



Queensland

Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005

Act No. 50 of 2005



Queensland

Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005

Contents

		Page
Part 1	Preliminary	
1	Short title	10
2	Commencement	10
Part 2	Amendment of Workers' Compensation and Rehabilitation Act 2003	
3	Act amended in pt 2 and sch	11
4	Insertion of new s 3A	11
	3A Notes in text	11
5	Amendment of s 5 (Workers' compensation scheme)	11
6	Insertion of new ch 1, pt 4, div 6, sdiv 3A	11
	Subdivision 3A When latent onset injuries arise	
	36A Date of injury	12
7	Replacement of s 40 (Meaning of rehabilitation)	12
	40 Meaning of rehabilitation	12
8	Replacement of s 41 (Meaning of rehabilitation coordinator).	13
	41 Meaning of rehabilitation and return to work coordinator	13
9	Amendment of s 42 (Meaning of suitable duties)	14
10	Amendment of s 71 (Issue or renewal of licence to a single employer)	14
11	Amendment of s 72 (Issue or renewal of licence to a group employer)	14
12	Replacement of s 78 (Duration of licence)	15
	78 Duration of licence	15
13	Amendment of s 92 (Powers of self-insurers).	15
14	Insertion of new ch 2, pt 4, divs 6 and 7	16

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

	Division 6	Self-insurers who become non-scheme employers	
	105	Application of div 6	16
	105A	Non-scheme employer must give notice to Authority	16
	105B	Non-scheme employer continues to be self-insurer for 12 months	17
	105C	Non-scheme employer continues to have obligation for rehabilitation	17
	105D	Authority may impose conditions on continued licence	17
	105E	Cancellation of continued licence	18
	105F	Transfer to WorkCover after cancellation	18
	105G	Particular functions and powers may be held by non-scheme employer after cancellation	19
	105H	Recovery of ongoing costs from non-scheme employer	19
	105I	Assessing liability after cancellation	21
	105J	Return of bank guarantee or cash deposit after cancellation	21
	Division 7	Member of a group who becomes non-scheme employer	
	105K	Application of div 7	22
	105L	Self-insurer must give notice to Authority	22
	105M	Non-scheme member continues as member of self-insurer for 12 months	23
	105N	Non-scheme member continues to have obligation for rehabilitation	23
	105O	Consequences of member becoming non-scheme member	23
15		Amendment of s 109 (Who must pay compensation).	24
16		Insertion of new ch 3, pt 3, div 5.	24
	Division 5	Workers with latent onset injuries that are terminal conditions	
	128A	Application of div 5	24
	128B	Entitlements of worker with terminal condition	24
	128C	Reduction of amount payable	25
17		Amendment of s 140 (Maximum entitlement).	25
18		Amendment of s 150 (Total incapacity—workers whose employment is governed by an industrial instrument)	26
19		Amendment of s 151 (Total incapacity—workers whose employment is not governed by industrial instrument)	26

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

20	Amendment of s 152 (Total incapacity—certain contract workers)	26
21	Amendment of s 157 (Total incapacity)	27
22	Amendment of s 159 (Total incapacity)	27
23	Amendment of s 192 (Additional lump sum compensation for certain workers)	27
24	Amendment of s 193 (Additional lump sum compensation for gratuitous care)	28
25	Amendment of s 200 (Total dependency)	28
26	Insertion of new s 201A	28
	201A Worker with non-dependent spouse, issue or next of kin	29
27	Amendment of s 202 (Workers under 21)	29
28	Amendment of s 205 (Variation of payments for injuries)	29
29	Amendment of s 220 (Insurer's responsibility for worker's rehabilitation)	29
30	Amendment of s 221 (Authority's responsibility for rehabilitation)	30
31	Amendment of s 226 (Employer's obligation to appoint rehabilitation coordinator)	30
32	Amendment of s 227 (Employer's obligation to have workplace rehabilitation policy and procedures)	31
33	Amendment of s 228 (Employer's obligation to assist or provide rehabilitation)	31
34	Amendment of s 238 (Worker with terminal condition)	31
35	Amendment of s 240 (Consequences, to costs, of seeking damages)	32
36	Replacement of s 310 (Application of div 1)	32
	310 Application of div 1	32
37	Amendment of s 453 (WorkCover's capital adequacy)	33
38	Amendment of s 458 (Reserves)	33
39	Replacement of ss 490–497.	33
	490 Object of ch 11	33
	491 Meaning of worker for ch 11	33
	492 Medical assessment tribunals to be maintained.	34
	493 Panels for tribunals	34
	494 Composition and constitution of tribunals.	34
40	Insertion of new s 511A	34
	511A Who can attend tribunal	34
41	Amendment of s 542 (Applying for review)	34

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

42	Amendment of s 544 (Decision-maker must give information to Authority)	35
43	Amendment of s 546 (Notice of review decision)	35
44	Insertion of new s 552A	35
	552A Conference	35
	552B Legal representation at appeal or conference	36
45	Amendment of s 553 (Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules)	36
46	Amendment of s 567 (Application of div 2)	36
47	Amendment of s 579 (Summary proceedings for offences other than against ch 8)	36
48	Amendment of s 625 (Appeals generally)	36
49	Insertion of new ch 18	37
	Chapter 18 Transitional provisions for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005	
	627 Definition for ch 18	37
	628 Latent onset injuries that are terminal conditions	37
	629 Maximum statutory compensation	37
	630 Weekly payment for total incapacity	38
	631 Compensation on worker's death	38
	632 Appointment of rehabilitation and return to work coordinator	38
	633 Existing rehabilitation coordinators	38
	634 Workplace rehabilitation policy and procedures	39
	635 Medical assessment tribunals	39
	636 Application of Industrial Relations (Tribunals) Rules	39
	637 Incorrect reference in s 625	39
50	Amendment of sch 2 (Who is a worker in particular circumstances)	40
51	Amendment of sch 6 (Dictionary)	40
Part 3	Amendment of Workplace Health and Safety Act 1995	
52	Act amended in pt 3 and sch	41
53	Omission of ss 5 and 6	41
54	Amendment of s 7 (Objective of Act)	41
55	Replacement of s 13 (Who is the principal contractor?)	42
	13 Who is the principal contractor for construction work	42
56	Replacement of s 13 (Who is the principal contractor for construction work)	43

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

	12A	Who is the client for construction work	43
	12B	Who is the project manager for construction work . . .	43
	13	Who is the principal contractor for construction work.	44
57		Replacement of ss 13A and 14	44
	14	What is construction work	44
58		Amendment of s 15A (Meaning of relevant workplace area)	45
59		Omission of s 17 (When is a self-employed person performing work?)	45
60		Replacement of s 22 (Ensuring workplace health and safety) . . .	45
	22	Ensuring workplace health and safety	46
61		Amendment of s 23 (Obligations for workplace health and safety)	46
62		Replacement of s 23 (Obligations for workplace health and safety)	46
	23	Obligations for workplace health and safety	47
63		Amendment of s 24 (Discharge of obligations)	47
64		Omission of s 24A (Charges for offences under s 24)	48
65		Amendment of s 26 (How obligations can be discharged if regulation etc. made)	48
66		Amendment of s 27 (How obligations can be discharged if no regulation etc. made)	48
67		Insertion of new s 27A	49
	27A	Managing exposure to risks	49
68		Replacement of ss 28–29B	50
	28	Obligations of persons conducting business or undertaking	50
	29	What obligations under s 28 include	51
69		Amendment of s 31 (Obligations of principal contractors)	51
70		Replacement of s 31 (Obligations of principal contractors)	52
	30A	Obligations of clients	52
	30B	Obligations of designers of structures	53
	30C	Obligations of project managers.	54
	31	Obligations of principal contractors	54
71		Amendment of s 34B (Obligation of designer of building or other structure used as a workplace)	55
72		Omission of s 34B (Obligation of designer of building or other structure used as a workplace)	56
73		Replacement of s 35 (Obligations of owners of specified high risk plant)	56
	35	Obligations of owners of plant	56

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

74	Amendment of s 36 (Obligations of workers and other persons at a workplace)	56
75	Amendment of s 38 (Regulations)	56
76	Amendment of s 42C (Ministerial notices in urgent circumstances)	57
77	Amendment of s 87 (Membership of committee)	57
78	Amendment of s 94 (Appointment of workplace health and safety officer by principal contractor)	57
79	Amendment of s 96 (Functions of workplace health and safety officers)	58
80	Replacement of s 97 (Employer and principal contractor to help workplace health and safety officer etc.)	58
	97 Employer and principal contractor to help workplace health and safety officer etc..	58
81	Amendment of s 104 (Entry to places)	59
82	Amendment of s 108 (General powers after entering places)	60
83	Replacement of s 110 (Inspector's power to seize dangerous places and things)	60
	110 Inspector's power to seize dangerous places and things	60
84	Amendment of s 122 (Power to require production of certain documents)	61
85	Amendment of s 147A (Definitions for pt 11)	62
86	Insertion of new pt 14, div 1B.	62
	Division 1B Workplace health and safety contributions	
	182B Purpose of div 1B.	62
	182C Definition for div 1B	62
	182D Workplace health and safety contribution to be paid	63
	182E Workplace health and safety contribution notice	63
	182F Working out workplace health and safety contribution amounts	64
	182G Confidentiality of information obtained from Commissioner of State Revenue	65
87	Replacement of s 184A (Appointment of principal contractors)	65
	184A Appointment of principal contractors	65
88	Amendment of s 184A (Appointment of principal contractors)	66
89	Insertion of new ss 185A and 185B	67
	185A Powers of chief executive to require production of particular documents	67

Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005 No. 50, 2005

	185B	Chief executive may require information from employers	68
	185C	Confidentiality of particular information	68
90		Insertion of new pt 17, div 3 and sch 1	69
	Division 3	Transitional provision for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005	
	192	Prosecution for offence against s 24	69
	Schedule 1	Prescribed activities	
91		Amendment of sch 3 (Dictionary)	71
	Part 4	Amendment of Industrial Relations Act 1999	
92		Act amended in pt 4	75
93		Amendment of s 93 (Dismissal of injured employees only after 6 months)	75
95		Amendment of s 267 (Commission's jurisdiction is exclusive) . . .	75
96		Insertion of new ch 20, pt 4	76
	Part 4	Transitional provision for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005	
	738	Dismissal of injured employee	76
Schedule		Minor amendments	77
		Workers' Compensation and Rehabilitation Act 2003	77
		Workplace Health and Safety Act 1995	80



Queensland

Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005

Act No. 50 of 2005

***An Act to amend the *Workers' Compensation and
Rehabilitation Act 2003*, the *Workplace Health and Safety Act
1995* and the *Industrial Relations Act 1999****

[Assented to 2 November 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*.

