

# Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 (the Bill).

### Policy objectives and the reasons for them

#### *Workers' Compensation and Rehabilitation Act 2003*

Section 584A of the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) requires the Minister with responsibility for workers' compensation to ensure a review of the operation of the scheme is completed at least once every five years. An independent reviewer, Professor David Peetz, was appointed to conduct the second review of the scheme (the Review) by 30 June 2018.

The terms of reference for the Review were to report to the Parliament on:

- (1) the performance of the scheme in meeting the objectives of the WCR Act;
- (2) emerging issues facing the scheme; and
- (3) the effectiveness of current rehabilitation and return to work programs and policy settings, including ways to increase the current return to work rate.

Professor Peetz conducted targeted consultation and obtained written submissions from key stakeholders, including unions, employer and legal representatives, medical and allied health associations, and insurers. The Review was tabled in Parliament on 29 June 2018.

The Review found that the scheme is performing well, is financially sound, involves low costs for employers, and provides fair treatment for both employers and injured workers. While major reform was not recommended, opportunities were identified to improve the process and experience for injured workers. The Review made 57 recommendations, including 15 proposed legislative amendments.

The objective of the Bill is to implement 12 of the Review's legislative recommendations focused on improving the process and experience for injured workers, including:

- clarifying WorkCover Queensland's ability to fund and provide programs and incentives that support employers improving health and safety performance, after consulting with the regulator under the *Work Health and Safety Act 2011* or any other relevant health and safety regulator;
- exempting expressions of regret and apologies provided by employers following a workplace injury from being considered in any assessment of liability for damages brought under the *Workers' Compensation and Rehabilitation Act 2003* to align with the approach taken in the *Civil Liability Act 2003*;

- providing an additional way that employers can ensure that rehabilitation and return to work coordinators are appropriately qualified, and requiring employers to provide details of their rehabilitation and return to work coordinators to insurers, to support compliance and the provision of advisory services to coordinators;
- requiring insurers to provide ongoing rehabilitation and return to work services if the injured worker has been unable to return to work after their entitlement to weekly benefits and medical expenses ceases. The employer's obligations for rehabilitation and return to work are also aligned with their insurer's obligations;
- requiring self-insured employers to report injuries and any payments made to injured workers to their insurer, aligning their obligations with the existing obligations on employers insured with WorkCover Queensland;
- clarifying that insurers have a discretion to accept claims submitted more than six months after the injury is diagnosed, if the injured worker has lodged a claim within 20 days of developing an incapacity for work from their injury;
- extending workers' compensation coverage to unpaid interns;
- amending the meaning of injury for a psychiatric or psychological disorder to remove 'the major' as a qualifier for employment's 'significant contribution' to the injury; and
- requiring insurers to take all reasonable steps to provide claimants with psychiatric or psychological injuries access to reasonable support services relating to their injury during claim determination.

The Bill also makes minor technical and consequential amendments to the *Workers' Compensation and Rehabilitation Act 2003* and the *Workers' Compensation and Rehabilitation Regulation 2014* to increase simplicity and clarify existing provisions.

### **Further Education and Training Act 2014**

In 2014, the *Vocational Education Training and Employment Act 2000* was repealed and replaced with the *Further Education and Training Act 2014*. The *Further Education and Training Act 2014* was introduced to provide a legislative framework to allow the parties to a training contract (employers/apprentices/trainees) to directly negotiate key training and employment issues.

However, since the introduction of the *Further Education and Training Act 2014*, it has been recognised that the relationship between an employer and apprentice/trainee is not always equal. This may result in those who are most vulnerable not being properly equipped or assisted in understanding, navigating or utilising the remedies available to them.

The Queensland Training Ombudsman (the Ombudsman) released the report *Review of group training arrangements in Queensland* in January 2018. Following extensive stakeholder consultations, the report identified deficiencies in areas such as cancellation practices of Group Training Organisations as well as inappropriate use of suspension instead of the stand-down provisions of awards. The *Queensland Training Ombudsman 2017–2018 Annual Report* also identified a number of complaints from apprentices whose employment had ceased and training contract cancelled, who may have benefitted from earlier departmental intervention.

Targeted consultations in March 2018 indicated that some provisions of the *Further Education and Training Act 2014* should be amended to restore previous provisions under the *Vocational Education Training and Employment Act 2000*, taking into account Queensland's legislative limitations.

The objectives of the amendments are to:

- protect the positions of apprentices and trainees, who are vulnerable workers and do not have the same bargaining powers as employers;
- minimise continuing adverse impacts on apprentices' and trainees' training arrangements, to improve quality training outcomes;
- give apprentices and trainees the best chance to complete their apprenticeship or traineeship, and the best chance for the employer to emerge with a skilled worker, hence realising the economic benefits for all parties and the community generally;
- address the existing legislative gap that exists in the *Further Education and Training Act 2014* to enable an employer or apprentice/trainee to seek permission from the Chief Executive to cancel the training contract;
- provide greater clarity to enable the Chief Executive to resolve any issues related to issuing an apprenticeship or traineeship completion certificate; and
- clarify the obligations of the Supervising Registered Training Organisation to complete an employer resource assessment and resolve practical implementation issues with certain provisions of the *Further Education and Training Act 2014*.

Accordingly, the Bill will enable the Department of Employment, Small Business and Training to assist stakeholders in achieving more equitable outcomes in the case of contested cancellations, temporary suspensions or to address inadequate training. In addition, other minor amendments have been identified to resolve practical implementation issues with sections of the *Further Education and Training Act 2014*. Further, one party cancellation, temporary suspension and one-party suspension decisions will be appealable to the Queensland Industrial Relations Commission.

Stakeholders including employers, apprentices, training providers and Queensland trade union representatives attended four Ministerial Roundtables on Apprenticeships and Traineeships in Queensland, held in July and August 2018. Information and feedback from stakeholders advocated for changes to achieve greater fairness in relation to cancellation, temporary suspension and the delivery mode requirements of the training plan.

### **TAFE Queensland Act 2013**

The objective of the amendments is to establish a more representative TAFE Queensland Board by stipulating that there must be regard to Aboriginal and Torres Strait Islander representation on the board, by requiring at least one person representing Aboriginal and/or Torres Strait Islander people.

Diversity on boards benefits the organisation and its stakeholders, while the Queensland Government also has a responsibility to model best practice cultural capability and one mechanism is to increase the proportion of Aboriginal and Torres Strait Islander people on government boards.

### **Commonwealth Games Arrangements Act 2011**

On 11 November 2011, the President of the Commonwealth Games Federation (the CGF), the Honourable Michael Fennell OJ, CD, announced the Gold Coast had won the bid to host the XXIst Commonwealth Games in 2018.

Following the announcement, the Government signed the Host City Contract which set out a range of contractual obligations for delivery of the Games. This included an obligation to constitute an organising committee within six months of signing the agreement.

The *Commonwealth Games Arrangements Act 2011* (the CGA Act) established the Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) to plan, organise and deliver the Gold Coast 2018 Commonwealth Games (GC2018). It set out GOLDOC's functions and powers, which included its primary responsibilities for organising, conducting, promoting and managing the commercial and financial aspects of GC2018.

GC2018 was successfully staged from 4 to 15 April 2018 and was the largest sporting event held in Australia this decade. Approximately 6,600 athletes and officials from 71 nations and territories participated in events across 18 competition venues on the Gold Coast, Brisbane, Townsville and Cairns. Following the successful delivery of GC2018 and the dissolution of GOLDOC on 31 December 2018 (in accordance with the CGA Act), the CGA Act has become redundant and should be repealed.

## **Achievement of policy objectives**

### **Workers' Compensation and Rehabilitation Act 2003**

The Bill achieves its objective of implementing recommendations of the Review by amending the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to:

- (a) *Clarify WorkCover Queensland's (WorkCover) ability to fund prevention initiatives (Recommendation 7.2 of Review)*

The Bill includes a new section in Chapter 8 of the WCR Act to clarify that WorkCover has the power to fund programs and provide incentives to encourage improved health and safety performance by employers. To ensure that these activities are complementary with those of the work health and safety regulator/s relevant to the employer, WorkCover must consult with the relevant regulator/s before engaging in the activity.

