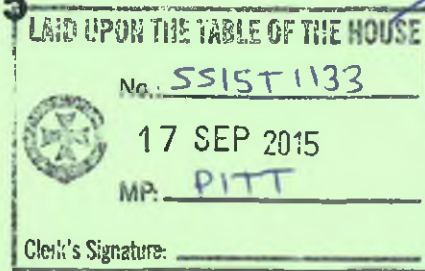


WORKERS' COMPENSATION AND REHABILITATION AND OTHER LEGISLATION AMENDMENT BILL 2015

Explanatory Notes

for



Amendments to be moved during consideration in detail by the Honourable Curtis Pitt MP Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships

Title of the Bill

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

Objectives of the Amendments

The proposed amendments to be moved during consideration in detail amend the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 (the Bill) to implement the Government's response to the Finance and Administration Committee's report on the Bill. In particular in response to recommendation 2, the proposed amendments remove the requirement for volunteer firefighters to attend 150 exposure incidents in order for the deeming provisions for firefighters to apply.

In addition proposed amendments are made to the *Industrial Relations Act 1999 (QLD)* (the IR Act) to:

- improve the expeditious operational performance of the Queensland Industrial Relations Commission (Commission) by restoring administrative responsibility for the Commission and the Industrial Registry (Registry) with the president and enabling the president to delegate functions as necessary; and
- widen the pool of applicants for the position of deputy president (Court) and make the legislative criteria concerning the legal status of deputy president (Court) consistent with that applicable for vice president (Court) by removing the requirement to be a "local" lawyer that currently applies to potential applicants for the position of deputy president (Court).

The former LNP Government moved administrative responsibility to the vice president and placed a severe limitation on appointments to the role of deputy president (Court). These changes were made without adequate explanation and in doing so, put

the Commission and Industrial Court out of step with similar institutions around the country, where legislative allocation of administrative responsibilities is to the president alone, or such that the president may delegate. The limitation on appointments to the position of deputy president (Court) made the criteria inconsistent with that applicable for the vice president (Court).

Achievement of the objectives

The policy objectives are to be achieved by:

- amending the Bill to omit the requirement for volunteer firefighters to attend 150 exposure incidents in order for the deeming provisions for firefighters to apply under section 36D(1)(c);
- making consequential amendments to the Bill to remove references to 'exposure incidents' and to clarify the scope of the definition of 'firefighter';
- amending the IR Act to reinstate administrative responsibility for the Commission and Registry with the president of the Commission and the Industrial Court of Queensland, and enable the president to delegate functions to the vice president and/or one or more deputy presidents; and
- amending the IR Act to remove the requirement for a deputy president (Court) to "be a local lawyer, within the meaning of the Legal Profession Act 2007" as currently prescribed by the IR Act.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved through legislative amendment.

Estimated cost for government implementation

Volunteers are currently covered by the Emergency Services Volunteers contract of insurance between Queensland Fire and Emergency Services and WorkCover Queensland. The cost of removing the exposure incident attendance requirement for volunteer firefighters will result in an increase the cost of this premium to Queensland Fire and Emergency Services.

There is no additional cost to Government associated with the proposed amendments to the IR Act.

Consistency with fundamental legislative principles

The proposed amendments to the Bill are consistent with fundamental legislative principles.

Consultation

The amendments are as a result of recommendation 2 in the Finance and Administration Committee's report on the Bill which was informed by 152 submissions to the Committee, including 119 submissions from volunteer rural firefighters and rural fire brigades, and public hearings held by the Committee.

Justice Martin, the President of the Court and Commission has been consulted on the proposed amendments to the IR Act. The President supports the proposed amendments.

The Department of Premier and Cabinet and Queensland Treasury have been consulted on the proposed amendments to the IR Act and support the proposed amendments.

Consistency with legislation of other jurisdictions

There are no known inconsistencies with policy objectives of other authorising laws.

NOTES ON PROVISIONS

Amendment 1 amends the definition of firefighter in section 36B in Clause 18 to ensure this definition captures all firefighting service undertaken before the commencement of the *Fire and Emergency Services Act 1990*. It does this by clarifying that the definition of 'firefighter' includes a person appointed or employed under the *Fire Brigades Act 1964*, section 24 or a person appointed or employed under the *Rural Fires Act 1946*, section 9.