2 Commencement

- (1) Section 48 is taken to have commenced on 22 August 2005.
- (2) The following provisions commence on 1 January 2006—
 - section 8
 - sections 31(2) and (4) and 32
 - section 39
 - section 43
 - section 49 (to the extent it inserts sections 632, 634 and 635)
 - section 51(3)
 - sections 91(4) and (5).
- (3) Section 91(6) commences on 1 July 2006.
- (4) The following provisions commence on a day to be fixed by proclamation—
 - section 56
 - section 62
 - sections 70 and 72
 - section 88
 - section 91(3)
 - schedule, amendments of the *Workplace Health and Safety Act 1995*, items 5 and 6.

'Subdivision 3A When latent onset injuries arise

'36A Date of injury

- '(1) This section applies if a person—
 - (a) is diagnosed by a doctor after the commencement of this section as having a latent onset injury; and
 - (b) applies for compensation for the latent onset injury.
- '(2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained—
 - (a) whether the person was a worker under the Act when the injury was sustained;
 - (b) whether the injury was an injury under the Act when it was sustained.
- '(3) Section 131 applies to the application for compensation as if the entitlement to compensation arose on the day of the doctor's diagnosis.
- '(4) Subject to subsections (2) and (3), this Act applies in relation to the person's claim as if the date on which the injury was sustained is the date of the doctor's diagnosis.
- '(5) To remove any doubt, it is declared that nothing in subsection (4) limits section 236.
- '(6) Subsections (2) to (4) have effect despite section 603.
- '(7) In this section—

relevant compensation Act means this Act or a former Act.'

7 Replacement of s 40 (Meaning of *rehabilitation*)

Section 40—

omit, insert—

'40 Meaning of *rehabilitation*

- '(1) *Rehabilitation*, of a worker, is a process designed to—
 - (a) ensure the worker's earliest possible return to work; or

- (b) maximise the worker's independent functioning.
- '(2) **Rehabilitation** includes—
 - (a) necessary and reasonable—
 - (i) suitable duties programs; or
 - (ii) services provided by a registered person; or
 - (iii) services approved by an insurer; or
 - (b) the provision of necessary and reasonable aids or equipment to the worker.
- '(3) The purpose of **rehabilitation** is—
 - (a) to return the worker to the worker's pre-injury duties; or
 - (b) if it is not feasible to return the worker to the worker's pre-injury duties—to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer; or
 - (c) if paragraph (b) is not feasible—to return the worker, either temporarily or permanently, to other suitable duties with another employer; or
 - (d) if paragraphs (a), (b) and (c) are not feasible—to maximise the worker's independent functioning.'

8 Replacement of s 41 (Meaning of **rehabilitation coordinator**)

Section 41—

omit, insert—

'41 Meaning of **rehabilitation and return to work coordinator**

'A **rehabilitation and return to work coordinator** is a person who—

- (a) has met the criteria for becoming a rehabilitation and return to work coordinator prescribed under a regulation; and
- (b) has the functions prescribed under a regulation.'

9 Amendment of s 42 (Meaning of *suitable duties*)

Section 42(c), 'rehabilitation plan'—

omit, insert—

'rehabilitation and return to work plan'.

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

(1) Section 71(1)(g)(ii)(A)—

omit, insert—

'(A) are adequately serviced by a rehabilitation and return to work coordinator who is in Queensland and employed by the employer under a contract (regardless of whether the contract is a contract of service); and'.

(2) Section 71—

insert—

'(1A) Despite subsection (1)(b), the Authority may renew a licence to be a self-insurer to a single employer for a period of not more than 2 years if satisfied that—

(a) the net tangible assets of the employer are at least \$90m; and

(b) the employer has a strategy that will enable the employer to satisfy subsection (1)(b) in the short-term.'

11 Amendment of s 72 (Issue or renewal of licence to a group employer)

(1) Section 72(1)(h)(ii)(A)—

omit, insert—

'(A) are adequately serviced by a rehabilitation and return to work coordinator who is in Queensland and employed by the group employer or a member of the group under a contract (regardless of whether the contract is a contract of service); and'.

(2) Section 72—

insert—

‘(1A) Despite subsection (1)(c), the Authority may renew a licence to be a self-insurer to a group employer for a period of not more than 2 years if satisfied that—

- (a) the combined total net tangible assets of all members of the group are at least \$90m; and
- (b) the employer has a strategy that will enable the employer to satisfy subsection (1)(c) in the short-term.’.

12 Replacement of s 78 (Duration of licence)

Section 78—

omit, insert—

‘78 Duration of licence

- ‘(1) A licence is issued for a period of 2 years.
- ‘(2) However, on an application for the renewal of a licence, the licence may be issued for a period of not more than 4 years.
- ‘(3) The period of the licence must be stated in the licence.’.

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

(1) Section 92(4) to (6)—

omit, insert—

- ‘(4) A self-insurer may engage a person who is in Queensland, and who is employed by the self-insurer under a contract (regardless of whether the contract is a contract of service), to perform the self-insurer’s functions or exercise the self-insurer’s powers, other than the functions and powers set out under the following provisions—
- (a) for an injury sustained during the operation of this Act—sections 109, 199, 210 to 212, 216 to 219, 220(1) and 222 to 224 of this Act;

- (b) for an injury sustained during the operation of the *WorkCover Queensland Act 1996*—sections 135, 217, 228 to 230, 234, 235 and 237 to 241 of that Act;
 - (c) for an injury sustained during the operation of the *Workers' Compensation Act 1990*—sections 144, 145, 148 and 150 to 152 of that Act;
 - (d) for an injury sustained during the operation of the *Workers' Compensation Act 1916*—section 14D of that Act.’.
- (2) Section 92(7) and (8)—
renumber as section 92(5) and (6).

14 Insertion of new ch 2, pt 4, divs 6 and 7

After section 104—

insert—

‘Division 6 Self-insurers who become non-scheme employers

‘105 Application of div 6

‘This division applies if a self-insurer becomes a non-scheme employer.

‘105A Non-scheme employer must give notice to Authority

- ‘(1) The non-scheme employer must, by written notice, tell the Authority that the non-scheme employer has become a non-scheme employer.
- ‘(2) The non-scheme employer must give the notice to the Authority within 5 business days after receiving notice that it has been granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII.
- ‘(3) The non-scheme employer must also tell the Authority the exit date.

'105B Non-scheme employer continues to be self-insurer for 12 months

- '(1) The non-scheme employer is taken to continue to be a self-insurer for 12 months from the exit date for the purposes of the injuries mentioned in subsection (3).
- '(2) For subsection (1), the self-insurer's licence of the non-scheme employer (the *continued licence*) continues until it is cancelled under section 105E.
- '(3) The non-scheme employer is liable for compensation and damages for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker employed by the non-scheme employer that arise from an event happening or ending during the period the non-scheme employer was licensed as a self-insurer but before the exit date.
- '(4) The non-scheme employer continues to have the functions and powers of a self-insurer under section 92 or 92A for the injuries mentioned in subsection (3) for the period of 12 months after the exit date.

'105C Non-scheme employer continues to have obligation for rehabilitation

'Sections 228 and 229¹ continue to apply to the non-scheme employer after the exit date for the injuries mentioned in section 105B(3).

'105D Authority may impose conditions on continued licence

- '(1) The Authority may, by written notice to the non-scheme employer, during the period of 12 months after the exit date—
 - (a) impose conditions on the continued licence; or
 - (b) vary conditions imposed on the continued licence.

¹ Section 228 (Employer's obligation to assist or provide rehabilitation) and 229 (Employer's failure in relation to rehabilitation)

- (2) The non-scheme employer must comply with the conditions imposed on the continued licence.

Maximum penalty for subsection (2)—1000 penalty units.

'105E Cancellation of continued licence

'The continued licence is cancelled on the day that is 12 months after the exit date.

'105F Transfer to WorkCover after cancellation

'Other than as provided by section 105G, on cancellation of the continued licence—

- (a) the non-scheme employer's functions and powers as a self-insurer under section 92 or 92A² end; and
- (b) for all applications for compensation held by the non-scheme employer immediately before the cancellation—
 - (i) the non-scheme employer must immediately give WorkCover all documents relating to the applications; and
 - (ii) WorkCover has all its functions and powers; and
- (c) an application for compensation that, other than for this section, would have been lodged with the non-scheme employer as a self-insurer, must be lodged with WorkCover; and
- (d) WorkCover replaces the non-scheme employer, for any proceeding being taken, or that may be taken, by a claimant or worker against or by the non-scheme employer as a self-insurer, as an insurer in relation to the claimant or worker; and

² Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

- (e) WorkCover has the rights, and assumes the obligations, of the non-scheme employer as a self-insurer under the contract of reinsurance.

Maximum penalty for paragraph (b)(i)—200 penalty units.

'105G Particular functions and powers may be held by non-scheme employer after cancellation

- '(1) The purpose of this section is to authorise the non-scheme employer to perform functions and exercise powers as a self-insurer to manage claims arising during the period when the non-scheme employer was a self-insurer but before the exit date.
- '(2) If the Authority considers it appropriate, the Authority may, at the request of the non-scheme employer, allow the non-scheme employer to continue to have functions and powers as a self-insurer previously had by the non-scheme employer as a self-insurer under section 92 or 92A.³
- '(3) The Authority must give the non-scheme employer written notice of the functions and powers continued.
- '(4) The Authority may impose conditions on the functions and powers continued.
- '(5) The non-scheme employer has the functions and powers of a self-insurer as stated in the notice.