- (b) *Exclude expressions of regret or apologies provided by an employer following a workplace injury from being considered in an assessment of liability for common law damages (Recommendation 7.12 of Review)*

There are numerous positive outcomes for both workers and employers if an employer offers a sincere apology to a worker following a workplace injury. However, many employers are hesitant to apologise to workers fearing that it will be interpreted as an admission of liability.

Relevant case law, including the High Court's decision in *Dovuro Pty Ltd v Wilkins [2003] HCA 51*, indicates that although apologies have no effect for a finding of negligence as the question of negligence is for a Court to determine, what is said after an event may constitute an admission of facts relevant to determining liability at common law.

Under the *Civil Liability Act 2003*, apologies with respect to other personal injury matters in Queensland are able to be provided without prejudice, that is, they have no impact on a person's 'liability' in the matter.

To align the WCR Act with the *Civil Liability Act 2003*, the Bill amends the WCR Act to exempt expressions of regret and apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability in a civil action brought under the WCR Act (specifically a common law claim for damages under Chapter 5).

- (c) *Require employers to demonstrate that their appointed rehabilitation and return to work coordinators are appropriately qualified, and require that all rehabilitation and return to work coordinators be made known to the insurer (Recommendations 6.8 and 6.10 of Review)*

Rehabilitation and Return to Work Coordinators (RRTWC) support injured workers' return to work by assisting in developing suitable duties plans at the workplace level. In 2013 the requirement for RRTWC to be accredited was removed. Since this time stakeholders have advised that the skill level of this group has reduced.

To ensure that persons appointed as RRTWC are appropriately qualified, the Bill amends the WCR Act to allow the Workers' Compensation Regulator to approve a list of training courses or qualifications for RRTWC relevant to the industry of the employer. The onus for demonstrating the person engaged to perform the role of RRTWC is appropriately qualified remains with the employer. This obligation can be met either through an approved training course or another way.

The Bill further amends the WCR Act to require employers to provide details of their RRTWC to the employer's insurer.

- (d) *Enhance rehabilitation and return to work outcomes for injured workers, allow workers to request a referral to an accredited rehabilitation and return to work program at any time during their statutory claim, and require insurers to refer workers to an accredited rehabilitation and return to work program at the end of their claim if they have not been able to return to work because of the injury (Recommendations 6.4 to 6.6 of Review)*

Injured workers are entitled to rehabilitation and return to work support from the insurer and employer while they are receiving compensation, however this support can end before rehabilitation and return to work has been achieved due to the operation of various provisions of the WCR Act which cease an injured worker's entitlement to statutory compensation after particular events. Workers who lodge a notice of claim for damages may also be referred to an insurer's accredited return to work program (section 220(2) of the WCR Act).

As a result, the Review identified that workers may have their rehabilitation and return to work progress interrupted or stopped when they may benefit from access to an accredited rehabilitation and return to work program during, or at the end of, their statutory claim. This limits the achievement of durable and meaningful return to work outcomes.

To address this identified gap the Bill amends the WCR Act to include a mandatory requirement to refer an injured worker to an accredited rehabilitation and return to work program if the worker is receiving compensation and makes a request, or the worker's entitlement to compensation has ceased and the worker has not returned to work because of the injury. If the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury then the insurer can decide not to refer the worker to the accredited rehabilitation and return to work program. Insurers can refer a worker to an accredited program at any stage during the claim.

Currently, an employer's obligations under section 228 to assist or provide rehabilitation to a worker do not include any requirement to engage with the insurer. In contrast, section 220 requires an insurer to engage with the injured worker, employer and treating registered person. Further, if the employer is a part of a self-insurance licence, there is no requirement for that employer to advise the insurer if they consider it is not practicable to provide the worker with suitable duties.

To complement the enhanced obligations on insurers regarding accredited rehabilitation and return to work programs, the Bill amends the WCR Act to:

- place a specific obligation on the employer to assist the insurer under section 228; and
- remove the exemption for a self-insurer under section 228(3).

(e) *Remove the exemption of self-insured employers from the obligation to notify of injuries which may be compensable (Recommendation 9.3 of Review)*

During the Review, concerns were raised by stakeholders regarding the lack of transparency in injury reporting by self-insured employers. In particular, the current requirement to notify of all injuries to WorkCover only applies to premium-paying employers and excludes self-insurers. This was noted as potentially resulting in underreporting and created the potential for self-insured employers to avoid their obligations to injured workers.

To ensure a consistent approach for WorkCover and self-insurers, the Bill amends the WCR Act to require self-insured employers to notify their insurer when a worker sustains an injury for which compensation may be payable. Consequential amendments were required to ensure that there is no disconnect or inconsistency within the WCR Act.

(f) *Allow insurers to waive the six-month time limit on lodging a claim if a worker lodges a claim within 20 business days of developing an incapacity for work from their injury (Recommendation 4.1 of Review)*

Under the WCR Act, a worker's application for compensation is only valid and enforceable if it is lodged within six months after the entitlement to compensation arises, which is designated as the day on which the worker is assessed by a doctor.

Historical judicial interpretation of these provisions was that the six-month time limit began from when the worker's injury had been assessed as resulting in a total or partial incapacity for work. However, this interpretation did not consider claims involving 'no time lost' injury, such as report only claims or medical expenses only claims.

In *Blackwood v Toward [2015] ICQ 008*, it was determined that the six-month time limit began on the date the doctor assessed the worker as having a work-related injury, even if at that point there is no incapacity for work. The Review identified that this interpretation negatively impacts workers with chronic, insidious or psychiatric injuries who attempt to manage their injury at work before deteriorating, and do not lodge a claim when they are assessed by the doctor, but at a later time when they become incapacitated for work.

The WCR Act currently allows an insurer to waive the time limit if the insurer is satisfied that a worker's failure to lodge the application was due to a mistake; absence from Queensland; or a reasonable cause (section 131(5)).

To address the issue identified in the Review, the Bill amends section 131 to provide for a further circumstance - if the worker is certified with an incapacity (either total or partial) and lodges their claim within 20 business days of the certification. The Review identified that this requirement would maintain the rigour of the current date that a worker's entitlement arises and provide flexibility to ensure that injured workers are not disadvantaged by attempting to remain at work while they manage their injury without the complication of a workers' compensation claim.

(g) *Extend workers' compensation coverage to unpaid interns (Recommendation 3.2 of Review)*

If an intern is paid, they will generally be covered by Queensland's workers' compensation scheme as a worker. The WCR Act also currently allows WorkCover to enter into a contract of insurance for statutory workers' compensation entitlements with schools and registered training organisations that cover students for injury arising out of, or in the course of, work experience or vocational placement. Where an unpaid intern is engaged outside of these circumstances, they will not be covered by the workers' compensation scheme.

To enable coverage of unpaid interns, with exemptions for interns already covered by injury insurance arrangements (including student internships undertaken as part of a course), the WCR Act will be amended to deem unpaid interns as workers entitled to access workers' compensation benefits.

(h) *Amend the meaning of injury for a psychiatric or psychological disorder to remove 'the major' as a qualifier for employment's 'significant contribution' to the injury (Recommendation 5.1 of Review)*

The WCR Act requires a compensable psychiatric or psychological disorder to have arisen out of, or in the course of, employment if the employment is 'the major significant contributing factor' to the injury. Prior to 2013, the definition of compensable psychological injury only required the worker's employment to be 'a significant' contributing factor.

The Review reported that prior to the 2013 amendments the rejection rate was 61.5 per cent for the two-year period November 2011 to October 2013. Over the twelve-month period to June 2018 the rejection rate for psychological and psychiatric claims was 62.1 per cent, marginally above pre-October 2013 levels.

The Review concluded that the 2013 change was probably made for its symbolic value for the parties rather than its practical impact, which appears small though probably real. The Review also found that there seemed no good reason for Queensland to be out of step with the other jurisdictions in Australia, none of which appear to require work to be 'the major' contributory factor.

The Review recommended that the definition of psychological injury in section 32 of the WCR Act revert to the previous definition and replace 'the major' with 'a' as the qualifier for work's 'significant contribution' to the injury.

(i) *Requiring insurers to take all reasonable steps to provide claimants with psychiatric or psychological injuries access to reasonable services during claim determination. (Recommendation 5.4 of Review)*

Early intervention for injuries and prompt claims determination both assist to minimise the impact and duration of an injury, resulting in reduced claims costs and improved return to work experience.

