Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (the Bill).

Policy objectives and the reasons for them

Workers' Compensation and Rehabilitation Act 2003

The objective of the proposed amendments to the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) is to implement legislative recommendations of the *2023 Review of the Operation of the Queensland Workers' Compensation Scheme* (2023 Review) and the *Decision Impact Analysis Statement in relation to regulatory proposals to extend workers' compensation coverage to gig workers and bailee taxi and limousine drivers* (Decision IAS).

Section 584A of the WCR Act requires the responsible Minister to ensure a review of the operation of the workers' compensation scheme (scheme) is completed at least once in every five-year period. The 2023 review was completed by independent reviewers, Ms Glenys Fisher and Emeritus Professor David Peetz. The reviewers invited key stakeholders to make submissions and meet with them, with a total of 31 meetings held and 45 submissions received. The 2023 Review report was tabled in the Queensland Parliament on 4 October 2023.

The 2023 Review found the scheme remains strong and while major reform was not recommended, it identified emerging trends which may impact the scheme's performance and viability. The scheme is well placed to respond to these trends which include:

- a rise in psychiatric and psychological injury claims, including secondary psychiatric and psychological injury claims;
- lower rehabilitation and return to work (RRTW) performance compared to other Australian workers' compensation jurisdictions; and
- delays in administrative decision-making by workers' compensation insurers and the Workers' Compensation Regulator.

In recognition of these trends, the 2023 Review made 54 recommendations designed to:

- increase early intervention to pre-empt the deterioration of physical injuries into secondary psychiatric or psychological injuries;
- address workplace issues that may be causing or worsening psychiatric or psychological injuries;
- make it easier for injured workers to find gainful employment with their own or another employer;
- promote reductions in delays in the time taken to provide information and make decisions in the scheme; and

- facilitate coverage by the scheme of insecure workers in the gig economy who may otherwise be exposed to uncompensated risk.

Of the 54 recommendations, 26 require legislative amendment and the remaining 28 are administrative and can be implemented by the Office of Industrial Relations or WorkCover Queensland (WorkCover) in consultation with key stakeholders. The Queensland Government response published on 27 February 2024 noted of the 26 legislative based recommendations, nine are accepted, 13 accepted in-principle, three remain under consideration, and one is not accepted.

Decision IAS

On 27 February 2024 the Government published a Decision IAS with its decision on workers' compensation coverage for workers in the gig economy and bailee drivers in the taxi and limousine industry.

The Decision IAS determined many gig workers are characterised as independent contractors rather than workers and lack workplace entitlements and protections including workers' compensation coverage. Gig workers can perform employee-like work but the exact legal status of individual gig workers is difficult to ascertain as engagement models vary significantly and the legal status of gig workers remains unclear nationally.

Many gig workers do not meet the current definition of 'worker' in the WCR Act and are not covered by Queensland's workers' compensation scheme. Some intermediaries (platforms) provide their own private accident insurance cover for their gig workers, removing the need for gig workers to make their own insurance arrangements. The exact number of gig workers covered by these policies is unknown and intermediary-provided insurance is of a lower standard than coverage provided by the Queensland scheme.

This exposes gig workers to a risk of uncompensated or undercompensated work-related injury or illness and creates disparity in the work-related entitlements available to these individuals in comparison to workers, leading to poor equity outcomes. Additionally, the injury and rehabilitation costs for work-related injuries sustained by these individuals is shifted to individual gig workers and the community via the healthcare system.

The Government recognises that if gig workers who are employee-like are injured due to the nature of work, they do not have the same protections as workers within the scheme and that intervention may be required to address the identified problem.

The Decision IAS determined while coverage of gig workers would provide a beneficial approach, further consideration of this issue is necessary taking into account the status of national work being undertaken from an industrial relations and workers' compensation perspective, industry and scheme impacts, implementation complexities and cost burden. It was recommended to amend the WCR Act to provide flexibility for the government to clarify the workers' compensation status of gig workers as informed by consideration of the legal status of gig workers nationally in the future.

It was also determined not to extend coverage to bailee taxi and limousine drivers at this time noting the longstanding and well-established safety and industry insurance arrangements for bailee drivers.

Industrial Relations Act 2016 and *Labour Hire Licensing Act 2017*

The objective of the proposed amendments to the *Industrial Relations Act 2016* (IR Act) and *Labour Hire Licensing Act 2017* (LHL Act) is to support modern and efficient industrial relations and labour hire licensing frameworks that meet the changing needs of Queenslanders.

Achievement of policy objectives

Workers' Compensation and Rehabilitation Act 2003

The Bill achieves its objective of implementing recommendations of the 2023 Review by amending the WCR Act as follows.

Require early intervention services for workers with relevant physical injuries, designed to minimise the development of secondary mental injuries (Recommendation 9)

Work-related secondary psychological or psychiatric injuries are compensable under the scheme. Like physical injuries, they must arise out of, or in the course of, employment, and employment must be a significant contributing factor (WCR Act section 32).

The number of secondary psychological or psychiatric injury claims have been increasing in recent years. Consistent with current best practice, early intervention is critical to reducing the risk and severity of mental illness and support recovery and successful return to work.