'105H Recovery of ongoing costs from non-scheme employer

- '(1) This section applies if, after the continued licence is cancelled, WorkCover—
- (a) pays compensation or damages for which the non-scheme employer is liable under section 68C or 87;⁴
or

3 Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

4 Section 68C (Local government self-insurer's liability for injury to councillors) or 87 (Self-insurer replaces WorkCover in liability for injury)

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

- (b) incurs management costs in managing compensation applications or damages actions for the compensation or damages mentioned in paragraph (a).
- ‘(2) The compensation or damages payments and management costs—
- (a) are a debt due to WorkCover by the non-scheme employer; and
 - (b) are payable within 20 business days after WorkCover’s written demand for payment, or a further period allowed by WorkCover.
- ‘(3) WorkCover may recover the debt from the unconditional bank guarantee or cash deposit if the non-scheme employer—
- (a) fails to pay the debt within the period; or
 - (b) authorises WorkCover to do so in writing.

Note—

See section 84 for reference to unconditional bank guarantee or cash deposit.

- ‘(4) If subsection (3) applies, WorkCover may, by written notice, ask the Authority to authorise the release of the amount of the debt to WorkCover from the unconditional bank guarantee or cash deposit.
- ‘(5) The Authority must make a decision about the release of the amount within 20 business days after being given the request.
- ‘(6) If the Authority refuses to release the amount, WorkCover may ask the Minister to give a direction under section 477.⁵
- ‘(7) In this section—
- management costs*** means the reasonable costs of administering the claims for which the non-scheme employer is liable.

5 Section 477 (Additional power to direct Authority)

'105I Assessing liability after cancellation

- '(1) WorkCover must appoint an actuary to assess the non-scheme employer's liability under section 105B(3).
- '(2) The amount of liability is the amount calculated under a regulation.
- '(3) The amount of liability assessed and management costs—
 - (a) are a debt due to WorkCover by the non-scheme employer; and
 - (b) are payable within 20 business days after the date of assessment, or a further period allowed by WorkCover.
- '(4) Without limiting subsection (3), if the non-scheme employer fails to pay the debt within the period, WorkCover may recover the debt from the unconditional bank guarantee or cash deposit.
- '(5) The Authority must retain the deposit or bank guarantee until the non-scheme employer's liability under section 105B(3) has been finalised as provided for under a regulation.
- '(6) In this section—

management costs means the reasonable costs of—

 - (a) administering the claims for which the non-scheme employer is liable; and
 - (b) the actuarial assessment of liability.

'105J Return of bank guarantee or cash deposit after cancellation

- '(1) This section applies if the non-scheme employer considers that all accrued, continuing, future and contingent liabilities of the non-scheme employer as a self-insurer have been discharged or adequately provided for.
- '(2) The non-scheme employer may, by written notice, ask the Authority to return the balance of the unconditional bank guarantee or cash deposit.
- '(3) The Authority must, within 60 business days after being given the request—

- (a) return the balance; or
 - (b) if the Authority considers that all accrued, continuing, future and contingent liabilities of the non-scheme employer as a self-insurer have not been discharged or adequately provided for—give the non-scheme employer a written notice refusing to return the balance and stating the reasons for the refusal.
- ‘(4) If the Authority refuses to return the balance, the non-scheme employer may appeal under chapter 13.⁶
- ‘(5) In this section—
return includes relinquish.

‘Division 7 Member of a group who becomes non-scheme employer

‘105K Application of div 7

‘This division applies if a member of a group employer that is a self-insurer becomes a non-scheme employer (the *non-scheme member*).

‘105L Self-insurer must give notice to Authority

- ‘(1) The self-insurer of which the non-scheme member is a member must, by written notice, tell the Authority that the non-scheme member has become a non-scheme employer.
- ‘(2) The notice must be given within 5 business days after the non-scheme member receives notice that the non-scheme member has been granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII.
- ‘(3) The self-insurer must tell the Authority the exit date of the non-scheme member.

⁶ Chapter 13 (Reviews and appeals)

- ‘(4) The Authority must consider whether the self-insurer, after the change, meets the requirements for a self-insurer’s licence for a group employer.

‘105M Non-scheme member continues as member of self-insurer for 12 months

- ‘(1) The non-scheme member is taken to continue to be a member of the self-insurer for 12 months from the exit date for the purposes of the injuries mentioned in subsection (2).
- ‘(2) The self-insurer is liable for compensation and damages for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker employed by the non-scheme member that arise from an event happening or ending during the period the non-scheme member was a member of the self-insurer but before the exit date.

‘105N Non-scheme member continues to have obligation for rehabilitation

‘Sections 228 and 229 continue to apply to the non-scheme member after the exit date for the injuries mentioned in section 105M(2).

‘105O Consequences of member becoming non-scheme member

- ‘(1) At the end of 12 months after the exit date, the self-insurer must pay WorkCover an amount for the non-scheme member’s total liability.
- ‘(2) For subsection (1), WorkCover is liable for compensation and damages for the non-scheme member’s total liability for all injuries sustained by a worker employed by the non-scheme member that arise from an event happening or ending during the period the non-scheme member was a member of the self-insurer but before the exit date.
- ‘(3) The total liability must be—

- (a) calculated in the way prescribed under a regulation by an actuary approved by the Authority; and
- (b) paid within the time allowed under a regulation.’.

15 Amendment of s 109 (Who must pay compensation)

- (1) Section 109(5)—
renumber as section 109(6).
- (2) Section 109—
insert—
- ‘(5) Subsection (4) applies only until WorkCover has allowed a claimant’s application for compensation under section 134.’.

16 Insertion of new ch 3, pt 3, div 5

After section 128—

insert—

‘Division 5 Workers with latent onset injuries that are terminal conditions

‘128A Application of div 5

‘This division applies to a worker if a latent onset injury sustained by the worker is a terminal condition.

‘128B Entitlements of worker with terminal condition

- ‘(1) The worker is entitled to compensation for the latent onset injury calculated only under this division.
- ‘(2) The worker is entitled to lump sum compensation equal to the sum of the following amounts—
 - (a) \$200000;
 - (b) 10% of the amount payable under paragraph (a);

- (c) additional lump sum compensation of up to \$200000 payable according to a graduated scale prescribed under a regulation, having regard to the age of the worker when the worker lodges an application for compensation for the latent onset injury.
- ‘(3) However, the amount payable under subsection (2)(a) is subject to any reduction made under section 128C.
- ‘(4) The worker is also entitled to compensation under chapter 4, part 2, but only until the worker receives lump sum compensation under subsection (2).

‘128C Reduction of amount payable

- ‘(1) This section applies if any of the following payments have been made in relation to the worker’s latent onset injury—
 - (a) a weekly payment of compensation;
 - (b) a redemption payment;
 - (c) a payment of lump sum compensation;
 - (d) a payment of compensation or damages under a law of Queensland, another State or of the Commonwealth.
- ‘(2) The amount of compensation payable under section 128B(2)(a) must be reduced by the total of all payments mentioned in subsection (1).’.

17 Amendment of s 140 (Maximum entitlement)

- (1) Section 140(1), after ‘event’—

insert—

‘, other than for a latent onset injury that is a terminal condition,’.
- (2) Section 140(1)(a), ‘\$174625’—

omit, insert—

‘\$200000’.
- (3) Section 140(1)(b), ‘\$174625’—

omit, insert—

‘\$200000’.

- (4) After section 140(1)—

insert—

Note—

For the entitlement to compensation of a worker who has sustained a latent onset injury that is a terminal condition, see chapter 3, division 5.’.

18 Amendment of s 150 (Total incapacity—workers whose employment is governed by an industrial instrument)

Section 150(1)(b) and (c), ‘39 weeks’—

omit, insert—

‘52 weeks’.

19 Amendment of s 151 (Total incapacity—workers whose employment is not governed by industrial instrument)

- (1) Section 151(1)(a)(ii), ‘70%’—

omit, insert—

‘80%’.

- (2) Section 151(b) and (c), ‘39 weeks’—

omit, insert—

‘52 weeks’.

- (3) Section 151(1)(b)(ii), ‘65%’—

omit, insert—

‘70%’.

20 Amendment of s 152 (Total incapacity—certain contract workers)

- (1) Section 152(1)(b) and (c), ‘39 weeks’—

omit, insert—

'52 weeks'.

- (2) Section 152(1)(b)(ii), '65%'—
omit, insert—
'70%'.

21 Amendment of s 157 (Total incapacity)

- (1) Section 157(5)(a)(i) and (6)(b), '70%'—
omit, insert—
'80%'.
- (2) Section 157(5)(b) and (c), '39 weeks'—
omit, insert—
'52 weeks'.
- (3) Section 157(5)(b)(i), '65%'—
omit, insert—
'70%'.

22 Amendment of s 159 (Total incapacity)

- (1) Section 159(1)(b) and (c), '39 weeks'—
omit, insert—
'52 weeks'.
- (2) Section 159(1)(b)(i)(B), '65%'—
omit, insert—
'70%'.

23 Amendment of s 192 (Additional lump sum compensation for certain workers)

Section 192(2), '\$174625'—
omit, insert—
'\$182620'.

24 Amendment of s 193 (Additional lump sum compensation for gratuitous care)

Section 193(6), '\$216635'—

omit, insert—

'\$226555'.

25 Amendment of s 200 (Total dependency)

(1) Section 200(2)(a), '\$300000'—

omit, insert—

'\$374625'.

(2) Section 200(2)(b), '\$10925'—

omit, insert—

'\$20000'.

(3) Section 200(2)(c), '7%'—

omit, insert—

'10%'.

(4) Section 200(2)—

insert—

'(aa) if the worker has left a totally dependent spouse, for the spouse—\$10000; and

(ab) if the worker has left a totally dependent spouse and dependent members of the worker's family who are under 6, for the spouse—a weekly amount equal to 8% of QOTE while a dependent member is under 6; and'.

26 Insertion of new s 201A

After section 201—

insert—

'201A Worker with non-dependent spouse, issue or next of kin

- '(1) This section applies if a worker left no dependants but is survived by any of the following—
- (a) a spouse;
 - (b) issue within the meaning of the *Succession Act 1981*;
 - (c) next of kin within the meaning of the *Succession Act 1981*.
- '(2) The amount of compensation payable to the worker's estate is 10% of the amount payable under section 200(2)(a).'

27 Amendment of s 202 (Workers under 21)

Section 202(2) and (3)(a), '\$16480'—
omit, insert—
'\$22500'.

28 Amendment of s 205 (Variation of payments for injuries)

Section 205(1), before 'part'—
insert—
'part 3, division 5 or'.