Workers with psychiatric and psychological injuries are entitled to workers' compensation for the injury if the injury is work-related and, if management action was relevant to the injury, their injury did not arise due to reasonable management action taken in a reasonable way. Due to the complexity of these claims, they can take longer to determine, and workers often wait a significant period of time before being able to access compensation benefits if their claim is accepted. In 2017-18, the average duration to decide a psychological injury claim was 34 working days.

The Bill amends the WCR Act to require that insurers take all reasonable steps to provide reasonable services to support workers with a psychological injury during their claim determination on a without prejudice basis, excluding hospitalisation costs. This method of implementation facilitates a flexible and tailored approach to intervention, which will best meet workers' unique needs.

In order to access these support services a worker will need to submit a valid application with a work capacity certificate diagnosing that the worker has a work-related psychiatric or psychological injury. A person will not be able to access the services if the injured person is not a worker, the insurer has evidence that the injury is not work-related, or the worker has recently had a claim denied for the same or a related injury event.

An insurer's decision not to pay for treatment up until the determination of the claim will be reviewed internally by an insurer and is subject to compliance and enforcement by the Workers' Compensation Regulator.

#### Minor amendments for regulatory simplification and clarification

The Bill also makes some minor amendments to simplify and clarify the WCR Act and Workers' Compensation and Rehabilitation Regulation 2014 (WCR Regulation). In particular:

##### *(a) Replacing monetary values with a multiple of QOTE*

Under the WCR Act, lump sum and other monetary entitlements of injured workers and dependants of deceased workers are subject to indexation in accordance with variations in Queensland Ordinary Time Earnings (QOTE). While the indexed amounts are required to be notified by the Regulator, the amounts that appear in the Act remained unchanged (for example, section 140 states that the maximum entitlement for weekly compensation is \$200,000, however the actual indexed amount (reflecting the current day amount) is \$340,215). This has led to unnecessary complexity and stakeholder confusion.

The Bill amends the WCR Act and WCR Regulation to replace, where applicable and practicable, relevant dollar amounts for lump sums and other monetary entitlements with percentages or multiples of QOTE.

##### *(b) Power to require information or documents from particular persons*

The Bill clarifies the circumstances that enable an authorised person to request information or documents.

*(c) Reference to 'x-rays' within the WCR Act*

In 2017, amendments were introduced to provide additional lump sum compensation for workers diagnosed with pneumoconiosis under the WCR Act. At the time, chest x-ray was deemed the most appropriate and widely available method for providing a graduated scale of benefit for increasing severity.

Due to the speed of change regarding medical imaging availability and sensitivity, it is proposed to replace references to 'x-rays' in determining these entitlements with the broader term 'imaging'. This will ensure workers with pneumoconiosis are not disadvantaged by changes and advancements in technology.

*(d) Life expectancy to qualify for terminal condition lump sum*

A worker with a terminal condition has an entitlement to the latent onset terminal lump sum compensation of up to \$743,041 under the WCR Act. The WCR Act currently defines a terminal condition as a condition that is expected to terminate the worker's life within two (2) years after the terminal nature of the condition is diagnosed (section 39A). However, some workers are diagnosed with a terminal work-related condition with a life expectancy greater than 2 years (for example 3 or 5 years) which means they are excluded from accessing this payment. The Bill amends the WCR Act to extend entitlement to the latent onset terminal entitlements by removing the reference to two years and replacing it with an assessment that the insurer is satisfied that the worker has a latent onset condition that is terminal.

**Further Education and Training Act 2014**

The Bill will achieve its policy objectives by:

- introducing a process for the chief executive to cancel a training contract when the parties to the contract (employer and apprentice/trainee) don't agree it should be cancelled, including an appeals process;
- including a provision to clarify and strengthen section 36 (i) that the chief executive will not consider cancelling a training contract on the grounds the employment has ceased, until the unfair dismissal appeal period of 21 days has passed, or any unfair dismissal case has been finalised;
- prescribing a process for an employer to apply to the chief executive for a temporary suspension period, including a process to appeal the decision;
- including a provision to enable the chief executive to amend the delivery mode of a training plan;
- requiring the signed consent of a parent on the application to extend the nominal term of a training contract, if the apprentice or trainee is under 18 years of age;
- enabling one party to make an application to the chief executive to suspend a training contract when the other party is unable to apply, including a process to appeal the decision; and
- enabling the chief executive to decide, on the application of the parties to the contract, whether to issue a training contract completion certificate.

Apprenticeships and traineeships integrate employment and structured training, whereby an apprentice or trainee enters into a training contract for a nominal period of time, in order to gain competence in a trade as an apprentice, or vocational area as a trainee.

The skills and knowledge gained through employment is integrated with training and certification provided by a Supervising Registered Training Organisation.

The standards for an apprenticeship and traineeship have a long history of legislated regulation in Queensland. This includes setting the standards for what is required to achieve a Government issued completion certificate. The *Further Education and Training Act 2014* continues that framework but with more flexibility for the parties, provided the standards are still achieved, thus warranting the issuing of a completion certificate.

The Bill will restore previous remedies under the *Vocational Education Training and Employment Act 2000*, taking into account Queensland's legislative limitations, to strengthen the enforceability of apprenticeship and traineeship provisions to enable the Department of Employment, Small Business and Training to assist those more vulnerable in the workplace to achieve an equitable outcome.

### **TAFE Queensland Act 2013**

The Bill will establish a more representative TAFE Queensland Board and will support the work of the board in meeting the needs of diverse communities, including Aboriginal and Torres Strait Islander students and communities and will support quality training outcomes for all Queensland stakeholders.

It is recognised that mechanisms to support and promote cultural diversity and understanding assist in reflecting and supporting the unique and rich contribution to society made by Aboriginal and Torres Strait Islander people and promote cultural diversity and understanding. As the premier public provider, it is fitting that TAFE Queensland demonstrates leadership in meeting the needs of diverse communities, including Aboriginal and Torres Strait Islander students and communities through its governance structure.

### **Commonwealth Games Arrangements Act 2011**

The Bill will achieve its objectives by repealing the *Commonwealth Games Arrangements Act 2011*.

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

There are no alternative means of achieving the policy objectives other than by legislative reform.

## **Estimated cost for government implementation**

### **Workers' Compensation and Rehabilitation Act 2003**

Estimates of the cost to implement the amendments on the workers' compensation scheme totals \$18.6 million per annum.

It is expected that claim costs for extending workers' compensation coverage to interns would be minor with an estimated maximum cost to the scheme of approximately \$140,000 to \$185,000. This cost will be fully borne by employers with interns and is unlikely to significantly impact premium.

The estimated additional cost to the scheme to allow claims to be lodged after six months is \$8.1 million per annum.

Providing psychologically injured workers with services prior to claim determination is estimated to cost the scheme (i.e. insurers) around \$4.0 to \$5.0 million per annum. This cost would not be considered in an employer's experience-based rating premium calculation for rejected claims. Providing early intervention is also expected to reduce the severity, duration and recurrence of mental illness, which will reduce claims costs and provide a significant net benefit to the scheme.

Extending the obligation on insurers to provide access to an accredited return to work program for a defined period after entitlement to compensation ends is estimated to cost insurers an additional \$1.5 to \$5.5 million, based on services being offered up to three or 12 months after the entitlement to compensation ends. Implementing this amendment may encourage behavioural change for insurers and employers to engage earlier to achieve a durable return to work before the entitlement to compensation ceases. If this occurs, there would be reduced costs to the scheme and broader economic benefits from people returning to work.

WorkCover Queensland is fully funded and will be able to meet the cost from existing resources. Self-insurance licences are only issued to employers that are able to satisfy the Workers' Compensation Regulator of their long-term financial viability and are able to meet their liabilities as a self-insurer.

#### **Further Education and Training Act 2014**

The costs will be met from existing resources.

#### **TAFE Queensland Act 2013**

The costs will be met from existing resources.

#### **Commonwealth Games Arrangements Act 2011**

There will be no appreciable cost to government in relation to the repeal of the *Commonwealth Games Arrangements Act 2011*.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992*. A potential breach of fundamental legislative principles is addressed below.

#### **Further Education and Training Act 2014**

##### **Legislation should be consistent with the principles of natural justice - *Legislative Standards Act 1992, section 4(3)(b)***

Clause 7 is a new provision which provides that a party to a registered training contract may apply in the approved form to the chief executive to suspend the contract for up to one year if the party reasonably believes that the other party to the contract can not, under section 30 of the *Further Education and Training Act 2014*, agree to a proposed suspension.