The Bill includes a new provision (clause 46) that requires an insurer to take all reasonable steps to minimise the risk of a worker sustaining a psychiatric or psychological injury arising from a physical injury following acceptance of a claim until the worker's entitlement to compensation ends.

Subject to consideration of the Bill, it is also proposed to develop a code of practice to further support insurers in this area. This will be developed in consultation with key stakeholders and informed by best practice research and expert external advice.

Provide that enforceable standards or codes of practice can be issued to support the enforcement of any aspect of the Act. All guidelines and factsheets on rehabilitation and return to work should be reviewed to ensure that any which are enforceable are not referred to as 'guidelines' and to determine which should be transitioned to an enforceable standard or code of practice under the Act (Recommendation 12)

The Bill includes a new scheme direction provision (clause 49) which enables the Workers' Compensation Regulator to set mandatory standards in prescribed circumstances by making scheme directions to support the Workers' Compensation Regulator's enforcement functions. Existing prescribed legislative standards and guidelines will be transitioned to a scheme direction including the Guideline for the Evaluation of Permanent Impairment and the Guidelines for Standard for Rehabilitation for employers.

The Bill also expands existing code of practice provisions (clause 50) which are currently limited to insurer claims management. They will be expanded to allow coverage of matters such as RRTW for employers or other persons with an obligation under the WCR Act (e.g., host employers).

Codes of practice may prescribe steps to be taken by a person to comply with a offence provision that requires 'reasonable steps' to be taken. These provisions include an insurer's duty to take all reasonable steps to secure the rehabilitation and early return to suitable duties of workers (section

220), an employer's duty to take all reasonable steps to assist or provide rehabilitation (section 228), a host employer's duty to cooperate with a labour hire provider (new section 229A), and an insurer's obligation to provide reasonable support services for workers who make a psychiatric or psychological injury claim (section 232AB).

The scope of code of practices also supports the implementation of Review recommendation 48 (requiring adequate training and development of insurer staff) noting a code of practice can be made in relation to training and development for claims managers and other insurer staff.

Any new code would be developed in consultation with key stakeholders and is required to be reviewed at least once in every 5-year period.

Require that the employer when providing written evidence that suitable duties are not practicable, describe the steps taken or the inquiries made to reach that determination; and the insurer take reasonable steps to satisfy itself that no suitable duties are available (Recommendation 14)

There is strong evidence and scheme wide recognition that timely return to work processes for injured workers to support gainful employment after injury is paramount.

The 2023 Review noted concerns that insurers do not make sufficient enquiries to verify and support return to work and suitable duties for injured workers. This is despite insurers having an obligation to take all reasonable steps to secure the rehabilitation and early return to suitable duties (section 220) and employers having an obligation to take all reasonable steps to assist or provide the worker with rehabilitation including providing written evidence if the employer considers it is not practicable to provide the worker with suitable duties (section 228).

The Bill introduces amendments (clause 42) to promote increased scrutiny of the availability of suitable duties by requiring insurers to form their own opinion about whether it is practicable for an employer to provide suitable duties and take certain steps if it is not satisfied by the employer's evidence about this.

The Principles of Practice for Workplace Rehabilitation Providers endorsed by the Heads of Workers' Compensation Authorities be given effect in the scheme by an enforceable standard or code of practice under the Act, which would ensure the quality of workplace rehabilitation providers in the scheme (Recommendation 17)

In October 2019, the Heads of Workers' Compensation Authorities endorsed *the Principles of Practice for Workplace Rehabilitation Providers* (the principles). Among other things, the principles are designed to guide workplace rehabilitation providers in delivering workplace rehabilitation services and inform workplace rehabilitation provider approval and management frameworks of workers' compensation authorities. To date Queensland has not yet formally adopted the principles however it is noted WorkCover adopts elements of the principles in its contractual engagements with workplace rehabilitation providers.

The Bill inserts a head of power (Clause 41) to set service delivery, competency and professional standards for workplace rehabilitation providers. This will be given effect through a scheme direction issued by the Workers' Compensation Regulator that aligns with the nationally agreed principles to ensure transparent and uniform standards.

An injured worker has the right to choose an alternative Workplace Rehabilitation Provider (WRP) from the list of accredited providers where the worker is dissatisfied with the WRP selected by the insurer. This right is to be included in the Workers' Statement of Rights (see recommendation 37) (Recommendation 19)

Under the WCR Act, an insurer must take all reasonable steps to coordinate the development and maintenance of a RRTW plan for injured workers (section 220(5)). The WCR Act requires that this RRTW plan be developed in consultation with the worker, among others. However, it does not specifically require that the worker be consulted about their preferred workplace rehabilitation provider.

The Bill enhances workers' direct participation in decisions about their rehabilitation by enabling workers to request a different workplace rehabilitation provider where they are dissatisfied with the initial provider selected by the insurer (clause 41).

Provide that a RRTW plan for an injured worker is to be developed within 10 business days of a claim for compensation being accepted. It may be amended from time to time thereafter, in consultation with the worker, to take account of changed circumstances (Recommendation 20)

Research has shown that in the early stages of a claim, a written RRTW plan increases the likelihood of a worker's return to work by 1.7 times. After 30 days, a plan becomes more critical increasing the likelihood of a worker's return to work by more than 3.4 times. Safe Work Australia's National Return to Work Survey 2021 found that Queensland had the lowest proportion of surveyed workers (61.9 per cent) who reported having a RRTW plan in place of any Australian state or territory.