29 Amendment of s 220 (Insurer's responsibility for worker's rehabilitation)

- Section 220—
insert—
- '(2) An insurer is responsible for coordinating the development and maintenance of a rehabilitation and return to work plan in consultation with the injured worker, the worker's employer and treating registered persons.'

30 Amendment of s 221 (Authority's responsibility for rehabilitation)

- (1) Section 221(b)—
omit.
- (2) Section 221(c)—
renumber as section 221(b).

31 Amendment of s 226 (Employer's obligation to appoint rehabilitation coordinator)

- (1) Section 226, heading—
omit, insert—

'226 Employer's obligation to appoint rehabilitation and return to work coordinator'.

- (2) Section 226(1)—
omit, insert—
- '(1) An employer must appoint a rehabilitation and return to work coordinator if the employer meets criteria prescribed under a regulation.'
- (3) Section 226(2)—
omit, insert—
- '(2) The rehabilitation and return to work coordinator must be in Queensland and be employed by the employer under a contract (regardless of whether the contract is a contract of service).'
- (4) Section 226(3) and (4)—
omit, insert—
- '(3) The employer must, unless the employer has a reasonable excuse, appoint the rehabilitation and return to work coordinator—
 - (a) within 6 months after—
 - (i) establishing a workplace; or
 - (ii) starting to employ workers at a workplace; or

- (b) within a later period approved by the Authority.
Maximum penalty—50 penalty units.’.

32 Amendment of s 227 (Employer’s obligation to have workplace rehabilitation policy and procedures)

- (1) Section 227(1), from ‘employs’—
omit, insert—
‘meets criteria prescribed under a regulation.’.
- (2) Section 227(3)(a)(i) and (ii)—
omit, insert—
(i) establishing a workplace; or
(ii) starting to employ workers at a workplace; or’.

33 Amendment of s 228 (Employer’s obligation to assist or provide rehabilitation)

- Section 228(3), before ‘evidence’—
insert—
‘written’.

34 Amendment of s 238 (Worker with terminal condition)

- (1) Section 238(3)—
renumber as section 238(4).
- (2) Section 238—
insert—
- ‘(3) Also, if a latent onset injury sustained by the worker is a terminal condition, the following provisions of this chapter do not apply to the worker—
- (a) section 250;
- (b) section 251(4)(a);
- (c) section 254(1)(c);

- (d) section 255(4)(b);
 - (e) section 258(1)(b);
 - (f) section 259(4)(c).⁸⁷.
- (3) Section 238(4), as renumbered, after 'subsection (2)'—
insert—
 'or (3)'.

35 Amendment of s 240 (Consequences, to costs, of seeking damages)

- (1) Section 240(2) and (3)—
renumber as section 240(3) and (4).
- (2) Section 240—
insert—
- '(2) If the claimant is a worker and chapter 3, part 3, division 5 applies to the worker, part 12, division 1 applies in relation to costs in the claimant's proceeding for damages.'

36 Replacement of s 310 (Application of div 1)

Section 310—
omit, insert—

'310 Application of div 1

'This division applies only if the claimant is—

- (a) a worker, if the worker's WRI is 20% or more; or
- (b) a worker, if a latent onset injury sustained by the worker is a terminal condition; or
- (c) a dependant.'

8 Section 250 (Claimant may seek damages only after being assessed), 251 (Need for urgent proceedings), 254 (Access to damages if application for compensation is subject to review or appeal), 255 (Need for urgent proceedings), 258 (Access to damages if claimant has not lodged application for compensation), 259 (Need for urgent proceedings)

37 Amendment of s 453 (WorkCover's capital adequacy)

Section 453(2)—

omit.

38 Amendment of s 458 (Reserves)

Section 458(2)—

omit.

39 Replacement of ss 490–497

Sections 490 to 497—

omit, insert—

'490 Object of ch 11

'The object of this chapter is to provide for an independent system of medical review and assessment of—

- (a) injury and impairment sustained by workers or other persons for which compensation is payable under this Act; and
- (b) other personal injury sustained by persons for which payment of an amount is payable under an Act prescribed under a regulation.

'491 Meaning of worker for ch 11

'For this chapter or a regulation made for this chapter, *worker* includes—

- (a) a person to whom compensation is payable under this Act for injury, including impairment or disfigurement; and
- (b) a person to whom an amount is payable for any personal injury under an Act prescribed under a regulation.

Note—

This chapter deals with injury in terms of injury, impairment and disfigurement.

'492 Medical assessment tribunals to be maintained

'There are to be maintained for this Act and other Acts prescribed under a regulation the medical assessment tribunals that are prescribed under a regulation.

'493 Panels for tribunals

- '(1) The Governor in Council, by gazette notice, may appoint, for a specified period of not more than 3 years, a panel of doctors for designation to a tribunal.
- '(2) Each appointee to a panel for a tribunal must be a specialist in the speciality for which the appointment is made.
- '(3) The Governor in Council, by gazette notice, may also appoint—
 - (a) an appointee to a panel for a tribunal to be chairperson of the tribunal; and
 - (b) at least 2 appointees to a panel for a tribunal to be deputy chairpersons of the tribunal.

'494 Composition and constitution of tribunals

'The composition and constitution of the medical assessment tribunals are as prescribed under a regulation.'

40 Insertion of new s 511A

After section 511—

insert—

'511A Who can attend tribunal

'Only the worker, or counsel, solicitor or agent nominated by the worker may be present before the tribunal.'

41 Amendment of s 542 (Applying for review)

- (1) Section 542(1), after 'or failure'—

insert—

‘, unless subsection (4) applies’.

(2) Section 542(4)(c), after ‘reasons’—

insert—

‘, regardless of whether the reasons addressed the matters prescribed under a regulation’.

42 Amendment of s 544 (Decision-maker must give information to Authority)

Section 544(1)(a)—

insert—

‘(iii) if the Authority believes on reasonable grounds that the reasons given by the decision-maker for the decision-maker’s decision have not addressed the matters prescribed under a regulation for section 540(4)—reasons for the decision that address those matters; or’.

43 Amendment of s 546 (Notice of review decision)

After section 546(3)—

insert—

‘(3AA) The reasons for the decision must address the matters prescribed under a regulation.’.

44 Insertion of new s 552A

After section 552—

insert—

‘552A Conference

‘(1) If the appeal is to the industrial commission, the industrial commission may, before the hearing of the matter, call a conference of the parties.

‘(2) The parties must attend the conference.

'552B Legal representation at appeal or conference

'A party may be represented by a lawyer at a conference called under section 552A or at the hearing of an appeal, but only with—

- (a) the agreement of the parties; or
- (b) the appeal body's leave.'

45 Amendment of s 553 (Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules)

Section 553(1), ' , rules 96 to 98'—

omit.

46 Amendment of s 567 (Application of div 2)

Section 567(f), 'section 103' and footnote—

omit, insert—

'section 103 or 105J⁹'.

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

Section 579(1A), 'WorkCover'—

omit, insert—

'an insurer'.

48 Amendment of s 625 (Appeals generally)

Section 625, 'chapter 3, part 3, division 1,' and footnote—

9 Section 103 (Return of bank guarantee or cash deposit after cancellation) or 105J (Return of bank guarantee or cash deposit after cancellation)

omit, insert—

‘chapter 13, part 3, division 1,¹⁰’.

49 Insertion of new ch 18

After section 626—

insert—

‘Chapter 18 Transitional provisions for Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2005

‘627 Definition for ch 18

‘In this chapter—

amending Act means the *Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2005*.

‘628 Latent onset injuries that are terminal conditions

‘The provisions of chapter 3, part 3, division 5¹¹ only apply if a worker’s application for compensation is lodged on or after the commencement of this section.

‘629 Maximum statutory compensation

‘Section 140,¹² as in force immediately before the commencement of this section, continues to apply in relation

10 Chapter 13 (Reviews and appeals), part 3 (Appeals), division 1 (Appeal to industrial magistrate, industrial commission or Industrial Court)

11 Chapter 3 (Compensation), part 3 (Compensation entitlements of particular workers), division 5 (Workers with latent onset injuries that are terminal conditions)

12 Section 140 (Maximum entitlement)

to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

'630 Weekly payment for total incapacity

'The provisions of chapter 3, part 9, division 4,¹³ as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

'631 Compensation on worker's death

'The amendments of this Act made by sections 25 to 27 of the amending Act apply only in relation to an injury sustained by a worker that result in the death of a worker on or after the commencement of this section.

'632 Appointment of rehabilitation and return to work coordinator

- '(1) This section applies if—
- (a) before the commencement of this section, an employer did not have an obligation to appoint a rehabilitation and return to work coordinator; and
 - (b) on the commencement of this section, the employer has an obligation to appoint a rehabilitation and return to work coordinator.
- '(2) The employer must appoint a rehabilitation and return to work coordinator on or before 1 July 2006.

'633 Existing rehabilitation coordinators

'A person who was a rehabilitation coordinator immediately before the commencement of this section is taken to be a

13 Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity)

rehabilitation and return to work coordinator on the commencement.

'634 Workplace rehabilitation policy and procedures

- '(1) This section applies if—
- (a) before the commencement of this section, an employer did not have an obligation to have workplace rehabilitation policy and procedures; and
 - (b) on the commencement of this section, the employer has an obligation to have workplace rehabilitation policy and procedures.
- '(2) The employer must have workplace rehabilitation policy and procedures on 1 July 2006.

'635 Medical assessment tribunals

- '(1) Each medical assessment tribunal in existence immediately before the commencement of this section continues in existence after the commencement as if it were established under chapter 11.
- '(2) Each appointment of a person to a medical assessment tribunal that is in force immediately before the commencement of this section continues after the commencement.

'636 Application of Industrial Relations (Tribunals) Rules

'The amendment of this Act made by section 45 of the amending Act applies only to an appeal started on or after the commencement of this section.

'637 Incorrect reference in s 625

'It is declared that the reference to chapter 3, part 3, division 1 in section 625, as inserted by the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* and before its amendment by the amending Act, is taken always to have been a reference to chapter 13, part 3, division 1.'

50 Amendment of sch 2 (Who is a worker in particular circumstances)

Schedule 2, part 2, section 1(d)—

omit, insert—

‘(d) the Commonwealth or a Commonwealth authority.’.

51 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definitions *rehabilitation coordinator* and *terminal condition*—

omit.