Amendment 2 omits the definition of volunteer firefighter from section 36B in Clause 18. The definition is not required as a result of the removal of the exposure incident attendance requirement for volunteer firefighters as the deeming provisions will now apply in the same way to all firefighters.

Amendment 3 omits the meaning of exposure incident under section 36C in Clause 18 as this definition is not required as a result of the removal of the exposure incident attendance requirement for volunteer firefighters.

Amendment 4 removes the exposure incident attendance requirement for volunteer firefighters that required a volunteer firefighter to have attended at least 150 exposure incidents in order to have the deeming provisions for firefighters (section 36D in Clause 18) apply.

Amendment 5 amends section 36E(2) in Clause 18 as a result of the removal of the exposure incident attendance requirement for volunteer firefighters to clarify that for all firefighters the years the person is employed for the purpose of firefighter and has attended fires during the year is used to decide on the number of years of the person's employment as a firefighter for the purpose of section 36D(1)(b).

Amendment 6 inserts a new section 36E(4) in Clause 18 as consequence of the amendment made in Amendment 3 to clarify that firefighting in this section means extinguishing, controlling or preventing the spread of a fire.

Amendment 7 omits section 36F in Clause 18 as a result of the removal of the exposure incident attendance requirement for volunteer firefighters. Removal of the 150 exposure incident threshold for volunteer firefighters means that the provision on deciding the number of exposure incidents attended is no longer required.

Amendment 8 omits the definition of *exposure incident* in Clause 22 as a consequence of the amendment made in Amendment 3.

Amendment 9 amends the definition of volunteer firefighter in schedule 6 (Dictionary) in Clause 22 as a consequence of the amendment made in Amendment 1.

Amendment 10 inserts the following clauses after clause 37 -

Clause 37AA provides that Division 1A amends the *Industrial Relations Act 1999*.

Clause 37AB amends section 75(6) to omit the word 'vice' where it appears so that those references now refer to president. The effect is to shift responsibility from the vice president to the president.

Clause 37AC omits the reference to 'or vice president' from sections 140F(2) and (3) so that only the president may give a direction about the conduct of a periodic review of a modern award.

Clause 37AD omits the reference to 'vice-president' from section 149(3)(a) and inserts the word 'president'.

Clause 37AE amends section 149A to omit the reference to 'vice-president' and insert the word 'president'. It also omits the words 'vice-president's' from section 149A(4)(b) and inserts the word 'president's'.

Clause 37AF amends the heading of section 149B and the body of section 149B to omit the word 'vice-president' where it appears and insert the word 'president'.

Clause 37AG amends section 160(5) to omit the word 'vice' where it appears. The effect of this is that these references will now be to president, and not vice president.

Clause 37AH amends section 242E(4) to insert the words 'or a deputy president (court)' after the word 'vice-president'. The effect is enable the president to delegate functions relating to the administration of the business of the court and the registry to the vice president or a deputy president (court). Currently the president may only delegate to the vice president.

Clause 37AI amends section 246C(2)(a) to omit the words 'local lawyer, within the meaning of the *Legal Profession Act 2007*' and insert the word 'lawyer'. The effect is to remove the reference to being a 'local lawyer' within the meaning of the *Legal Profession Act 2007* and replace it with a reference to a lawyer.

Clause 37AJ omits section 252(3) to remove responsibility from the vice president for the preparation of a report for the year on the working of the commission for inclusion in the president's report. Paragraph 37AJ(2) amends section 252(4) to renumber it as 252(3) following the deletion of current section 252(3).

Clause 37AK amends section 259AA(3) to omit the word 'vice' where it appears, which has the effect of changing those references to president.

Clause 37AL(1) amends section 264(1), (2), (3), (4AA), (4A), (6), (7)(b) to omit the word 'vice' where it appears, which has the effect of changing those references to president. Paragraph 37AL(2) inserts the following at section 264(4A) – '(aa) to the vice president; or'. Paragraph 37AL(3) inserts after the word 'if' in section 264(4A)(b) – 'the vice president or'. Paragraph 37AL(4) renumbers section

264(4A)(aa) to (b) as section 264(4A)(a) to (c). Paragraph 37AL(5) amends section 264(5) to omit the words 'vice president or a deputy president' and insert the words 'president, vice president, a deputy president or an industrial commissioner'. The effect of these amendments is to provide that the president is responsible for the administration of the commission and registry and the orderly and expeditious exercise of the commission's jurisdiction and powers with power to do all things necessary or convenient to perform these responsibilities. Further, the president may delegate a power to a vice president, deputy president or one or more industrial commissioner. A reference to the vice president has been added to section 264(4A) as another party to whom the president may delegate his powers under the amended arrangements. The change to section 264(5) reflects the fact that the president may delegate a power under amended subsection (4A) to the vice president, a deputy president or an industrial commissioner, and each of those parties may give a direction to a commissioner that must be complied with.