The chief executive must give each party to the contract a show cause notice proposing to suspend, or not to suspend the contract. However, the chief executive is not required to give a show cause notice if the chief executive reasonably considers it is not practicable to give a party a notice.

Clause 7 of the Bill potentially breaches the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker. However, this provision is specifically for situations when one party to a registered training contract can not, under section 30 of the *Further Education and Training Act 2014*, agree to a proposed suspension.

For example, a party who can not agree to a proposed suspension under section 30 may have suffered a medical condition that has left the party in a coma. If the apprentice or trainee under the training contract is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee unless it would be inappropriate in all the circumstances for a parent to give signed consent, to protect rights of the young person. The chief executive may reasonably consider it is not practicable to give a party a notice if the circumstances surrounding the party who can not agree to a proposed suspension under section 30 are very sensitive, and the issuing of a notice would be regarded as insensitive.

The decision of the chief executive to suspend the contract preserves a registered training contract that may otherwise be cancelled due to the party being unable to meet their obligations under the contract. The decision of the chief executive would be reviewed once the party is in a position to be able to discuss matters relating to their contract. Additionally, section 168 of the *Further Education and Training Act 2014* has been amended to include that the decision of the chief executive under this new provision is appealable to the Queensland Industrial Relations Commission.

## **Consultation**

### **Workers' Compensation and Rehabilitation Act 2003**

A Stakeholder Reference Group (SRG) comprised of unions, employer groups, insurers, allied health representative bodies, and the legal community met on 19 September 2018, 11 October 2018, 7 March 2019, 5 July 2019, 15 July 2019 and 29 July 2019 to consider the legislative amendments arising from the five-year review. At the meetings on 5, 15 and 29 July 2019, the SRG considered consultation drafts of the Bill.

### **Further Education and Training Act 2014**

A preliminary discussion paper was developed and distributed to various employer and union representative groups prior to the availability of the Bill. The following stakeholders were consulted on the preliminary discussion paper: Group Training Association of Queensland and Northern Territory Limited; Australian Manufacturing Workers' Union; Electrical Trades Union. A Preliminary discussion paper was provided to the Australian Industry Group.

**Commonwealth Games Arrangements Act 2011**

The Australian Commonwealth Games Association and the City of Gold Coast were consulted in relation to the dissolution of GOLDOC and the proposed, subsequent repeal of the *Commonwealth Games Arrangements Act 2011*.

**Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and the extent to which it is uniform or complementary to the Commonwealth or another State is not relevant in this context.

## Notes on provisions

### Part 1 Preliminary

Clause 1 states that when enacted, the Bill will be cited as the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019*.

Clause 2 provides that sections 39, 40, 42 to 44, 48 to 50, 54 to 58, 63, section 77 to the extent it inserts section 739, sections 78 and 79, and Part 5 will commence on 1 July 2020. All other sections will commence on assent.

### Part 2 Amendment of Further Education and Training Act 2014

Clause 3 provides that Part 2 of the Bill amends the *Further Education and Training Act 2014*.

Clause 4 provides for the Supervising Registered Training Organisation's assessment of the employer's capacity to provide or arrange to provide the range of work, facilities and supervision required under the training plan to be regarded as an employer resource assessment, as defined under Schedule 1 Dictionary.

Clause 5 provides for an amendment to section 23 to include that an application made under this section must be signed by a parent of the apprentice or trainee if the apprentice or trainee under the registered training contract is under 18 years, unless it would be inappropriate in all the circumstances for a parent to give signed consent. This amendment to section 23 is for the purpose of consistency with other application provisions under the *Further Education and Training Act 2014*. Clause 26 provides for a transitional provision in relation to the amendment to section 23.

Clause 6 provides for the insertion of the new chapter 2, part 2, division 5, subdivision 1 heading before section 30, Application for suspension by both parties.

Clause 7 is a new provision which provides that a party to a registered training contract may apply in the approved form to the chief executive to suspend the contract for up to one year if the party reasonably believes that the other party to the contract can not, under section 30 of the *Further Education and Training Act 2014*, agree to a proposed suspension. For example, a party who can not agree to a proposed suspension under section 30 may have suffered a medical condition that has left the party in a coma. If the apprentice or trainee under the training contract is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee unless it would be inappropriate in all the circumstances for a parent to give signed consent.

An application for suspension of a training contract under this new provision must state the reasons for the proposed suspension, including why the applicant believes the other party can not agree to the suspension, and the period of the proposed suspension. A decision to suspend a training contract will take effect not less than 7 days after the application is given to the chief executive. This timeframe is matter of fact and not to be regarded as a timeframe for the applicant to withdraw the application, as is the case under Section 31 of the *Further Education and Training Act 2014*.

The chief executive may request further information from the applicant reasonably required to decide the application, within 21 days after receiving the application. The request will be in the form of a written notice and will provide the applicant a period of at least 14 days after the notice is given to comply with the notice. The chief executive must consider any information given by the applicant within the period stated in the notice. If the applicant does not comply with the notice, the applicant is taken to have withdrawn the application to suspend the contract.

The chief executive must give each party to the contract and, if the apprentice or trainee is under 18 years, the parent of the apprentice or trainee unless it would be inappropriate in all the circumstances to do so, a show cause notice proposing to suspend, or not to suspend the contract. If the chief executive proposes to suspend the contract, the notice must state the period of the proposed suspension and the day the proposed suspension is to take effect. If the chief executive proposes not to suspend the contract, the notice must state the reasons for the decision.

However, the chief executive is not required to give a show cause notice under this new provision if the chief executive reasonably considers it is not practicable to give a party a notice. For example, if the circumstances surrounding the party who can not agree to a proposed suspension under section 30 are very sensitive, and the issuing of a notice would be regarded as insensitive.

A party may give the chief executive a written response within 14 days after a show cause notice is given. After having regard to the reasons stated in the application and, if a show cause notice was given, any written responses to the notice, the chief executive must decide whether or not to suspend the training contract. The chief executive may only suspend the training contract if satisfied that a party can not perform the party's obligations under the training contract. The chief executive must give each party an information notice about the decision. If the chief executive decides to suspend the training contract, the information notice must state the period of the suspension and the day the suspension takes effect.

Clause 8 is a new provision which provides that an employer of an apprentice or trainee may apply in the approved form to the chief executive for approval to temporarily suspend the registered training contract for a period of no more than 30 days if the employer temporarily can not provide the training stated in the training plan for the apprentice or trainee. An application under this new provision must state the reasons for the proposed temporary suspension and the period of the proposed temporary suspension. The employer must give a copy of the application to the apprentice or trainee, inviting the apprentice or trainee to make a submission to the chief executive within 5 days, in relation to the proposed temporary suspension.

Within 7 days after receiving the application, the chief executive must decide the application. After having regard to the reasons stated in the application and any submissions made by the apprentice or trainee in relation to the proposed temporary suspension, the chief executive must decide whether or not to approve the application. The chief executive may only approve the application if satisfied the employer can not provide the training to the apprentice or trainee under the training contract. The chief executive must give the employer and apprentice or trainee an information notice about the decision. If the chief executive approves the application, the information notice must state the maximum period of not more than 30 days over which the training contract may be suspended; the time during the maximum period, or part of the period, the employer may stand down the apprentice or trainee; and the day the period starts.

If the training contract is temporarily suspended, the employer may stand down the apprentice or trainee unless the employer and the apprentice or trainee otherwise agree. The employer may stand down the apprentice or trainee without pay under this section only in accordance with the information notice from the chief executive.

Clause 9 amends the title of Chapter 2, part 2, division 6, subdivision 1 to clarify that this subdivision applies for a cancellation request from all parties to the contract.

Clause 10 is a new provision which provides that a party to a registered training contract may apply in writing to the chief executive to cancel the contract if the party believes either the party or the other party to the contract, can not successfully complete that party's obligations under the contract. An application to cancel a training contract under this new provision must state the reasons for the proposed cancellation, and may include material in support of the application. A decision to cancel a training contract will take effect not less than 7 days after the application is given to the chief executive. This timeframe is matter of fact and not to be regarded as a timeframe for the applicant to withdraw the application, as is the case under Section 34 of the *Further Education and Training Act 2014*.