While the WCR Act currently requires insurers to coordinate the development and maintenance of RRTW plans for injured workers (section 220(5)), it does not specify a timeframe. The Bill (clause 41) requires an insurer to ensure a RRTW plan is in place within 10 business days after the workers' application for compensation is accepted and provides for that plan to be kept under review and modified as further information becomes available and developments arise. This amendment seeks to ensure active and prompt RRTW planning that is documented.

Require host employers to cooperate with labour hire providers to assist them to comply with their obligations to establish and implement a rehabilitation and return-to-work program and provide the pre-injury position or a suitable duties position to the extent it is reasonable to do so. This should be an offence provision (Recommendation 22)

Research indicates RRTW outcomes for labour hire workers is lower than those of employees, and this is in part because host employers are under no obligation to offer suitable duties or work. To address the gap in RRTW outcomes between labour hire workers and employees, the Bill inserts a new provision (Clause 43) which requires host employers to cooperate with the labour hire provider by taking all reasonable steps to support them to meet their RRTW obligations under section 228, including by extension the provision of suitable duties. Importantly the provision does not make the host employer the employer of a labour hire worker (which remains the labour hire provider) as there is no contract of employment with the labour hire worker. This aligns with approaches in the Victorian and Western Australian schemes.

Add asbestos related diseases, primary site liver cancer, primary site lung cancer, primary site skin cancer, primary site cervical cancer, primary site ovarian cancer, primary site pancreatic cancer, primary site penile cancer, primary site thyroid cancer and malignant mesothelioma into the Act as presumptive illnesses for firefighters (Recommendation 26)

Treat day work rotation as service for the purpose of s 36E of the Act (Recommendation 27(a))

The WCR Act currently streamlines the workers' compensation process for eligible firefighters diagnosed with certain cancers by presuming they sustained the disease in the course of employment unless evidence exists to the contrary. This effectively reserves the onus of proof in workers' compensation claims, ensuring these firefighters do not have to prove the work-relatedness of the disease.

The Bill amends (Clause 60) the WCR Act to include the recommended ten additional diseases taking the total number of recognised deemed diseases to 22. This recognises that occupational exposure in the firefighting profession is carcinogenic to humans and notes the evolving scientific research (including the July 2022 World Health Organisation's International Agency for Research on Cancer which escalated occupational exposure in the firefighting profession from Group 2B – Probably carcinogenic to humans to Group 1 – Carcinogenic to humans) and the potential and actual harm suffered by workers diagnosed with the recommended diseases. The Bill also reduces the qualifying period for primary site oesophageal cancer from 25 to 15 years to align with national policy developments.

For a disease to be eligible for the presumption an eligible firefighter must meet a qualifying period or number of years that they were employed for the purpose of firefighting and have attended fires to the extend reasonably necessary to fulfil the purpose of their employment (section 36D). To address concerns that firefighters on day work rotation may be excluded from the presumption, the Bill clarifies by way of 'relevant duties' that they are to be included in calculating the qualifying period (Clause 27). This improves access to the presumption.

Provide a default payment of weekly compensation after a claim is accepted and until an insurer calculates the applicable rate of weekly compensation. This would be a fixed percentage of QOTE. For part-time and casual employees, the default payment would be the fixed percentage of QOTE expressed as an hourly rate, times the number of hours per week the employee nominates they normally work. Over/underpayments would be made up through subsequent benefits once the correct rate was calculated (Recommendation 29)

The Bill implements this recommendation by inserting new provisions (Clause 35) that require an insurer to commence making a default payment to the worker on the expiry of five business days after allowing the worker's application for compensation or the expiry of the relevant excess period (whichever is later), while a decision on the calculation of the rate of payment is pending. Unless a regulation prescribes otherwise, this payment is a fixed rate of 55 per cent of Queensland Ordinary Time Earnings (QOTE) (pro-rated for workers not engaged in full-time work) and WorkCover may recover any overpayment from the employer. Creating a default payment will ease financial stress on injured workers with accepted claims through more immediate cash flows.

The Workers' Compensation Regulator undertake a review of the employer-specific obligations and offences in the Act to ensure that they are fit for purpose, meet community standards and can be practically enforced and introduce further regulatory tools including enforceable notices and on the spot fines (Recommendation 33)

New provisions (Clause 53) provide a framework for the issuing of compliance notices (similar to improvement notices under the *Work Health and Safety Act 2011*) for contraventions of the WCR Act with an offence for not complying with a compliance notice. Notices will be subject to internal review (by the Workers' Compensation Regulator) and appeal (by the Queensland Industrial Relations Commission (QIRC)). This enhances the regulatory tools available to the Workers' Compensation Regulator and supports securing compliance without commencing a prosecution.

The Bill will also increase the penalty units for certain offences to resolve internal inconsistencies within the WCR Act, ensure maximum penalties are proportionate to the seriousness of the offence, and align with community expectations about the punishment of workers' compensation offences. This more appropriately acknowledges the importance of key obligations (such as those relating to RRTW) and the impact non-compliance with these obligations has on the RRTW outcomes of injured workers, employers, insurers and the scheme.