Clause 37AM amends the heading and body of section 269 to change all references to 'vice president' to 'president' so that responsibility shifts to the president.

Clause 37AN amends section 270 to omit the word 'vice' with the effect that the reference in section 270 is now to president.

Clause 37AO(1) omits the current section 281(2) and replaces it with '(2) A commissioner may refer a matter only with the president's approval.' Paragraph 37OA(2) omits the word 'vice' from sections 281(3),(4),(5) with the effect that these sections now refer to the president rather than the vice president.

Clause 37AP omits current section 299(3) and inserts – '(3) In performing a function or exercising a power, the registrar must comply with a direction given by the president in relation to the court or the commission.'

Clause 37AQ amends section 301(b) to omit the word 'vice' so that this reference will instead refer to the president.

Clause 37AR amends section 308(1),(2) and (5)(b) to omit the word 'vice', so that these provisions refer instead to the president.

Clause 37AS omits the word 'vice' where it appears in section 309 so that these provisions will instead refer to the president. Paragraph 37AS(2) omits section 309(3).

Clause 37AT amends section 310 to omit the word 'vice' where it appears, so that these provisions now refer instead to the president. Paragraph 37AT(2) omits section 310(3).

Clause 37AU amends section 311 to omit the word 'vice' where it appears, so that these provisions now refer instead to the president.

Clause 37AV amends section 311A(1) to omit the word 'vice' where it appears so that this provision now refers instead to the president.

Clause 37AW amends the heading of section 313 to omit the words 'Vice president' with the word 'President'. Paragraph 37AW(2) omits the word 'vice' from where it appears in section 313 so that this section now refers to the president.

Clause 37AX amends the note at section 320(5) to replace the reference to 'vice president' with a reference to 'president'.

Clause 37AY inserts a new transitional provision after section 857, being new section 858, to ensure that any action taken by the vice president before the commencement of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015* continues to have effect after the commencement.

Clause 37AZ amends Schedule 2, part 1, section 4A(2) to omit the reference to 'vice president' and insert the words 'any other member'. Paragraph 37AZ(2) omits Schedule 2, part 1, section 4A(3). This empowers the president to grant leave to any member of the commission, and removes the vice president's power to grant leave as currently provided for in Schedule 2, part 1, section 4A(3).

Division 1B amends the *Industrial Relations (Tribunals) Rules 2011*.

Clause 37BA provides that division 1B amends the *Industrial Relations (Tribunals) Rules 2011*.

Clause 37BB amends rule 79 to omit the reference to 'vice' so that the rule now refers to the president.

Division 1C amends the *Trading (Allowable Hours) Act 1990*.

Clause 37BC provides that that division 1C amends the *Trading (Allowable Hours) Act 1990*.

Clause 37BD amends section 23A(2) and (3)(b) to omit 'vice-president' and insert 'president' so that the president may refer the matter of an order under section 21 or 22 to the full bench on the terms the president considers appropriate.

Clause 37BE inserts a new pt 8, div 4 after section 52 to provide a transitional provision. The new section 53 provides that any referral by the vice-president under section 23A in relation to a matter that had not been decided by the full bench immediately before the commencement will continue to have effect so that the full bench may hear and decide the matter referred to it as if the referral had been made by the president after the commencement.

Clause 37BF amends the dictionary in schedule 1 by inserting a new definition for 'president'. The definition states that 'president means the president of the industrial commission under the *Industrial Relations Act 1999*.'

Amendment 11 adds the following words to the long title of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015, after '*Electrical Safety Act 2002*,': '*the Industrial Relations Act 1999, the Industrial Relations (Tribunals) Rules 2011, the Trading (Allowable Hours) Act 1990,*'