The chief executive may request further information from the applicant reasonably required to decide the application, within 21 days after receiving the application. The request will be in the form of a written notice and will provide the applicant a period of at least 14 days after the notice is given to comply with the notice. The chief executive must consider any information given by the applicant within the period stated in the notice. If the applicant does not comply with the notice, the applicant is taken to have withdrawn the application.

The chief executive must give each party to the contract and, if the apprentice or trainee is under 18 years, the parent of the apprentice or trainee unless it would be inappropriate in all the circumstances to do so, a show cause notice proposing to cancel or not to cancel the contract. The notice must state the reasons for the decision, and if the chief executive is proposing to cancel the contract, the notice must also state the day the cancellation takes effect.

A party may give the chief executive a written response within 14 days after a show cause notice is given under this new provision. After having regard to the reasons stated in the application and any written responses to the notice, the chief executive must decide whether or not to cancel the training contract. The chief executive may only cancel the contract if satisfied that a party to the training contract can not successfully complete the party's obligations under the training contract. The chief executive must give each party an information notice about the decision. If the chief executive decides to cancel the training contract, the information notice must state the day the cancellation takes effect.

If a registered training contract is cancelled under this new provision, the apprenticeship or traineeship of the person who was the apprentice or trainee ends on the day the contract is cancelled.

Clause 11 provides for an amendment to section 36 which provides that the chief executive must not cancel a registered training contract under section 36(1)(i) if the chief executive receives a notice of a contested event as defined under the new section 58A, and the contested event has not been finalised. The chief executive must not cancel a contract under section 36(1)(i) within 21 days after the employment of the apprentice or trainee has ceased to allow for a notice of a contested event as defined under section 58A.

Clause 12 provides for an amendment to section 38 to update a reference to section 36. The subsections in section 36 were amended by clause 11.

Clause 13 is a new provision which provides that a registered training contract may be re-registered if the contract was cancelled by the chief executive under any chapter 2, part 2, division 6 provision, and the decision the industrial relations commission or the Fair Work Commission under the *Fair Work Act 2009* (Cwlth) in relation to a contested event as defined under section 58A, is to reinstate the employment of the apprentice or trainee who was a party to a cancelled contract. The industrial relations commission is defined in the *Acts Interpretation Act 1954* as the commission under the *Industrial Relations Act 2016*.

It is the obligation of each person that was a party to the registered training contract that was cancelled to notify the chief executive as soon as possible after becoming aware of the decision of the industrial relations commission or the Fair Work Commission under the *Fair Work Act 2009* (Cwlth) to reinstate the employment of the apprentice or trainee who was a party to a cancelled contract. The chief executive must, as soon as practicable after receiving notice from the parties, re-register the training contract and provide each person that was a party to the registered training contract that was cancelled, and the Supervising Registered Training Organisation for the apprentice or trainee, with a written notice stating:

- that the cancelled training contract has been re-registered;
- that the nominal term of the re-registered training contract is extended by the period the contract was cancelled;
- the new nominal completion date, taking into account the period of extension; and
- that the training plan for the apprentice or trainee that was in force prior to the training contract being cancelled, continues in force unless the parties enter into a new training plan.

Clause 14 is a new provision which provides that the parties to a registered training contract may apply in the approved form to the chief executive for the issue of a completion certificate if the parties are satisfied that the apprentice or trainee has completed all the training and assessment required under the training plan, however the Supervising Registered Training Organisation has stopped operating as a registered training organisation and not able to sign a completion agreement with the parties.

If the apprentice or trainee making an application under this new provision is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee unless it would be inappropriate in all the circumstances for a parent to give signed consent.

The parties must provide evidence supporting the application. This evidence must include:

- a qualification or statement of attainment issued by the Supervising Registered Training Organisation prior to it ceasing operating; or
- a statement of results issued during the process of winding up the Registered Training Organisation; or
- a letter or other documentation from the National Vocational Education and Training Regulator stating the units of competency the apprentice or trainee achieved under the Registered Training Organisation; or
- any other documentation the chief executive regards as acceptable to verify the units of competency achieved by the apprentice or trainee.

The chief executive may issue the completion certificate under this new provision only if satisfied the apprentice or trainee has completed the apprenticeship or traineeship in accordance with the *Further Education and Training Act 2014*.

Clause 15 provides for an amendment to section 58(1) to include that an employer must give the chief executive signed notice of a contested event, as defined under the new section 58A, within 14 days after the contested event happens.

Clause 16 is a new provision which provides that an apprentice or trainee must give the chief executive notice if a contested event happens within 21 days after the employment of the apprentice or trainee ceased.

Clause 17 is a new provision which provides clarification of the Supervising Registered Training Organisation's obligation to complete and retain an employer resource assessment in the approved form, as defined under Schedule 1 Dictionary, when negotiating the training plan with the employer and apprentice or trainee. The supervising registered training organisation must regularly review, and if necessary, revise the employer resource assessment during the period of the training plan, and provide the most recent copy of it within a reasonable timeframe when requested by the chief executive. A maximum penalty of 80 penalty units applies if the Supervising Registered Training Organisation contravenes subsection (2) of this new provision.

Clause 18 provides for the insertion of the new chapter 2, part 4, division 2, subdivision 1 heading before section 77, Ending a training plan.

Clause 19 provides for the insertion of the new chapter 2, part 4, division 2, subdivision 2 heading after section 79, Changing a training plan—all parties agree.

Clause 20 provides for an amendment to section 80 to omit the word 'only'.

Clause 21 provides for the insertion of the new chapter 2, part 4, division 2, subdivision 3 heading after section 81, Changing a training plan—supervising registered training organisation.

Clause 22 provides for the insertion of the new chapter 2, part 4, division 2, subdivisions 4-6.

Subdivision 4 Changing a training plan—on application by one party

Subdivision 4 is a new provision which provides for the chief executive to decide whether to change the mode of delivery of the training plan for an apprentice or trainee, on application by a party to a training plan if the party considers an apprentice or trainee has not made sufficient progress to achieve the qualification or statement of attainment under the training plan. The application must be in the approved form and state the proposed change to the mode of delivery of the training plan and the reasons for the proposed change.

If the apprentice or trainee makes the application under this new provision and is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee unless it would be inappropriate in all the circumstances for a parent to give signed consent.

The chief executive may request further information from the applicant reasonably required to decide the application, within 21 days after receiving the application.

The request will be in the form of a written notice and will provide the applicant a period of at least 14 days after the notice is given to comply with the notice. The chief executive must consider any information given by the applicant within the period stated in the notice. If the applicant does not comply with the notice, the applicant is taken to have withdrawn the application.

If the chief executive proposes to change the mode of delivery of the training plan the chief executive must give each party to the registered training contract a show cause notice stating the reasons for proposing the change, what is the proposed change to the mode of delivery of the training plan, and the day the proposed change is to take effect.

A party may give the chief executive a written response within 14 days after a show cause notice is given under this new provision. After having regard to the reasons stated in the application and, if a show cause notice was given, any written responses to the notice, the chief executive must decide whether or not to change the mode of delivery of the training plan. The chief executive may only change the mode of delivery of the training plan if satisfied the change is necessary to assist the apprentice or trainee make the required progress to achieve the qualification or statement of attainment under the training plan. The chief executive must give each party a written notice about the decision. If the chief executive decides to change the mode of delivery of the training plan, the written notice must state the change and the date the change takes effect, being not less than 14 days after the day the notice is given to the parties.

#### Subdivision 5 Changing a training plan—chief executive

Subdivision 5 is a new provision which provides for the chief executive to decide to change the mode of delivery of the training plan for an apprentice or trainee, without an application by the parties to the plan if the chief executive is satisfied the change is necessary to assist an apprentice or trainee to achieve the qualification or statement of attainment under the apprentice's or trainee's training plan.

If the chief executive proposes to change the mode of delivery of the training plan, the chief executive must give each party to the registered training contract a show cause notice stating the reasons for proposing the change, what is the proposed change to the mode of delivery of the training plan, and the day the proposed change is to take effect.