Include an offence prohibiting employers from making payments to an injured worker in lieu of the worker making a claim for compensation (Recommendation 34)

The Bill includes a new provision (Clause 29) which specifically prohibits an employer from giving a benefit or causing detriment to a person if the reason is to influence an injured worker to refrain from making an application for compensation for the injury or otherwise pursuing an entitlement to compensation. The intent is to prevent employers from replacing or circumventing the workers' compensation scheme and to enable the Workers' Compensation Regulator to prosecute offending employers to deter this conduct.

In consultation with stakeholders, the Regulator should develop a statement of workers' rights and responsibilities in the workers' compensation system, to be distributed in workplaces, on insurer websites and provided to all injured persons on notification of an injury. The statement should include such matters as – the right of a worker to: (a) make a claim for workers' compensation; (b) choose their own treating medical practitioner; (c) not have an employer contact the treating practitioner or attend a medical consultation except with genuine consent; (d) choose their WRP where they are dissatisfied with the choice made by the insurer; (e) seek advice and support from their union, the WCIAS, the WPSS or lawyer; and (f) participate in the development of their RRTW plan; and the responsibilities of a worker to: (a) satisfactorily participate in RRTW; and (b) treat insurer staff with courtesy (Recommendation 37). If required a worker's rights should be confirmed in the WCRA recommendation 37 (Recommendation 38).

The Bill implements this recommendation by inserting provisions (Clauses 29 and 34) which require employers and insurers to give statements providing information about the workers' compensation scheme to workers. A head of power will enable a regulation to prescribe the content to be included in each information statement and the way in which it must be given. Consistent with this, amendments to the *Workers' Compensation and Rehabilitation Regulation 2014* (WCR Regulation) will require the statement to include information about the worker rights identified in Review recommendation 37. This includes the rights of a worker to choose their own treating doctor and not have their employer or insurer present during treatment, clarifying that these are matters for the worker, just as they are for any injury whether work-related or otherwise. It is also intended the statement address workers' obligations and responsibilities in the scheme.

The Bill will also require insurers to give employers an information statement. The provision of this statement was not specifically recommended by the 2023 Review but is considered appropriate based on stakeholder feedback that both workers and employers should be assisted to understand their rights and obligations within the scheme. The statement must be in the form approved by the Workers' Compensation Regulator.

Allow insurers to compel employers to comply with requests for wage information within 10 business days (Recommendation 42)

Providing timely wage information is important to the operation of the workers' compensation scheme as delays can impact calculating weekly benefits for injured workers. There is evidence delays in the payment of compensation can have adverse effects on a worker's recovery such as financial stress. WorkCover currently has authority to request wage information from employers, and this arises from its general powers under section 388 of the WCR Act. However, WorkCover does not have the power to compel this information from employers.

The Bill inserts a new provision (Clause 35) to compel employers to provide wage information within five business days of the insurer's request to ensure prompt calculation of weekly compensation entitlements, with penalties for non-compliance. The use of five business days (instead of 10 business days) aligns with the new provisions that relate to timing for the default payment to injured workers (relates to recommendation 29).

Implement a governance framework to ensure appropriate training/refresher training and ongoing due diligence checks for medical specialists who undertake the evaluation of permanent impairment in the Queensland scheme (Recommendation 52)

The Bill improves the governance around scheme doctors who conduct permanent impairment assessments for the scheme by inserting a head of power (Clause 36) to allow a regulation to prescribe the necessary qualifications, training and experience for these medical specialists to ensure authorisation, appropriate training and ongoing due diligence checks are undertaken as part of a broader governance framework. It is proposed the supporting regulation (once made) will address administrative matters such as the process for disputes over assessed degree of impairment where reports may not be compliant with the Guidelines for Evaluation of Permanent Impairment.

Implements the Decision IAS on the coverage of gig workers (Recommendation 53)

The Bill implements the Government's preferred approach in the Decision IAS and provides a narrow head of power to make a regulation to prescribe who is a 'worker' and 'employer' in particular circumstances (Clauses 24 and 26). The head of power to make a regulation to prescribe a worker is limited to 'regulated worker' covered by a minimum standards order, minimum standards guideline or a collective agreement under the *Fair Work Act 2009* (Cth), chapter 3A.

Under the Bill coverage in the scheme is not automatic if a minimum standards order, minimum standards guideline or a collective agreement has been made by the Fair Work Commission for regulated workers. Instead, once a minimum standards order, minimum standards guideline or a collective agreement applies it is then open to the government to consider if a regulation should be made. In making this decision it would be appropriate to consider the terms included in a minimum standards order (which can include insurance); any current insurance arrangements that might already exist and how they compare to entitlements in the scheme; impacts on sustainability of the

scheme; business administrative and compliance costs; regulatory burden; and impacts on the relevant industry. It is noted these issues would need to be considered as part of separate regulatory impact analysis and would be subject to further public consultation.

This approach recognises the findings of the Decision IAS and ensures the government is appropriately guided in regulating coverage of gig workers by the scheme to workers which have been determined nationally to have a legal status of 'employee-like'. This approach provides certainty and national consistency for the gig industry.