(2) Schedule 6—

insert—

‘***exit date***, for a non-scheme employer, means the date on which an employer becomes a non-scheme employer.

latent onset injury means an insidious disease.

non-scheme employer means an employer that—

(a) on or after the commencement of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*, section 14, is granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII;¹⁴ and

(b) would, if the licence had not been granted, be required to have the employer's liability provided for—

(i) under a licence as a self-insurer under chapter 2, part 4; or

(ii) under a WorkCover policy.

non-scheme member see section 105K.

rehabilitation and return to work coordinator see section 41.

¹⁴ *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII (Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims)

rehabilitation and return to work plan means a written plan outlining the rehabilitation objectives and the steps required to achieve the objectives.

terminal condition see section 39A.’.

- (3) Schedule 6, definition *medical assessment tribunal*—

omit, insert—

‘***medical assessment tribunal*** means a medical assessment tribunal established under chapter 11.’.

Part 3 Amendment of Workplace Health and Safety Act 1995

52 Act amended in pt 3 and sch

This part and the schedule amend the *Workplace Health and Safety Act 1995*.

53 Omission of ss 5 and 6

Sections 5 and 6—

omit.

54 Amendment of s 7 (Objective of Act)

- (1) Section 7(1) and (2)—

omit, insert—

- ‘(1) The objective of this Act is to prevent a person’s death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace.

Example of an illness caused by a workplace—

asthma caused by inhaling spray paint mist from a neighbouring workplace

*Workers' Compensation and Rehabilitation and Other No. 50, 2005
Acts Amendment Act 2005*

Example of an illness caused by a work activity—

carbon monoxide poisoning caused by a liquefied petroleum gas operated forklift being used in a coldroom

Example of an illness caused by plant—

legionnaire's disease caused by inhaling legionella bacteria from the contaminated cooling tower of an air conditioning unit

'(2) The objective is achieved by preventing or minimising a person's exposure to the risk of death, injury or illness caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace.'

(2) Section 7(3)(d)—

omit, insert—

'(d) providing for the development of accredited training programs for delivery and assessment of competence by—

(i) accredited providers; and

(ii) registered training organisations as defined under the *Vocational Education, Training and Employment Act 2000*, section 14; and'.

(3) Section 7(3)—

insert—

'(g) providing for the collection of a workplace health and safety contribution and for the collection of statistical data for the purposes of workplace health and safety regulation and related education and prevention services.'

55 Replacement of s 13 (Who is the *principal contractor*?)

Section 13—

omit, insert—

'13 Who is the *principal contractor* for construction work

'(1) The *principal contractor* for construction work is the person appointed by the owner of the workplace, where the

construction work is to be performed, as the principal contractor for the construction work under section 184A.¹⁵

- ‘(2) If the owner does not appoint a principal contractor for the construction work, the owner is taken to be the principal contractor for the construction work.’.

56 Replacement of s 13 (Who is the *principal contractor* for construction work)

Section 13—

omit, insert—

‘12A Who is the *client* for construction work

- ‘(1) The *client* for construction work is the person who commissions the construction work and—
- (a) engages a project manager to plan and manage construction work; or
 - (b) appoints a principal contractor to manage and perform construction work.
- ‘(2) Subsection (1) does not apply if—
- (a) the construction work is for a structure that is a class 1a building; or
 - (b) the construction work is not a prescribed activity, and the estimated final price for the construction work is \$80000 or less.

‘12B Who is the *project manager* for construction work

- ‘(1) The *project manager* for construction work is the person engaged by the client to carry out the planning and management of the construction work.
- ‘(2) Subsection (1) does not apply if—
- (a) the construction work is for a structure that is a class 1a building; or

15 Section 184A (Appointment of principal contractors)

- (b) the construction work is not a prescribed activity, and the estimated final price for the construction work is \$80000 or less.

'13 Who is the *principal contractor* for construction work

- '(1) The *principal contractor* for construction work is the person appointed by the client as the principal contractor for the construction work under section 184A.¹⁶
- '(2) If the client does not appoint a principal contractor for the construction work, the client is taken to be the principal contractor for the construction work.
- '(3) If there is no client for the construction work, the person who commissions the construction work is taken to be the principal contractor for the construction work.'

57 Replacement of ss 13A and 14

Sections 13A and 14—

omit, insert—

'14 What is *construction work*

- '(1) Work is *construction work* if it is—
 - (a) work to erect, construct, extend, alter, convert, fit-out, commission, renovate, repair, refurbish, disassemble or decommission a structure, or part of a structure; or
 - (b) work connected with site preparation, excavation and landscaping for work mentioned in paragraph (a); or
 - (c) the assembly or installation of prefabricated components to form a structure, or part of a structure, for work mentioned in paragraph (a); or
 - (d) the disassembly of prefabricated components for work mentioned in paragraph (a) that, immediately before the disassembly, formed a structure or part of a structure; or
 - (e) an activity that is a prescribed activity.

¹⁶ Section 184A (Appointment of principal contractors)

- ‘(2) Work is not **construction work** to the extent it is carried out at a workplace, as part of a business or undertaking, if the work is to erect or construct a structure that, when erected or constructed, is intended to be transported to another place.

Example of what is not construction work—

construction of a manufactured home or prefabricated building

- ‘(3) Construction work is taken to stop—
- (a) when the construction work at the workplace where the construction work is being performed ends and possession of the workplace is returned to the owner of the workplace; or
 - (b) if the owner remains in possession of the workplace where the construction work is being performed while the work is performed—when the construction work at the workplace ends.’.

58 Amendment of s 15A (Meaning of *relevant workplace area*)

Section 15A, ‘building or other structure’—

omit, insert—

‘place’.

59 Omission of s 17 (When is a self-employed person performing work?)

Section 17—

omit.

60 Replacement of s 22 (Ensuring workplace health and safety)

Section 22—

omit, insert—

'22 Ensuring workplace health and safety

'Workplace health and safety is ensured when persons are free from—

- (a) death, injury or illness caused by any workplace, relevant workplace area, work activities, or plant or substances for use at a workplace; and
- (b) risk of death, injury or illness created by any workplace, relevant workplace area, work activities, or plant or substances for use at a workplace.'

61 Amendment of s 23 (Obligations for workplace health and safety)

Section 23(1)—

omit, insert—

- '(1) The following persons have obligations under division 2 to ensure workplace health and safety—
- persons who conduct a business or undertaking, whether as employers, self-employed persons or otherwise
 - persons in control of workplaces
 - principal contractors
 - designers, manufacturers and suppliers of plant
 - erectors and installers of plant
 - owners of plant
 - manufacturers and suppliers of substances
 - designers of structures to be used as workplaces
 - persons in control of relevant workplace areas
 - persons in control of fixtures, fittings or plant included in relevant workplace areas.'

62 Replacement of s 23 (Obligations for workplace health and safety)

Section 23—

omit, insert—

'23 Obligations for workplace health and safety

- '(1) The following persons have obligations under division 2 to ensure workplace health and safety—
- persons who conduct a business or undertaking, whether as employers, self-employed persons or otherwise
 - persons in control of workplaces
 - designers, manufacturers and suppliers of plant
 - erectors and installers of plant
 - owners of plant
 - manufacturers and suppliers of substances
 - persons in control of relevant workplace areas
 - persons in control of fixtures, fittings or plant included in relevant workplace areas.
- '(2) In addition, the following persons have obligations under division 2 to ensure workplace health and safety for construction work—
- clients
 - designers of structures
 - project managers
 - principal contractors.
- '(3) Designers of structures continue to have obligations under section 30B to ensure workplace health and safety after the structure has been constructed.
- '(4) Workers and other persons at workplaces have obligations under division 3 to ensure workplace health and safety.'

63 Amendment of s 24 (Discharge of obligations)

Section 24—

insert—

- ‘(3) If more than 1 person has a workplace health and safety obligation for a matter, each person—
- (a) retains responsibility for the person’s workplace health and safety obligation for the matter; and
 - (b) must discharge the person’s workplace health and safety obligation to the extent the matter is within the person’s control; and
 - (c) must consult, and cooperate, with all other persons who have a workplace health and safety obligation for the matter.’.

64 Omission of s 24A (Charges for offences under s 24)

Section 24A—

omit.

65 Amendment of s 26 (How obligations can be discharged if regulation etc. made)

- (1) Section 26(1) and (2), ‘may discharge’—

omit, insert—

‘discharges’.

- (2) Section 26(3)(b)—

omit, insert—

‘(b) doing all of the following—

- (i) adopting and following another way that gives the same level of protection against the risk;
- (ii) taking reasonable precautions;
- (iii) exercising proper diligence.’.

66 Amendment of s 27 (How obligations can be discharged if no regulation etc. made)

Section 27(2) and (3)—

omit, insert—

- '(2) A person discharges the person's workplace health and safety obligation for exposure to the risk by doing both of the following—
- (a) adopting and following any way to discharge the person's workplace health and safety obligation for exposure to the risk;
 - (b) taking reasonable precautions, and exercising proper diligence, to ensure the obligation is discharged.'

67 Insertion of new s 27A

Part 3, division 1, after section 27—

insert—

'27A Managing exposure to risks

- '(1) To properly manage exposure to risks, a person must—
- (a) identify hazards; and
 - (b) assess risks that may result because of the hazards; and
 - (c) decide on appropriate control measures to prevent, or minimise the level of, the risks; and
 - (d) implement control measures; and
 - (e) monitor and review the effectiveness of the measures.
- '(2) To properly manage exposure to risks, a person should consider the appropriateness of control measures in the following order—
- (a) eliminating the hazard or preventing the risk;
 - (b) if eliminating the hazard or preventing the risk is not possible, minimising the risk by measures that must be considered in the following order—
 - (i) substituting the hazard giving rise to the risk with a hazard giving rise to a lesser risk;
 - (ii) isolating the hazard giving rise to the risk from anyone who may be at risk;
 - (iii) minimising the risk by engineering means;

- (iv) applying administrative measures;
- (v) using personal protective equipment.

Examples of subparagraph (iii)—

redesigning work, plant, equipment, components or premises

Examples of subparagraph (iv)—

training, reasonable hours of work

- ‘(3) However, this Act also specifies particular ways in which workplace health and safety must be ensured in particular circumstances.
- ‘(4) Compliance with subsection (1) does not excuse a person from an obligation to ensure workplace health and safety or a particular obligation imposed on the person under this Act.’.

