. In addition to the special circumstances, the Authority would need to be satisfied that the group employer is fit and proper to be a self-insurer, can appropriately perform the functions and exercise the powers of a self-insurer and meet the obligations of a self-insurer. The amendment further provides, without limitation, two examples of special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a group employer.

New amending *clause 78D* amends section 570 to provide that decisions of the Workers' Compensation Regulatory Authority (the Authority) made in respect to an application for issue or renewal of a self insurance licence that rely on the Authority considering special circumstances as provided in section 71(2) and 72(2) are appealable, however the court can not decide to issue or renew a licence to be a self-insurer under section 71(2) or 72(2). The court will have the power to confirm the decision of the Authority or to set aside the decision and return the matter to the Authority with the directions the court considers appropriate.

New amending *clause 78E* inserts new Chapter 30 that will provide transitional provisions for amendments made by the *Criminal Law and Other Legislation Amendment Act 2013*. The amendments will apply to all applications for issue or renewal of licence, including any application for renewal of licence that is currently within the review period as provided by section 80 of the Act, that were commenced before the date of assent.

Clause 14 amends the long title of the Bill to remove the references to the *Drug Court Act 2000*, the *Justices Act 1886* and the *Residential Tenancies and Rooming Accommodation Act*

2008; and to insert reference to the *Industrial Relations Act 1999* and the *Workers' Compensation and Rehabilitation Act 2003*.

©The State of Queensland 2013