It is noted the provisions in the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) for regulated workers has a proposed commencement date of 26 August 2024 (or a date by proclamation).

This approach similarly applies for prescribing who is an employer (Clause 59) in particular circumstances.

Separately, the Bill makes other minor technical and consequential amendments to the WCR Act.

Industrial Relations Act 2016

The Bill proposes to amend the IR Act to ensure Queensland's industrial relations jurisdiction remains contemporaneous and aligned with recent industrial relations reforms implemented in the *Fair Work Act 2009* (Cth) (FW Act) by:

- ensuring employers have an obligation to make superannuation contributions to their employees under the Queensland Employment Standards;
- increasing the number of unpaid flexible parental leave days from 30 to 100 and providing additional flexibility for when parents can take this leave, such as late term pregnancy leave; and
- increasing the claim threshold for unpaid wages claims from $50,000 to reflect the new $100,000 threshold for small claims under the FW Act.

The Bill also proposes amendments to align the appeal pathway for full bench decisions of the QIRC if constituted with at least one member who is a presidential member. These appeals are proposed to proceed to the Queensland Court of Appeal consistent with other appeals pathways in Queensland.

Labour Hire Licensing Act 2017

The Bill proposes to amend the LHL Act to ensure compatibility with human rights and to promote contemporary operational practices by:

- removing section 69(4) to ensure the LHL Act is compatible with human rights, specifically the right to a fair hearing and rights in criminal proceedings under sections 31 and 32 of the *Human Rights Act 2019*; and
- facilitating electronic service of documents under the LHL Act, or in a manner prescribed by regulation, which is aligned with contemporary service methods, operational efficiencies and industry expectations.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives.

Estimated cost for government implementation

Workers' Compensation and Rehabilitation Act 2003

All Queensland employers must hold a workers' compensation policy with WorkCover unless they are a licensed self-insurer. Employers insured with WorkCover (including government departments) pay an annual premium. This premium covers liability for income replacement and medical treatment, RRTW support, injury prevention activities and scheme administration. The actual premium paid by an employer varies according to wages paid, claims experience and the employer's industry.

As at 30 June 2023, financial results show WorkCover recorded an after tax operating surplus of $26.8 million. WorkCover remains fully funded with a funding ratio of assets over liabilities of 138.9 per cent, and total equity of $1.89 billion. Should WorkCover be unable to pay an amount payable under a policy or other insurance contract, the consolidated fund is to be appropriated and the amount paid to WorkCover.

Expanding the list of presumptive diseases for firefighters is expected to result in an additional 26 claims per annum and total estimated scheme cost of around $14.7 million per annum. This cost may be less noting these cancers (if work-related) are already covered by the scheme under the usual claims pathway. This cost impact is an estimate only and is sensitive to the number of workers who may be eligible, and behaviour and claims experience changes.

Costs arising from these legislative amendments will be met from existing agency resources. Any funding required beyond existing agency resources will be subject to normal budget processes.

Industrial Relations Act 2016

There are no significant cost implications to Government. Implementing reforms for unpaid flexible parental leave is not anticipated to be significant and will be accommodated within existing agency resources.

Labour Hire Licensing Act 2017

No financial impacts are anticipated from the proposed LHL Act amendments.

Consistency with fundamental legislative principles

Workers' Compensation and Rehabilitation Act 2003

The proposed amendments are generally consistent with fundamental legislative principles (FLPs) defined in section 4 of the *Legislative Standards Act 1992* (LS Act).

Head of power to prescribe workers and employers by regulation

The Bill will amend the WCR Act to enable a regulation to prescribe certain persons covered by minimum standards orders, minimum standards guidelines or collective agreements under the FW Act as a 'worker' and other persons as an 'employer'. This may engage the following FLPs:

- legislation should allow the delegation of legislative power only in appropriate cases and to appropriate persons (LS Act, section 4(4)(a));

- legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (LS Act, section 4(4)(b)); and
- legislation should authorise the amendment of an Act only by another Act (LS Act, section 4(4)(c)).

The delegation of legislative power to the Executive Council is considered appropriate as it provides an appropriate limitation and safeguard over the exercise of the regulation-making power and ensures that the Legislative Assembly has the ability to apply sufficient scrutiny and if necessary disallow regulations.

Gig workers who are 'employee-like' have been identified as having reduced workplace entitlements and protections including workers' compensation coverage. This exposes gig workers to a risk of uncompensated or undercompensated work-related injury or illness and creates disparity in the work-related entitlements available to these individuals in comparison to workers, leading to poor equity outcomes. Additionally, the injury and rehabilitation costs for work-related injuries sustained is shifted to individual gig workers and the community via the healthcare system. As a result of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, the legal status of gig workers as being 'employee-like' will be subject to determinations nationally by the Fair Work Commission

The Bill provides a regulation making power that is limited to regulated workers who are covered by a minimum standards order, minimum standards guideline or collective agreement made by the Fair Work Commission under the FW Act. Where a minimum standards order, minimum standards guideline or collective agreement is made, coverage by the WCR Act is not automatic and a supporting regulation would need to be made. This means standard regulatory safeguards apply if the Government proposes to consider exercising the regulation-making power. Under Queensland Government policy, the proposal would be subject to regulatory impact analysis and public consultation.