A party may give the chief executive a written response within 14 days after a show cause notice is given under this new provision. After having regard to any written responses to the notice, the chief executive must decide whether or not to change the mode of delivery of the training plan. The chief executive may only change the mode of delivery of the training plan if satisfied the change is necessary to assist the apprentice or trainee make the required progress to achieve the qualification or statement of attainment under the training plan. The chief executive must give each party a written notice about the decision. If the chief executive decides to change the mode of delivery of the training plan, the written notice must state the change and the date the change takes effect, being not less than 14 days after the day the notice is given to the parties.

#### Subdivision 6 Supervising registered training organisation's obligations in relation to a change

If a training plan is changed under subdivision 4 or 5, the Supervising Registered Training Organisation must take all reasonable steps to ensure the change is complied with by the parties to the plan.

Clause 23 provides for an amendment to section 112A to update a reference to section 23. The subsections in section 23 were amended by clause 5.

Clause 24 provides for an amendment to section 168(1) to include that a person may appeal to the industrial relations commission if the person is aggrieved by a decision made by the chief executive under the following new provisions:

- a decision under new section 32D;
- a decision under new section 32F;
- a decision to cancel a registered training contract under new section 35D.

This clause also provides for an amendment to section 168(1) to update a reference to section 36. The subsections in section 36 were amended by clause 11.

Clause 25 provides for an amendment to section 208 to include a new subsection that provides that a declaration continued in force under section 208 expires on 1 July 2020.

Clause 26 provides for a transitional provision in relation to the amendment to section 23. Section 23 was amended by clause 5. This transitional provision provides for an application made under section 23 before commencement of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* and, immediately before commencement, the chief executive had not decided the application. The chief executive must decide the application under the *Further Education and Training Act 2014* as in force immediately before the commencement.

Clause 27 provides for an amendment to the Dictionary in Schedule 1 to omit, insert and amend definitions to assist with the interpretation of other provisions.

### **Part 3      Amendment of TAFE Queensland Act 2013**

Clause 28 provides that Part 3 of the Bill amends the *TAFE Queensland Act 2013*

Clause 29 provides for amendment of s 12 to establish a new section 12 (2A) to establish that at least 1 member of the board must be an Aboriginal or Torres Strait Islander.

Clause 30 amends the heading of Part 6.

Clause 31 inserts a new division heading for transitional provisions.

Clause 32 provides that if on commencement, the board does not consist of a member who is an Aboriginal or Torres Strait islander, the board is taken to be validly constituted; and this continues to apply until the first day on which, after the commencement, a member who is an Aboriginal or a Torres Strait Islander is appointed to the Board.

### **Part 4      Amendment of *Workers' Compensation and Rehabilitation Act 2003***

Clause 33 provides that Part 4 of the Bill amends the *Workers' Compensation and Rehabilitation Act 2003*.

Clause 34 amends section 32 (Meaning of injury) to remove the requirement that for a psychiatric or psychological disorder employment is the major significant contribution to the injury. The amendment will result in all injuries, whether physical or psychiatric or psychological, being assessed the same in relation to employment's contribution to the injury.

Clause 35 amends section 36F (Meaning of pneumoconiosis score) by replacing the reference to 'x-ray' in subsection (b) with the broader term 'image'. This will ensure workers with pneumoconiosis are not disadvantaged by changes and advancements in technology.

Clause 36 amends section 39A (Meaning of terminal condition) to extend entitlement to latent onset terminal entitlements by removing the current requirement that the condition is expected to terminate the worker's life within 2 years after the terminal nature of the condition is diagnosed.

Clause 37 inserts a new subsection (2) into section 41 (Meaning of rehabilitation and return to work coordinator). The onus for demonstrating the person engaged to perform the role of RRTWC is appropriately qualified remains on the employer. The amendment provides that a person is taken to be appropriately qualified to perform the functions of a rehabilitation and return to work coordinator (RRTWC) if the person has completed a training course approved by the Workers' Compensation Regulator (the Regulator).

This enables the Regulator to approve a list of training courses or qualifications for RRTWC relevant to the industry of the employer that if completed would be sufficient to satisfy the requirement that the RRTWC is appropriately qualified. If there is no approved training course, or the RRTWC has not completed the approved training course, then the employer would need to demonstrate how the RRTWC is appropriately qualified.

Clause 38 amends section 42 (Meaning of suitable duties) to clarify that the return to work plan is developed under section 220(4). This amendment supports the link between the insurer's and the employer's duty in relation to the rehabilitation and return to work of an injured worker.

Clause 39 inserts a new section 63B (Additional premium for interns) that will allow WorkCover to apply an additional premium for employers that have an intern. This amendment is required as premium is generally calculated using an employer's declared wages, however interns are not paid wages. Without this amendment WorkCover would not be able to recover premium to cover the cost of providing accident insurance for interns.

Clause 40 amends section 66 (Employer's liability for excess period). This amendment is a consequential amendment arising from the amendment to section 133 which requires all employers, regardless of their insurance status, to notify their insurer when a worker sustains an injury for which compensation under the WCR Act may be payable. This amendment is required to ensure consistency with sections 109, 133 and 133A. This clause provides that all employers, regardless of their insurer, are responsible for payment of an excess up to the lesser value of QOTE or the amount of weekly compensation. Where an employer fails to pay this amount, it will be payable by the employer's insurer.

Clause 41 amends section 107 (meaning of QOTE) to clarify that the percentage difference in QOTE for the financial year compared to QOTE for the previous financial year is rounded to the nearest second decimal place. It also moves the section from Chapter 4 (Compensation) to Chapter 1 (Preliminary) as QOTE is used for more purposes than just the calculation of compensation entitlements.

Clause 42 amends section 109 (Who must pay compensation). This amendment is a consequential amendment arising from the amendment to section 133 which requires all employers, regardless of their insurance status, to notify their insurer when a worker sustains an injury for which compensation under the WCR Act may be payable. The amendment is required to ensure consistency with section 133 and 133A. The amendment will ensure that any amounts paid by the employer, either in compensation or instead of compensation, that is payable under the Act are reported to the insurer. The amendment ensures that all employers, regardless of their insurer status, have the same obligations to their workers and insurers.

Clause 43 amends section 128B (Entitlements of worker with terminal condition) to replace dollar amounts with multiples of Queensland Ordinary Time Earnings (QOTE).

Clause 44 amends section 128G (Lump sum compensation) to replace dollar amounts with multiples of QOTE.

Clause 45 amends section 128J (Further lump sum compensation) to replace the reference to 'x-ray' in subsection (3)(c) with the broader term 'image'. This will ensure workers with pneumoconiosis are not disadvantaged by changes and advancements in technology.

Clause 46 amends section 131 (Time for applying) to provide for a further circumstance in which an insurer may waive the time limit to lodge an application for compensation. Under section 131 of the WCR Act, a worker's application for compensation is only valid and enforceable if it is lodged within six months after the entitlement to compensation arises. In *Blackwood v Toward* [2015] ICQ 008, it was determined that the six-month time limit began on the date the doctor assessed the worker as having a work-related injury, even if at that point there is no incapacity for work. This application impacts workers with chronic, insidious or psychiatric injuries who attempt to manage their injury at work before deteriorating, and do not lodge a claim when they are assessed by the doctor, but at a later time when they become incapacitated for work. The amendment provides discretion for the insurer to waive the time limit if the worker is certified with an incapacity (either total or partial) and lodges their claim within 20 business days of the certification.

Clause 47 amends section 132 (Applying for compensation) to clarify when an application for compensation is considered valid and enforceable. This amendment is a consequential amendment arising from the new entitlement to support workers with psychiatric or psychological injuries (see clause 63).

Clause 48 amends section 133 (Employer's duty to report injury) to require self-insured employers to notify their insurer when a worker sustains an injury for which compensation may be payable. The amendment ensures that all employers, regardless of their insurer status, have the same obligations to their workers and to their insurer.

Clause 49 amends section 133A (Employer's duty to tell WorkCover if worker asks for, or employer makes, a payment). This amendment is a consequential amendment arising from the amendment to section 133 which requires all employers, regardless of their insurance status, to notify their insurer when a worker sustains an injury for which compensation under the WCR Act may be payable. The amendment is required to ensure there is consistency with sections 109 and 133A. The amendment will ensure that any amounts paid by the employer, either in compensation or instead of compensation, that is payable under the Act are reported to the employer's insurer.

The amendment ensures that all employers, regardless of their insurer, have the same obligations to their workers and to their insurers.

Clause 50 amends section 140 (Maximum entitlement) to replace dollar amounts with multiples of QOTE.