68 Replacement of ss 28–29B

Sections 28 to 29B—

omit, insert—

‘28 Obligations of persons conducting business or undertaking

- ‘(1) A person (the *relevant person*) who conducts a business or undertaking has an obligation to ensure the workplace health and safety of the person, each of the person’s workers and any other persons is not affected by the conduct of the relevant person’s business or undertaking.
- ‘(2) The obligation is discharged if the person, each of the person’s workers and any other persons are not exposed to risks to their health and safety arising out of the conduct of the relevant person’s business or undertaking.
- ‘(3) The obligation applies—
 - (a) whether or not the relevant person conducts the business or undertaking as an employer, self-employed person or otherwise; and

- (b) whether or not the business or undertaking is conducted for gain or reward; and
- (c) whether or not a person works on a voluntary basis.

'29 What obligations under s 28 include

'Without limiting section 28, discharging an obligation under the section includes, having regard to the circumstances of any particular case, doing all of the following—

- (a) providing and maintaining a safe and healthy work environment;
- (b) providing and maintaining safe plant;
- (c) ensuring the safe use, handling, storage and transport of substances;
- (d) ensuring safe systems of work;
- (e) providing information, instruction, training and supervision to ensure health and safety.'

69 Amendment of s 31 (Obligations of principal contractors)

- (1) Section 31(1), 'for a construction workplace'—

omit.

- (2) Section 31(1)(a), 'construction'—

omit.

- (3) Section 31(1)(a)(ii)—

omit, insert—

'(ii) to help any other person at the workplace to discharge the person's workplace health and safety obligations;'

- (4) Section 31(2) and (3)—

omit, insert—

- '(2) In addition, the principal contractor has the obligation mentioned in subsection (3) if the principal contractor reasonably believes, or should reasonably believe, that a

person at the workplace is not discharging the person's workplace health and safety obligation.

- '(3) The principal contractor must—
- (a) direct the person to comply with the person's workplace health and safety obligation; and
 - (b) if the person fails to comply with the direction—ensure the person stops work until the person complies with the obligation.'

70 Replacement of s 31 (Obligations of principal contractors)

Section 31—

omit, insert—

'30A Obligations of clients

- '(1) A client has an obligation to consult with—
- (a) if a designer designed a structure that is, or is part of, construction work—the designer about how the construction work in connection with the design can be undertaken in a way that prevents or minimises all risks to health and safety; and
 - (b) if there is a project manager for the construction work—the project manager about how the construction work can be planned and managed in a way that prevents or minimises all risks to health and safety; and
 - (c) if there is a principal contractor for the construction work—the principal contractor about how the construction work can be undertaken in a way that prevents or minimises all risks to health and safety.
- '(2) If the client is aware of any information about hazards and risks relating to the site at which the construction work is to be undertaken, the client must give this information to the designer, project manager or principal contractor.

Examples of hazards and risks relating to a site—

- overhead power lines
- access and egress

underground services
adjoining neighbours
asbestos

'30B Obligations of designers of structures

- '(1) A designer of a structure has an obligation to ensure the design of the structure does not affect the workplace health and safety of persons—
- (a) during construction of the structure; and
 - (b) when the structure has been constructed and is being used for the purpose for which it was designed.

Examples of persons to whom obligations are owed—

- persons involved in the construction of the structure
- persons who work in the structure after it has been constructed
- persons who maintain or repair the structure or any fixtures, fittings or plant in, or forming part of the structure

- '(2) The obligation is discharged if persons are not exposed to risks to their health or safety arising out of the design.

Examples of matters that might be considered in discharging a designer's obligation under this section—

- availability of anchorage points for window cleaners
- adequacy of ventilation
- adequacy of lighting in plant rooms
- ease of access to the building for maintenance purposes
- provision for maintenance and servicing of airconditioning units
- adequacy of trafficable surfaces

- '(3) Without limiting the designer's obligation under subsection (1), the designer must give the client a written report on the health and safety aspects of the design before construction work starts.

- '(4) For deciding, after the structure has been designed, whether the designer discharged the designer's workplace health and safety obligation under subsection (1), regard must be had to

the standards of design prevailing when the designer designed the structure.

‘(5) The designer’s obligation under subsection (1) applies only to the extent that the content of the design of the structure falls under the control of the designer.

‘(6) In this section—

structure does not include a structure that is a class 1a building.

‘30C Obligations of project managers

‘(1) A project manager has an obligation to ensure construction work is planned and managed in a way that prevents or minimises risks to the health and safety of—

(a) all persons undertaking the construction work; and

(b) persons at or near the workplace during the construction work.

‘(2) Without limiting the project manager’s obligation under subsection (1), the project manager must give the client a written report on the health and safety aspects of the construction work before the construction work starts.

‘31 Obligations of principal contractors

‘(1) A principal contractor has an obligation to ensure the workplace health and safety of persons arising from—

(a) a hazard at the workplace for which no other person owes a workplace health and safety obligation; and

(b) anything that has been provided for the general use of persons at the workplace.

‘(2) Without limiting the principal contractor’s obligation under subsection (1), the principal contractor must—

(a) coordinate, supervise and oversee construction work in a way that prevents or minimises risks to the health and safety of persons at or near the workplace during the work; and

- (b) consult with each of the following persons who are involved in the construction work in relation to identifying hazards associated with the construction work and assessing risks that may result because of the hazards—
- the designer;
 - the project manager;
 - any other relevant person; and
- (c) notify another person of any matter of which the principal contractor is aware, or should reasonably be aware, that may affect the capacity of that person to comply with the person's obligations under this Act; and
- (d) provide safeguards and take safety measures prescribed under a regulation made for principal contractors.
- ‘(3) In addition, the principal contractor has the obligation mentioned in subsection (4) if the principal contractor reasonably believes, or should reasonably believe, that a person at the workplace is not discharging the person's workplace health and safety obligation.
- ‘(4) The principal contractor must—
- (a) direct the person to comply with the person's workplace health and safety obligation; and
 - (b) if the person fails to comply with the direction—ensure the person stops work until the person complies with the obligation.¹⁷.

71 Amendment of s 34B (Obligation of designer of building or other structure used as a workplace)

- (1) Section 34B, heading—
omit, insert—

¹⁷ See section 36(a) (Obligations of workers and other persons at a workplace) for the obligation to comply with the instructions given for workplace health and safety at the workplace by the principal contractor.

'34B Obligations of designers of structures used as workplaces'.

(2) Section 34B(1), (2), (3) and (4), 'building or other'—
omit.

72 Omission of s 34B (Obligation of designer of building or other structure used as a workplace)

Section 34B—
omit.

73 Replacement of s 35 (Obligations of owners of specified high risk plant)

Section 35—
omit, insert—

'35 Obligations of owners of plant

'An owner of plant has an obligation to ensure the plant is maintained in a condition that ensures the plant is safe, and without risk to health, when used properly.'

74 Amendment of s 36 (Obligations of workers and other persons at a workplace)

Section 36(a)—
omit, insert—

'(a) to comply with the instructions given for workplace health and safety at the workplace by the employer at the workplace and any principal contractor for construction work at the workplace;'

75 Amendment of s 38 (Regulations)

Section 38(5) to (7)—
omit, insert—

'(5) A regulation may prescribe fees payable under this Act including fees for the following—

- (a) notification of building and construction work;
- (b) registrations, including registrations for registrable plant and registrable plant designs;
- (c) certifications, including certifications for prescribed occupations;
- (d) appointments, including appointments as accredited providers.’.

76 Amendment of s 42C (Ministerial notices in urgent circumstances)

- (1) Section 42C(1)(a)(i)—

omit, insert—

‘(i) at or near a workplace or relevant workplace area because of a work activity, or plant or substance for use at a workplace; or’.

- (2) Section 42C(1)(b)—

omit, insert—

‘(b) because of the situation, there is or is likely to be, a risk of—

- (i) serious bodily injury; or
- (ii) work caused illness; or
- (iii) a dangerous event happening.’.

77 Amendment of s 87 (Membership of committee)

Section 87(2)(b)—

omit, insert—

‘(b) other members negotiated by the employer, any principal contractor, and workers at the workplace.’.

78 Amendment of s 94 (Appointment of workplace health and safety officer by principal contractor)

- (1) Section 94(1)(a)—

omit, insert—

‘(a) if 30 or more persons work at the workplace during any 24 hour period; or’.

(2) Section 94(4), ‘construction’—

omit.

79 Amendment of s 96 (Functions of workplace health and safety officers)

(1) Section 96(c), after ‘report’—

insert—

‘in writing’.

(2) Section 96(e), after ‘assist’—

insert—

‘in’.

80 Replacement of s 97 (Employer and principal contractor to help workplace health and safety officer etc.)

Section 97—

omit, insert—

‘97 Employer and principal contractor to help workplace health and safety officer etc.

‘(1) An employer or principal contractor must do each of the following—

(a) provide information in the employer’s or principal contractor’s possession about risks to the workplace health and safety of workers and other persons from workplaces, relevant workplace areas, workplace activities, or plant or substances for use at a workplace to the workplace health and safety officer;

(b) include the workplace health and safety officer at any interview about workplace health and safety between the employer and a worker, if the worker agrees;

- (c) consult the workplace health and safety officer on any proposed change to the workplace that affects, or may affect, workplace health and safety at the workplace;
- (d) help the workplace health and safety officer to seek appropriate advice on issues that affect, or may affect, workplace health and safety at the workplace;
- (e) allow the workplace health and safety officer to conduct workplace inspections and assessments during normal working hours;
- (f) provide resources to the workplace health and safety officer to allow the officer to properly exercise the officer's functions under this Act;
- (g) take appropriate action to rectify any identified unsafe workplace health and safety conditions and practices;
- (h) take all reasonable steps to ensure the workplace health and safety officer performs the person's function under section 96A;
- (i) keep anything given to the employer or principal contractor by the workplace health and safety officer under section 96(c) or 96A(4) for 5 years after it is given.

Maximum penalty—10 penalty units.

- '(2) An employer or principal contractor may instruct the workplace health and safety officer on action to be taken to ensure workplace health and safety at the workplace.'