Additionally, any regulation that is made under the power would be subject to a disallowance motion under section 50 of the *Statutory Instruments Act 1992* (SI Act).

Identical safeguards apply to the exercise of the proposed power to prescribe entities as 'employers' by regulation.

New offence provisions

The Bill will introduce new offences provisions which will:

- require persons who are supplied labour hire workers to cooperate with the worker's employer (the labour hire provider) by taking all reasonable steps to support the employer to meet its rehabilitation obligations for the worker under section 228 of the WCR Act (new section 229A); and
- require an insurer who has allowed a worker's application for compensation for a physical injury to take all reasonable steps to minimise the risk of the worker sustained a psychiatric or psychological injury arising from the physical injury (new section 232AC).

These amendments may engage the FLP that legislation should be unambiguous and drafted in a sufficiently clear and precise way (LS Act, section 4(3)(k)) because of the requirement on obligation holders to take 'reasonable steps'. The requirement to take 'reasonable steps' aligns with the approach taken in existing provisions that impose obligations on insurers and employers and recognises the varying nature of work-related injuries (sections 220, 228 and 232AB).

To support obligation holders to meet their obligations under the WCR Act, the Bill enables codes of practice to be made about the steps a person may take to comply with an obligation to take reasonable steps. This would, for example, allow a code of practice to prescribe steps which may be taken to comply with new sections 229A and 232AC, providing certainty to obligation holders on the standard of compliance required.

WorkCover Queensland's power to require information

The Bill will require employers to comply with a notice from WorkCover to provide information necessary to calculate a worker's weekly compensation entitlement within five business days (new section 146A). If an employer fails to comply with the notice and WorkCover pays the worker a basic (default) weekly payment under new section 146B, WorkCover may require the employer to pay an amount by way of penalty, which it may recover as a debt or as an addition to a premium payable by the employer. This provides an incentive for an employer to provide wage information as without this information there is a financial impact on the worker in receiving weekly compensation. These amendments may engage the FLP that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LS Act, section 4(3)(a)).

Where an insurer does not have the information necessary to calculate a worker's weekly compensation entitlement, the insurer must commence payments of basic weekly compensation to the worker (new section 146B). The payment must commence on the later of the expiry of five business days after WorkCover allows the worker's application for compensation or the expiry of the relevant excess period for the worker. WorkCover's penalty powers under section 146A recognise that but for an employer's failure to supply this information as requested, the worker would be in a position to receive their full weekly compensation entitlement and the obligation to pay basic weekly compensation would not be triggered.

It is noted WorkCover is empowered to penalise non-compliant employers under existing provisions of the WCR Act, including where an employer has contravened obligations to pay excess (WCR Act, section 66), paid compensation payable by WorkCover (WCR Act, section 109A), or contravened rehabilitation obligations (WCR Act, section 229). The penalty powers in proposed section 146A are broadly consistent with these provisions and contain appropriate safeguards by:

- specifying the amount of penalty that WorkCover may recover from an employer;
- enabling the employer to apply to WorkCover to waive or reduce the penalty because of extenuating circumstances;
- requiring WorkCover to consider any such application; and
- enabling the employer to apply to the Workers' Compensation Regulator for a review of WorkCover's decision not to waive or reduce a penalty.

Codes of practice

The Bill will expand the Minister's existing power to make a code of practice under section 486A of the WCR Act by enabling codes of practice to state actions to be taken by an insurer, employer or other person in performing functions, exercising powers or complying with obligations under the WCR Act. Persons who are subject to a code of practice will be required to take action that complies with the code and will have defence in a prosecution where they take other action that is as effective or more effective that the action prescribed in the code. This may engage the FLP that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LS Act, section 4(3)(a)).

The Bill contains appropriate safeguards on the making of codes of practice by deeming codes to be subordinate legislation. This ensures codes of practices can be disallowed by the Legislative Assembly (SI Act, section 50) and codes of practice are subject to FLPs, including FLPs that subordinate legislation (SI Act, section 4(5)):

- is within the statutory power that allows the subordinate legislation to be made;
- is consistent with the policy objectives of the authorised law; and
- contains only matter appropriate to subordinate legislation.

The creation of a code of practice will also be subject to further safeguards under Queensland Government policy, which would require any code of practice to be subject to a regulatory impact analysis process including consultation with affected stakeholders.

Compliance notices

The Bill will expand the enforcement tools available to the Workers' Compensation Regulator by enabling authorised persons to issue compliance notices to prevent contraventions of the WCR Act from continuing or being repeated. A person will commit an offence if they do not take action or refrain from taking action stated in the compliance notice (proposed section 537F(1)). This may engage the FLPs that:

- legislation should make rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LS Act, section 4(3)(a)); and
- legislation should be consistent with principles of natural justice (LS Act, section 4(3)(b)).

The Bill contains appropriate safeguards on issuing of compliance notices by prescribing clear rules about when and how a compliance notice may be issued. Specifically, compliance notices may only be issued if the authorised person is satisfied on reasonable grounds that a person has contravened the Act and the contravention is continuing or is likely to be repeated (proposed section 537C(2)). Compliance notices must also satisfy specific content requirements (proposed section 537C(3)) and may only specify a date for compliance which is reasonable in the circumstances (section 537C(5)).