Clause 51 amends section 141 (Time from which compensation payable). The amendment is a consequential amendment arising from the amendment to section 131 which provides discretion for the insurer to waive the time limit to lodge an application if the worker is certified with an incapacity (either total or partial) and lodges their claim within 20 business days of the certification. This amendment is required to improve readability and consistency with terms used within the WCR Act.

Clause 52 amends section 144B (When payment of medical treatment, hospitalisation and expenses stops). This is a consequential amendment arising from the amendment to section 220 (see clause 59) and new Part 5A (see clause 63) and is required to ensure that the payments for services to support workers during the claims determination period for a psychiatric or psychological injury or for participation in the insurer's accredited rehabilitation and return to work program do not cease due to the operation of section 144B.

Clause 53 amends section 168 (Review of compensation and associated payments) to provide that an insurer may review a person's entitlement to compensation if the insurer considers the person's entitlement under the Act may have changed. This amendment is a consequential amendment arising from the amendment to section 220 (see clause 59) and is required to improve clarity for the operation of this provision.

Clause 54 amends section 192 (Additional lump sum compensation for workers with DPI of 30% or more) to replace dollar amounts with multiples of QOTE.

Clause 55 amends section 193 (Additional lump sum compensation for gratuitous care) to replace dollar amounts with multiples of QOTE.

Clause 56 amends section 200 (Total dependency) to replace dollar amounts with multiples of QOTE.

Clause 57 amends section 202 (Workers under 21) to replace dollar amounts with multiples of QOTE.

Clause 58 amends section 205 (Variation of payments for injuries) by removing the requirement of the Regulator to notify of a QOTE variation by subordinate legislation. The notification is no longer required as the Bill replaces all dollar amounts with multiples of QOTE.

Clause 59 amends section 208 (Application and object of chapter 4) by inserting a new subsection (3) which states that the section is subject to part 5A. This amendment is a consequential amendment arising from the amendment creating a new Part 5A (see clause 63) to ensure that the amounts payable to support workers with psychiatric or psychological injury during the claim determination period are not limited due to the application and object of Chapter 4.

Clause 60 amends the Chapter 4, Part 3, Division 1 heading by replacing 'Responsibility' with 'Insurer's Responsibility'.

Clause 61 replaces section 220 (Insurer's responsibility for worker's rehabilitation) with a new section which expands an insurer's responsibility for rehabilitation and return to work. The current section includes an obligation on an insurer to refer a worker to the insurer's accredited return to work program when the worker has lodged a notice of claim for damages. The new section removes this obligation and replaces it with a mandatory requirement for an insurer to refer an injured worker to the insurer's accredited rehabilitation and return to work program if the worker's entitlement to compensation has ceased under sections 144A, 168 or 190(2) and the worker has not returned to work because of the injury. If the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury, then the insurer may decide not to refer the worker to the program by providing written decision to the worker.

If the worker is already participating in an accredited rehabilitation and return to work program of the insurer when compensation has ceased, then the worker will continue in the program without need for a further referral by the insurer.

A worker's entitlement to remain in the accredited rehabilitation and return to work program continues until the first of the following happens:

- the insurer is satisfied the worker is unwilling or unable to participate in the program, for example:
  - the worker advises that they have decided to retire or cease employment;
  - the worker advises that they have decided not to participate in the program;
  - the worker unreasonably refuses to participate, or
  - the worker's participation is not satisfactory, for example, not attending agreed meetings, or failing to participate in host employment programs;
- the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury, for example:
  - medical advice indicates that further participation will not reasonably contribute to achieving a durable return to work and the worker's functioning has been maximised;
  - all appropriate return to work initiatives have been considered;
- the worker receives a payment of damages for the injury;
- the worker receives a redemption payment for the injury;
- the worker receives compensation for the injury for five years.

Decisions not to refer the worker to the program following a request, or cessation of entitlement to compensation, or to end a worker's participation in the program are reviewable decisions.

Clause 62 amends section 222(4) (Liability for rehabilitation fees and costs) to clarify that an insurer's liability for rehabilitation fees and costs continue for the period of a worker's participation in the insurer's accredited rehabilitation and return to work program.

Clause 63 amends section 226 (Employer's obligation to appoint rehabilitation and return to work coordinator) to require employers to provide details of their rehabilitation and return to work coordinator to the employer's insurer. The employer must give the insurer the prescribed details of a person appointed as a rehabilitation and return to work coordinator within 12 months after the appointment; and if the prescribed details of a person appointed as a rehabilitation and return to work coordinator change, the employer must give written notice telling the insurer about the change within 12 months.

The requirement to notify within 12 months is to align reporting to the insurance premium cycle, which minimise the administrative burden for the employer and the insurer.

Clause 64 amends section 228 (Employer's obligation to assist or provide rehabilitation) to expand the employer's obligations to assist or provide rehabilitation to include an obligation to assist the insurer. This clause replaces section 228 with a new provision which states that the employer of a worker who has sustained an injury must take all reasonable steps to assist or provide the worker with rehabilitation during the prescribed period for the worker. It also provides that the rehabilitation must be of a suitable standard as prescribed by regulation; the employer must cooperate with the insurer to enable the insurer to meet its obligations under section 220 and if an employer considers it is not practicable to provide the worker with suitable duties programs, the employer must give the insurer written evidence that it is not practicable. The new section 228 also defines 'prescribed period' for a worker who has sustained an injury to mean the period that starts on the day the worker is injured and ends on the day the insurer's responsibility for the worker ends under section 220.

Clause 65 inserts a new Chapter 4, Part 5A, (Support for workers with psychiatric or psychological injuries) which requires insurers to take all reasonable steps to provide reasonable services to support workers with a psychiatric or psychological injury during their claim determination on a without prejudice basis, excluding hospitalisation costs. The purpose of the support is to provide early intervention services to the worker that is reasonable during the claim determination process.

A worker's eligibility for support will require a worker to submit a valid application with a medical certificate stating they have been diagnosed with a work-related psychiatric or psychological injury. An insurer will not be required to provide the support services in cases where the injured person is not a worker (for example, the nominated employer can promptly verify that the applicant is not a worker), an injury has not been diagnosed, or the insurer has evidence that the injury is not work-related (for example, the nominated event was a relationship breakdown).

Part 5A does not apply if the worker has made an earlier application for compensation under section 132 for a psychiatric or psychological injury and the event that resulted in the injury of the earlier application is the same, or substantially the same as the event that resulted in the injury.

If an insurer decides not to pay for reasonable services up until the determination of the claim the insurer must conduct an internal review before making the decision. If the claim is accepted, any amounts paid during the determination period are deemed to be compensation.

Clause 66 amends section 306M (Damages for loss of consortium or loss of servitium) by removing the note in subsection 306M(1)(b). This note is obsolete as section 306V is omitted by clause 62.

Clause 67 amends section 306R (Court required to inform parties of proposed award) by removing the note in subsection 306R(2). This note is obsolete as section 306V is omitted by clause 62.

Clause 68 removes Chapter 5, Part 9, Division 5 (Indexation provisions). This division is no longer required as the amounts subject to indexation are now expressed as a multiple of QOTE.

Clause 69 inserts a new Chapter 5, Part 14 (Expressions of regret and apologies) after section 320 to exempt expressions of regret and apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability in a civil action brought under the WCR Act (i.e. a common law claim for damages under Chapter 5), to align the WCR Act with the *Civil Liability Act 2003*. Amendments include:

- Section 320A which clarifies that the division applies in relation to liability for damages.
- Section 320B confirms that the purpose of the new Division 1 is to allow an individual to express regret about an incident that may give rise to an action for damages without being concerned that the expression of regret may be construed or used as an admission of liability on a claim or in a proceeding based on a claim arising out of the incident.
- Section 320C defines an 'expression of regret' made by an individual in relation to an incident alleged to give rise to an action for damages is any oral or written statement expressing regret for the incident to the extent that it does not contain an admission of liability on the part of the individual or someone else.
- Section 320D stipulates that an expression of regret made by an individual in relation to an incident alleged to give rise to an action for damages at any time before a civil proceeding in relation to the incident is started in a court is not admissible in the proceeding.
- Division 2 (Apologies) includes section 320E which clarifies that the division applies in relation to liability for damages.
- Section 320F clarifies that the purpose of the Division 2 is to allow a person to make an apology about a matter without the apology being construed or used as an admission of liability for damages in relation to the matter.
- Section 320G defines an 'apology' as an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not it admits or implies an admission of fault in relation to the matter.
- Section 320H provides that an apology made on behalf of a person in relation to any matter alleged to have been caused by the person does not constitute an express or implied admission of fault or liability for damages by the person in relation to the matter and is not relevant to the determination of fault or liability for damages in relation to the matter.