81 Amendment of s 104 (Entry to places)

- (1) Section 104(1)—

omit, insert—

- '(1) An inspector may enter a place only if—
- (a) it is a workplace or a relevant workplace area; or
 - (b) the inspector reasonably suspects it is a workplace or a relevant workplace area; or

- (c) for a workplace or relevant workplace area, or suspected workplace or relevant workplace area, on or near domestic premises—the entry is to land around the premises to gain access to the workplace or relevant workplace area or suspected workplace or relevant workplace area; or
 - (d) its occupier consents to the entry; or
 - (e) specified high risk plant is situated at the place; or
 - (f) a prescribed activity is being performed at the place by a person who holds a certificate to perform the activity; or
 - (g) the entry is authorised by a warrant.’.
- (2) Section 104(3), (4) and (5), after ‘workplace’—
insert—
 ‘or relevant workplace area’.

82 Amendment of s 108 (General powers after entering places)

- (1) Section 108(1A), after ‘workplace’—
insert—
 ‘or relevant workplace area’.
- (2) Section 108(3)(e)(i) and (ii), ‘a workplace’—
omit, insert—
 ‘the place’.

83 Replacement of s 110 (Inspector’s power to seize dangerous places and things)

Section 110—
omit, insert—

‘110 Inspector’s power to seize dangerous places and things

- ‘(1) This section applies if an inspector who enters a place under this division reasonably believes that—

- (a) a workplace or part of a workplace at the place; or
- (b) a relevant workplace area, or part of a relevant workplace area, at the place; or
- (c) plant at the place; or
- (d) a substance at a workplace or relevant workplace area at the place;

is defective or hazardous to a degree likely to cause serious bodily injury, work caused illness or a dangerous event happening.

- ‘(2) The inspector may seize the place, the workplace or part, the relevant workplace area or part, the plant at the place, or the substance at the workplace or relevant workplace area.’.

84 Amendment of s 122 (Power to require production of certain documents)

- (1) Section 122(1)—

omit, insert—

- ‘(1) To monitor or enforce compliance with this Act, an inspector may require a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place stated by the inspector—

- (a) a document issued to the person under this Act or required to be kept by the person under this Act; or
- (b) a document, including a contract, about work undertaken or being undertaken by the person relating to workplaces, relevant workplace areas, work activities, or plant or substances for use at a workplace.’.

- (2) Section 122(2), ‘employer, person, contractor or owner’—

omit, insert—

‘person’.

- (3) Section 122(3), ‘subsection (1)(b)’—

omit, insert—

‘subsection (1)’.

- (4) Section 122(7), from 'employer' to 'owner'—
omit, insert—
 'person'.

85 Amendment of s 147A (Definitions for pt 11)

Section 147A, definition *original decision—*

omit, insert—

'original decision—

- (a) for division 1—means a decision of an inspector; and
 (b) for division 2—means a decision of the chief executive.'

86 Insertion of new pt 14, div 1B

After section 182A—

insert—

'Division 1B Workplace health and safety contributions

'182B Purpose of div 1B

'The purpose of this division is to establish funding support for activities of the department for the provision of workplace health and safety regulation and related education and prevention services by providing for a workplace health and safety contribution to be paid by particular employers.

'182C Definition for div 1B

'In this division—

non-scheme employer see the *Workers' Compensation and Rehabilitation Act 2003*, schedule 6.

'182D Workplace health and safety contribution to be paid

'Each non-scheme employer must pay to the chief executive a workplace health and safety contribution for each financial year.

'182E Workplace health and safety contribution notice

- '(1) A non-scheme employer must pay its workplace health and safety contribution for a financial year in accordance with the requirements of a notice (*workplace health and safety contribution notice*) the chief executive gives to the non-scheme employer.
- '(2) A workplace health and safety contribution notice must state the following—
 - (a) the financial year the notice relates to;
 - (b) the total amount of the workplace health and safety contribution payable by the non-scheme employer for the financial year;
 - (c) the calculations used to work out the workplace health and safety contribution payable by the non-scheme employer for the financial year;
 - (d) the amount of any instalment of the workplace health and safety contribution currently payable by the non-scheme employer and the date by which the instalment must be paid.
- '(3) Before the financial year starts, the chief executive must, for each financial year—
 - (a) work out the amount of the workplace health and safety contribution payable by each non-scheme employer for the financial year; and
 - (b) give each non-scheme employer its first workplace health and safety contribution notice for the financial year.
- '(4) The date by which an instalment must be paid, other than an overdue instalment, must not be earlier than the later of the following—

- (a) the start of the part of the financial year to which the instalment relates;
- (b) 14 days after the non-scheme employer receives the workplace health and safety contribution notice advising that payment of the instalment is required.

'182F Working out workplace health and safety contribution amounts

- '(1) A regulation may prescribe all things necessary or convenient for establishing and operating arrangements for the payment of workplace health and safety contributions.
- '(2) Without limiting subsection (1), a regulation may provide for any of the following—
 - (a) requirements for working out the amount of the workplace health and safety contribution payable by each non-scheme employer for a financial year;
 - (b) payment of workplace health and safety contributions by instalments;
 - (c) payment of a proportion of the amount of a workplace health and safety contribution in circumstances, identified in the regulation, in which it is not appropriate for a non-scheme employer to have to pay an amount for a full financial year;
 - (d) adjustment of the amount of a workplace health and safety contribution to take account of significant change in the circumstances on which the working out of workplace health and safety contributions was based.
- '(3) The size of a non-scheme employer's workplace health and safety contribution must be based on the number of workers of the non-scheme employer in Queensland.
- '(4) For this section, the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001* may disclose to the chief executive any information the commissioner has about anything under the *Pay-roll Tax Act 1971* if the commissioner is satisfied the disclosure is necessary to verify the correctness of information obtained by

the chief executive from a non-scheme employer under this section.

- ‘(5) Subsections (1) and (2) do not limit the power to make regulations under this Act.

‘182G Confidentiality of information obtained from Commissioner of State Revenue

- ‘(1) This section applies if the Commissioner of State Revenue discloses information to the chief executive under section 182F(4).

- ‘(2) An official (the *first official*) must not disclose the information to any one else unless the disclosure is made in the performance of the first official’s functions under this Act—

- (a) to another official for the performance of that official’s functions under this Act; or
 (b) in a proceeding for a prosecution for an offence against this Act.

Maximum penalty—100 penalty units.

- ‘(3) In this section—

official means—

- (a) the chief executive; or
 (b) a person involved in the administration of this Act; or
 (c) a person who has been an official.’

87 Replacement of s 184A (Appointment of principal contractors)

Section 184A—

omit, insert—

‘184A Appointment of principal contractors

- ‘(1) This section applies if construction work is to be performed at a workplace and the construction work—
- (a) is a prescribed activity; or

- (b) if the construction work is not a prescribed activity—the estimated final price for the construction work is more than \$80000.
- ‘(2) The owner of the workplace where the construction work is to be performed must appoint a principal contractor for the construction work.
Maximum penalty—10 penalty units.
- ‘(3) The owner must—
- (a) appoint the principal contractor by using the approved form; and
- (b) give a copy of the appointment to the principal contractor and the chief executive no later than 10 days before the construction work starts.
Maximum penalty—10 penalty units.
- ‘(4) The owner must ensure there is only 1 principal contractor appointed for the construction work at any particular time, unless the owner has the chief executive’s written approval to appoint more than 1 principal contractor for the work.
Maximum penalty—10 penalty units.
- ‘(5) If the owner, without the chief executive’s written approval, has in place, or purports to have in place, 2 or more principal contractors for the construction work at the one time—
- (a) all principal contractor appointments end; and
- (b) the owner is taken to be the principal contractor for the work until another principal contractor appointment is made.
- ‘(6) The ending of principal contractor appointments because of subsection (5) does not affect an owner’s liability for an offence against subsection (4).’.

88 Amendment of s 184A (Appointment of principal contractors)

- (1) Section 184A(1), ‘construction work is to be performed at a workplace’—

omit, insert—

'a client commissions construction work'.

- (2) Section 184A(2), from 'owner' to 'performed'—

omit, insert—

'client'.

- (3) Section 184A(3) to (5), 'owner'—

omit, insert—

'client'.

- (4) Section 184A(6), 'an owner's'—

omit, insert—

'a client's'.

89 Insertion of new ss 185A and 185B

After section 185—

insert—

'185A Powers of chief executive to require production of particular documents

- '(1) The chief executive may require a person to make available for inspection by the chief executive, or produce to the chief executive for inspection, at a reasonable time and place nominated by the chief executive—
- (a) a document issued to the person under this Act or required to be kept by the person under this Act; or
 - (b) a document, including a contract, about work undertaken or being undertaken by the person relating to workplaces, relevant workplace areas, work activities, or plant or substances for use at a workplace.
- '(2) The person must comply with a requirement under subsection (1), unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

- '(3) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement under subsection (1) if complying with the requirement might tend to incriminate the person.
- '(4) The chief executive may keep the document to copy it.
- '(5) If the chief executive copies the document, or an entry in the document, the chief executive may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- '(6) The person responsible for keeping the document must comply with the requirement, unless the person has a reasonable excuse for not complying.
Maximum penalty—10 penalty units.
- '(7) The chief executive must return the document to the person as soon as practicable after copying it.

'185B Chief executive may require information from employers

- '(1) The chief executive may ask an employer to disclose to the chief executive in the approved form, statistical or other information relating to its activities as an employer or a workplace health and safety matter.
- '(2) An employer must comply with the request, unless the employer has a reasonable excuse for not complying.
Maximum penalty for subsection (2)—10 penalty units.

'185C Confidentiality of particular information

- '(1) This section applies if a person makes available for inspection, or produces for inspection, a document (including a contract) because of a requirement made under section 122 or 185A.
- '(2) An official must not disclose to any one else information from the document acquired in the performance of the official's functions under this Act unless the disclosure is—
 - (a) made with the person's consent; or

- (b) for the administration of this Act; or
- (c) in a proceeding before a court or a board of inquiry in which the information is relevant to the issue before the court or board.

Maximum penalty—100 penalty units.

‘(3) In this section—

official means—

- (a) the chief executive; or
- (b) an inspector; or
- (c) a person involved in the administration of this Act; or
- (d) a person who has been an official.’.

90 Insertion of new pt 17, div 3 and sch 1

After section 191—

insert—

‘Division 3 Transitional provision for Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2005

‘192 Prosecution for offence against s 24

‘Sections 24A and 28 to 29B¹⁸ of the Act, as in force immediately before the commencement of this section, continue to apply to a prosecution for an offence that was committed before the commencement.