The Bill contains additional safeguards and ensures natural justice by enabling a person who is issued with a compliance notice to apply to the Workers' Compensation Regulator for a review of the notice (proposed section 537D(1)). The Workers' Compensation Regulator may confirm the notice, withdraw the notice, or withdraw the notice and issue a new notice on review (proposed

section 537D(10)). If the person is dissatisfied with the Workers' Compensation Regulator's decision, they may appeal the decision to the QIRC (proposed section 537E).

Reporting of suspected offending

The Bill amalgamates and expands existing reporting obligations for suspected offences in the WCR Act to enable additional reportable offences to be prescribed by regulation. This regulation-making provision is intended to be used to prescribe employer-specific offences as reportable offences in support of Review recommendation 31. Once a regulation is made, WorkCover and self-insurers would be required report to the Workers' Compensation Regulator if they form a reasonable belief that a prescribed offence is being or has been committed (proposed section 537A(1)).

The requirement to report prescribed employer-specific offences may engage the FLP that legislation should provide appropriate protection against self-incrimination (LS Act, section 4(3)(f)). This is because self-insurers hold dual functions as insurer and employer and reporting employer-specific offences to the Workers' Compensation Regulator would mean a self-report.

Requiring WorkCover and self-insurers to report prescribed employer-specific offences is necessary to ensure the Workers' Compensation Regulator can discharge its statutory functions of regulating the workers' compensation scheme (WCR Act, section 327(1)(a)) and conducting proceedings before a court or tribunal including prosecutions (WCR Act, section 327(1)(n)). Reporting obligations in the WCR Act are currently limited to the reporting of offences relating to fraud, the provision of false and misleading information, and claims farming. This inhibits the Workers' Compensation Regulator's ability to detect, investigate and prosecute other offending, including contraventions of employers' rehabilitation obligations under section 228 of the WCR Act. Given their direct relationship with employers, WorkCover and self-insurers are the parties most likely to encounter evidence of employer offending.

Identifying the cause of breaches enhances the public interest by potentially preventing future non-compliances through poor claims management and RRTW practices. This information would be used to inform future guidance and education campaigns.

Power to enter premises

The Bill amends the definition of 'workplace' for chapter 12 part 1 to clarify that an authorised person may at any time enter a place that is, or that the authorised person reasonably suspects is, a place of business of an insurer. This may engage the FLP that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (LS Act, section 4(3)(e)).

The power of an authorised person to enter premises is an existing power in the WCR Act and arguably already applies to insurers' places of business (with the amendment clarifying that this is the case). It is important that authorised officers have appropriate entry powers to ensure compliance with the WCR Act can be monitored and enforced. This will be particularly important to ensure that the new compliance notice framework to be introduced by Chapter 12 Part 4 of the Bill can be operationalised.

The power to enter is also subject to appropriate safeguards including the following:

- the authorised person must leave immediately if they enter the premises and it is not a workplace (section 518(3));
- the authorised person must, as soon as practicable after entry to the premises, take all reasonable steps to notify the relevant person conducting a business or undertaking and the person with management or control (section 519(2)); and
- limitations on the power to enter apply where the premises is used for residential purposes (section 525).

Other legislative amendments

The proposed amendments to the IR Act and LHL Act are consistent with FLPs as defined in section 4 of the LS Act.

Consultation

Workers' Compensation and Rehabilitation Act 2003

Recommendations arising from the 2023 Review and proposed policy proposals were subject to consultation through a series of meetings in 2023 and 2024 with a stakeholder reference group including registered industrial organisations, insurers, peak legal, medical and allied health bodies, and representatives of the rideshare and taxi industry. Specifically the stakeholder reference group included invitations to the Association of Self-Insured Employers of Queensland (ASIEQ); Australian Association of Social Workers; Australian Industry Group; Australian Lawyers Alliance; Australian Medical Association Queensland; Australian Psychological Society; Australian Rehabilitation Providers Association; Australian Workers' Union; Bar Association of Queensland; Business Chamber Queensland; Council of Australian Volunteer Fire Associations; General Medical Assessment Tribunal – Chair; General Medical Assessment Tribunal – Psychiatric representative; Housing Industry Association; Master Builders Queensland; Mining and Energy Union (Qld); Occupational Therapy Australia; Queensland Law Society; Queensland Council of Unions; Queensland Resources Council; Rural Fire Brigades Association Queensland Inc.; Rideshare Drivers Network; Taxi Council Queensland; Uber; United Firefighters Union Queensland; WorkCover Queensland. In addition, separate meetings were held with Doordash, Didi and Menulog.

The stakeholder reference group was consulted on the 2023 Review recommendations on 9, 17 and 20 November 2023 to help inform the government response. This was followed by consultation on the draft Bill on 1, 8, 15 and 20 March 2024. Out of session consultation also occurred on 28 March 2024.