Clause 70 amends section 383 (General statement of WorkCover's functions) to clarify that WorkCover's functions include to fund and provide programs and incentives to encourage improved health and safety performance by employers.

Clause 71 inserts a new section 385A (WorkCover may fund and provide programs and incentives) to clarify that prior to WorkCover funding and providing programs and incentives to encourage improved health and safety performance by employers, WorkCover must consult with the regulator under the *Work Health and Safety Act 2011* and any other relevant work health and safety regulator prescribed by Regulation.

The function to fund and provide programs and incentives to encourage improved health and safety performance by employers is distinct from WorkCover's obligation to make payments on the Minister's instruction under section 481A of the WCR Act. It is also distinct to WorkCover's other insurance functions including to provide premium incentives and discounts such as early payment discounts.

Clause 72 amends section 481A (Amounts payable by WorkCover on Minister's instruction) by inserting a new subsection (4) clarifying that payments made on the Minister's instruction do not limit functions under section 385A.

Clause 73 amends section 532C (Power to require information or documents from particular persons) by clarifying that an authorised person has the power to require information or documents if they reasonably believe that the WCR Act has been contravened. A contravention occurs if the WCR Act imposes a duty or obligation on a person and that person has not fulfilled that duty or obligation. There does not need to be a penalty attached to the duty or obligation for a contravention to have occurred.

This amendment is consistent with the requirements under the *Work Health and Safety Act 2011* (section 17) which refers to a WHS entry permit holder entering a workplace for the purpose of inquiring into a suspected contravention of the Act that relates to, or affects, a relevant worker. It further provides that the WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.

Clause 74 amends section 538 (Internal review by insurer) to require that an insurer must undertake an internal review of a decision made in relation to support for workers with psychiatric or psychological injuries (see clause 63) before making the decision.

Clause 75 amends section 540 (Application of Part 2) to extend the list of reviewable decisions to include decisions by WorkCover and a self-insurer not to refer a worker to an accredited rehabilitation and return to work program, and to end a worker's continued participation in an accredited rehabilitation and return to work program.

Clauses 76 amends section 584 (Regulation-making power) to allow a regulation to prescribe an amount, including, for example, an amount of a fee, levy or damages, as a multiple of QOTE.

Clauses 75 inserts a new chapter 35 (Transitional provisions for Workers' Compensation and Rehabilitation Act 2019) that provides for transitional provisions for certain amendments to the Act.

Section 731 provides that the new requirement for employment to be significant contributing factor to psychiatric or psychological disorder (see clause 32) will apply for injuries that were sustained on or after commencement.

Section 732 provides that the new requirement for certification of a terminal condition (see clause 34) will apply for injuries that were sustained on or after 31 January 2015. This date aligns with the changes for deemed diseases for firefighters with certain cancers and will ensure that this beneficial provision will have application for those firefighters and for workers with a terminal coal lung dust disease and for workers with a terminal silicosis disease.

Section 733 provides that the expression of percentage difference in QOTE for financial year rounded to nearest second decimal place (see clause 39) is, and is taken to have always been, as valid as it would have been if the percentage difference had been notified under new section 107(3).

Section 734 provides that the new requirement for payment of compensation by employer who is a self-insurer (see clause 40) will apply for injuries that were sustained on or after commencement.

Section 735 provides that the new power of discretion of insurer to waive time limit for applying for compensation (see clause 44) will apply only if the application was made on or after the commencement.

Section 736 provides that the new requirement to report of injury by employer who is self-insurer (see clause 46) will apply for injuries that were sustained on or after commencement.

Section 737 provides that the new obligation of employer who is self-insurer to report payment to insurer (see clause 47) will apply for injuries that were sustained on or after commencement.

Section 738 provides that for the new insurer's obligation to refer a worker who has stopped receiving compensation to the insurer's accredited rehabilitation and return to work program (see clause 59) will apply only if the worker stopped receiving the compensation after the commencement.

Section 739 provides that the employer's obligation to give the insurer details of rehabilitation and return to work coordinator appointed before commencement (see clause 61) will apply to the employer as if the coordinator were appointed on the commencement.

Section 740 provides that the new insurer's obligation to provide support for a worker with psychiatric or psychological injury (see clause 63) will apply for injuries that were sustained on or after commencement.

Section 741 provides that if an expression of regret or apology was made before commencement and before a notice of claim for damages for an injury has been given, then the new provisions relating to expressions of regret or apology under Chapter 5, part 14 apply.

Clauses 78 amends Schedule 2 (Who is a worker in particular circumstances) and is intended to set out that unpaid interns are workers for the purposes of the WCR Act and entitled to compensation for injury.

An intern is defined as a person who is performing work for a business or undertaking without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and would be a worker if the work performed by the person were for the payment of wages.

Any person mentioned in chapter 1, part 4, division 3, subdivision 1, 2, 3 or 4 (for example, a volunteer with a non-profit organisation or a religious, charitable or benevolent organisation, or a student on work experience or vocational placement) is specifically excluded from being a worker under this provision. A person providing unpaid assistance as a favour would also not be considered a worker under this provision.

Clause 79 amends Schedule 3 (Who is an employer in particular circumstances) by inserting a new clause 8 to set out who is an employer of an intern.

Clause 80 amends the Dictionary in Schedule 6 to omit, insert and amend definitions to assist with the interpretation of other provisions.

## **Part 5 Amendment of Workers' Compensation and Rehabilitation Regulation 2014**

Clause 81 provides that Part 3 of the Bill (Amendment of Workers' Compensation and Rehabilitation Regulation 2014) amends the *Workers' Compensation and Rehabilitation Regulation 2014*.

Clause 82 amends section 128 (Prescribed amount of damages for loss of consortium or loss of servitium – Act, s 306M (1)(b)) inserts a new table to replace the dollar amounts with multiples of QOTE.

Clause 83 amends section 130 (General damages calculation provisions – Act, s 306P(2), definition general damages calculation provisions) to replace the reference in subsection 130(2) to 'a table' with 'table 1 to 9'. It also inserts a new subsection (2A) which provides 'for an injury within the scale value stated in an item of a table other than a table mentioned in subsection (2), the general damages are the amount worked out in the way stated in the column of the table with the heading 'general damages'.' These changes are a consequence of the change to listed amounts now expressed as a multiple of QOTE.

Clause 84 amends section 131 (Prescribed amount of award for future loss – Act, s 306R(2)) to replace the dollar amounts for 1 July 2020 and after with multiples of QOTE.

Clause 85 inserts a new section 146A (146A WorkCover funding and provision of programs and incentives—Act, s 385A, definition *prescribed entity*) that prescribes entities that WorkCover must consult with if it proposes to fund or provide programs and incentives to encourage improved health and safety performance by employers where the program or incentive will involve an employer under the jurisdiction of a prescribed entity.

Clause 86 amends Schedule 2 (Graduated scale for additional compensation for workers with terminal latent onset injuries) to replace dollar amounts with multiples of QOTE.

Clause 87 amends Schedule 3 (Graduated scale of additional compensation for workers with DPI of 30% or more) to replace dollar amounts with multiples of QOTE.

Clause 88 amends Schedule 4 (Graduated scale for additional compensation for gratuitous care) to replace dollar amounts with multiples of QOTE.

Clause 89 amends Schedule 4C (Graduated scale for additional compensation for gratuitous care) to replace dollar amounts with multiples of QOTE.

Clause 90 amends Schedule 12 (General damages calculation provisions) by inserting a new table 10, which replaces dollar amounts with multiples of QOTE.

## **Part 6 Repeal**

Clause 91 states that, when enacted, the Bill will repeal the *Commonwealth Games Arrangements Act 2011* in its entirety.

## **Part 7 Minor and consequential amendments**

Clause 92 makes minor and consequential amendments to the *Workers' Compensation and Rehabilitation Act 2003* and *Workers Compensation and Rehabilitation Regulation 2014*.