¹⁸ Sections 24A (Charges for offences under s 24), 28 (Obligations of employers), 29 (Obligations of self-employed persons), 29A (Obligations of persons conducting business or undertaking) and 29B (What obligations under ss 28–29A may include) of the Act

'Schedule 1 Prescribed activities

schedule 3, definition *prescribed activity*

1 Prescribed activities—demolition work

- (1) Demolition work is a prescribed activity if the structure the subject of the demolition or dismantling contains pre-tensioned or post-tensioned structural components.
- (2) Demolition work is a prescribed activity if the demolition or dismantling of the structure involves the use of—

- (a) load shifting equipment; or

Examples of load shifting equipment for paragraph (a)—

combination front-end loader and backhoe, skid steer loader, excavator, crane

- (b) explosives or another induced collapse method.

- (3) All other demolition work is a prescribed activity unless the structure the subject of the demolition or dismantling is—

- (a) a domestic house; or

- (b) a structure built as, and still having generally the characteristics of, a domestic house; or

Example of building or other structure for paragraph (b)—

a domestic house converted to flats or an office

- (c) a structure that is ancillary to—

- (i) a domestic house; or

- (ii) a structure mentioned in paragraph (b).

Example of ancillary building or other structure for paragraph (c)—

a carport or garage

2 Prescribed activities—asbestos removal work

Asbestos removal work is a prescribed activity.'

91 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *building work, civil construction work, construction work, construction workplace, demolition work, owner* and *principal contractor*—

omit.

- (2) Schedule 3—

insert—

'*accredited provider* see part 14, division 1.

asbestos means the fibrous form of the mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals and includes—

- (a) actinolite, amosite (brown asbestos), anthophyllite, crocidolite (blue asbestos), chrysotile (white asbestos), tremolite; and
- (b) any mixture containing 1 or more of the minerals mentioned in paragraph (a).

asbestos materials means installed thermal or acoustic insulation materials comprising or containing asbestos.

asbestos removal work means work to remove asbestos materials other than work to remove asbestos materials that is done entirely in a containment device.

construction work see section 14.

containment device means a device that—

- (a) is used for the removal of asbestos materials; and
- (b) when in use, prevents the release of airborne asbestos fibres outside the device.

demolition work means work to demolish or dismantle systematically a structure, or part of a structure, but does not include the systematic dismantling of—

- (a) a part of a structure for alteration, maintenance, remodelling or repair; or

- (b) formwork, falsework, scaffold or other construction designed or used to provide support, access or containment during construction work.

estimated final price, for construction work, means the estimated final price at practical completion for the work, including any GST payable in relation to the supply of the work.

owner means a person who holds legal title to a thing, structure or place, or part of a structure or place, and includes—

- (a) a person who has control of a thing, structure or place; and
- (b) a person who manages a structure or place, or part of a structure or place, as agent for—
- (i) a person who holds legal title to the structure or place; or
- (ii) a person mentioned in paragraph (a); and
- (c) a person from whom a thing, structure or place, or part of a structure or place, was seized, unless the chief executive is aware of its actual owner; and
- (d) a mortgagee in possession; and
- (e) a lessee; and
- (f) a licensee; and
- (g) a trustee; and
- (h) a company administrator, receiver, receiver and manager or liquidator.

prescribed activity means an activity that is a prescribed activity under schedule 1.

principal contractor, for construction work, see section 13.

structure means—

- (a) a building, a steel or reinforced concrete construction, wall, mast, tower, pylon, structural cable or telecommunications structure; or

- (b) an underground works (including shafts and tunnels), pipe, pipeline, sea defence works, river works, earthworks or earth retaining construction or other construction designed to preserve or alter a natural feature; or
- (c) a road or highway, footpath or driveway, railway line or siding, tramway line, airfield, dock or harbour, water storage or supply system (including a constructed lagoon), sewerage or drainage system, electricity or gas generation facility, transmission or distribution facility, gasholder, park or recreation ground (including, for example, a golf course, playing field, racecourse or swimming pool); or
- (d) production, storage or distribution facilities for heavy industries; or
- (e) fixed plant; or
- (f) a ship or submarine; or
- (g) formwork, falsework, scaffold or other construction designed or used to provide support, access or containment during construction work.

workplace health and safety contribution notice see section 182E.’.

- (3) Schedule 3—

insert—

‘*BCA* means the edition of the Building Code of Australia as in force on 1 May 2004.

Building Code of Australia see the *Building Act 1975*, schedule.

class 1A building means a building that, under the *BCA*, part A3.2, is classified as a class 1a building.

client, for construction work, see section 12A.

project manager, for construction work, see section 12B.’.

- (4) Schedule 3, definitions *asbestos materials*, *asbestos removal work* and *containment device—*

omit.

(5) Schedule 3—

insert—

'asbestos containing material' means any material, object, product or debris containing asbestos.

asbestos fibre means a fibre of asbestos having—

- (a) a diameter of less than 3µm;¹⁹ and
- (b) a length more than 5µm; and
- (c) a length to diameter ratio of more than 3:1.

asbestos removal work means work to remove friable asbestos containing material.

bonded asbestos containing material means asbestos containing material containing a bonding compound reinforced with asbestos fibres.

Example—

Asbestos cement pipes and flat or corrugated asbestos cement sheets consist of sand and cement reinforced with asbestos fibres.

friable asbestos containing material means unbonded asbestos containing material that, when dry, is or may become crumbled, pulverised or reduced to powder by hand pressure.

unbonded asbestos containing material means asbestos containing material that does not contain a bonding compound reinforced with asbestos fibres.'

(6) Schedule 3, definition *asbestos removal work*—

omit, insert—

'asbestos removal work' means work to remove—

- (a) friable asbestos containing material; or
- (b) 10m² or more of bonded asbestos containing material.'

(7) Schedule 3, definition *dangerous event*, 'caused by a work activity'—

¹⁹ µm is the symbol for micrometres.

96 Insertion of new ch 20, pt 4

After section 737—

insert—

**'Part 4 Transitional provision for
Workers' Compensation and
Rehabilitation and Other Acts
Amendment Act 2005**

'738 Dismissal of injured employee

'Section 95, as in force immediately before the commencement of this section, continues to apply to an injured employee who is dismissed before the commencement.'

Schedule (continued)

- 7 Section 101(2)(b) and 102(4)(b), 'days of'—**
omit, insert—
'days after'.
- 8 Section 109(4), 'not a a self-insurer'—**
omit, insert—
'not a self-insurer'.
- 9 Section 159(1)(b), 'incapacity, the greater of the following—'**
omit, insert—
'incapacity—'.
- 10 Section 159(1)(b)(i)(B), after 'QUOTE;'—**
insert—
'or'.
- 11 Section 206(3), before 'part'—**
insert—
'part 3, division 5 or'.
- 12 Section 226(1) and (3) to (6), 'rehabilitation coordinator'—**
omit, insert—
'rehabilitation and return to work coordinator'.
- 13 Section 226(5), after 'coordinator'—**
insert—
' , who is employed under a contract of service at the workplace,'.

Schedule (continued)

- 14 Section 234—**
relocate and renumber, in chapter 1, part 4, division 6, subdivision 5, as section 39A.
- 15 Chapter 5, part 12, division 1, heading—**
omit, insert—
- 'Division 1 Costs applying to worker with WRI of 20% or more, worker with latent onset injury that is a terminal condition, or dependant'.**
- 16 Sections 498 and 499—**
renumber as sections 495 and 496.
- 17 Section 546(3)(b), '28 days'—**
omit, insert—
'20 business days'.
- 18 Section 550(4), from 'giving' to 'to'—**
omit, insert—
'filing a written notice of appeal with'.
- 19 Section 552(3), 'industrial magistrate'—**
omit, insert—
'relevant appeal body'.
- 20 Section 603(2), 'is force'—**
omit, insert—
'in force'.

Schedule (continued)

Workplace Health and Safety Act 1995

1 Section 3A(3), example—

omit, insert—

'Example for subsection (3)—

Section 28 of this Act imposes an obligation on a person who conducts a business or undertaking to ensure that each person who performs a work activity for the purposes of the business or undertaking is not exposed to risks to their health and safety arising out of the conduct of the business or undertaking. Under the *Electrical Safety Act 2002*, an obligation is imposed on an employer to ensure the employer's business or undertaking is conducted in a way that is electrically safe. Accordingly, the obligation under this Act of a person who conducts a business or undertaking does not include an obligation to ensure the person's business or undertaking is conducted in a way that is electrically safe.'

2 Sections 9 to 12, 15 and 18, heading, '?'—

omit.

3 Section 9, example 1—

omit.

4 Section 9, examples 2 and 3—

renumber as examples 1 and 2.

5 Section 14(3)(a), 'owner of the workplace'—

omit, insert—

'client'.

6 Section 14(3)(b), 'owner'—

omit, insert—

'client'.

Schedule (continued)

- 7 Section 27(2), 'The'—**
omit, insert—
'A'.
- 8 Part 3, division 2, heading—**
omit, insert—
'Division 2 Obligations of particular persons'.
- 9 Section 86(4), 'construction'—**
omit.
- 10 Section 109(1), 'workplace or, with the occupier's consent, another'—**
omit.
- 11 Section 123(1), 'or work caused illness'—**
omit, insert—
, work caused illness or the happening of a dangerous event'.
- 12 Section 175(2), 'for a construction workplace'—**
omit.
- 13 Section 175(2), 'an employer or worker at the workplace'—**
omit, insert—
'any person at a workplace'.

Schedule (continued)

- 14 Section 175(2), 'the employer or worker'—**
omit, insert—
'the person'.
- 15 Section 182, heading, 'revocation'—**
omit, insert—
'cancellation'.
- 16 Section 182, 'revoke'—**
omit, insert—
'cancel'.
- 17 Section 182, footnote, 'revoke'—**
omit, insert—
'cancel'.
- 18 Section 185, heading—**
omit, insert—
- '185 Powers of chief executive to make requirements about unsafe plant or substances'.**
- 19 Schedule 3, definitions *work caused illness and work injury*, 'work, a workplace, a work activity or specified high risk plant'—**
omit, insert—
'a workplace, a relevant workplace area, a work activity, or plant or substances for use at a workplace'.