Consultation on the recommendations and the draft Bill was also undertaken with Government agencies including Queensland Fire and Emergency Services in relation to the amended presumptive firefighter provisions and Department of Justice and Attorney-General in relation to the revised penalty provisions. Consultation was also undertaken with the Queensland Industrial Relations Commission and the Department of Justice and Attorney-General in relation to the draft compliance notice provisions.

Industrial Relations Act 2016 and *Labour Hire Licensing Act 2017*

Due to the technical nature of the proposed amendments to the IR Act and LHL Act and their alignment with the original policy intent, consultation was not considered necessary.

Consistency with legislation of other jurisdictions

Workers' Compensation and Rehabilitation Act 2003

Amendments to the list of deemed diseases for firefighters (Schedule 4A) are consistent with national approaches. With the exception of asbestos-related diseases and primary site liver cancer (which are only recognised in the Northern Territory), the amended list is consistent with approaches taken by the Commonwealth, Tasmania and Western Australia. Other jurisdictions (including the Northern Territory and Victoria) recognise one or more of the additional diseases. While each of the additional diseases is recognised by at least one other Australian workers' compensation scheme, there is no single Australian workers' compensation scheme that recognises all.

Amendments that require entities who host labour hire workers to cooperate with the worker's employer are broadly consistent with provisions in the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (Victorian Act) and *Workers Compensation and Injury Management Act 2023* (WA) (WA Act). These provisions require hosts, to the extent it is reasonable to do so, to cooperate with labour hire employers in respect of action to be taken by the employer to comply with certain RRTW obligations (Victorian Act, section 109 and WA Act, section 167).

Amendments that recognise the right of workers to choose their own treating doctor and not have employer or insurer present during treatment are broadly consistent with provisions in WA Act. The WA Act recognises the right of an injured worker to attend a medical practitioner of their own choice and prohibit the worker's employer or employer's insurer from being present while the worker is being physically or clinically examined or treated by their treating medical practitioner (WA Act, sections 170 and 171).

The remaining amendments to the WCR Act are specific to the State of Queensland, and the extent to which they are uniform or complementary to the legislation of the Commonwealth or another State is not relevant in this context.

Industrial Relations Act 2016

The Bill aligns as far as practicable with comparable reforms recently introduced by the Australian Government.

Labour Hire Licensing Act 2017

Victoria, South Australia, and the Australian Capital Territory have labour hire licensing schemes and inspectorates. Similar to Queensland, Victoria only provides for the service of documents via registered or regular post, or in person. South Australia, however, allows electronic service.

Reasons for non-inclusion of information

Not applicable.

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 2024.*

Clause 2 provides for the commencement of various provisions by proclamation.

Part 2 Amendment of *Industrial Relations Act 2016*

Clause 3 provides that Part 2 amends the *Industrial Relations Act 2016*.

Clause 4 amends section 21 (Meaning of Queensland Employment Standards) to include a new provision to the Queensland Employment Standards relating to superannuation contributions.

Clause 5 amends the heading of chapter 2, part 4, division 8 to 'Parental and related leave' to clarify this division provides for parental and other related types of leave entitlements.

Clause 6 amends section 78(4) (Cancelling parental leave) to clarify this section does not affect an employee's entitlement to late term pregnancy leave provided for under new section 85AA.

Clause 7 inserts new section 85AA (Late term pregnancy leave).

New subsection (1) provides a pregnant employee with an entitlement to unpaid late term pregnancy leave for a period immediately before the employee starts birth-related leave.

New subsections (2) and (3) provide that the leave cannot start earlier than six (6) weeks before the expected date of birth, and the employee must give the employer at least four (4) weeks written notice of their intention to take this leave.

New subsection (4) provides that the employee may withdraw their notice to take late term pregnancy leave by a further written notice to their employer. However, this notice must be given before the leave has started.

New subsections (5) and (6) provide that late term pregnancy leave is to be taken as a single continuous period until the employee starts birth-related leave, except when interrupted by special pregnancy-related leave or sick leave taken under section 85.

New subsection (7) recognises that an employee may wish to return to work should the pregnancy end other than by the birth of a living child. An employee must give two weeks written notice to the employer of their intention to resume work, with the time and date to be nominated by the employer.

Late term pregnancy leave is drawn from the maximum period of parental leave entitlement provided for an employee under section 62(1)(a).

Clause 8 amends section 87B (Flexible parental leave). Subsection (1) is amended to provide that late term pregnancy leave under new section 85AA applies to flexible parental leave. Subsection (2) is amended to increase the number of unpaid flexible parental leave days from the current 30 days to a new maximum of 100 days, or if a higher number of days is prescribed by a regulation,

the higher number of days. Subsection (3) is amended to confirm that any late term pregnancy leave taken under new section 85AA is included in the total sum of leave taken for determining when an entitlement to flexible parental leave ends.

Clause 9 inserts new chapter 2, part 3, division 13A (Superannuation contributions) in the Queensland Employment Standards.

New section 127A creates an employment standard which introduces a requirement for employers to make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay the superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* (Cth) in relation to the employee.

The addition of section 127B reduces the employer's liability to the extent of the superannuation charge payment that has been made in accordance with the *Superannuation Guarantee Charge Act 1992* (Cth) and the employee is a benefitting employee, and the Commissioner of Taxation is required to pay, or otherwise deal with, a shortfall component for the benefit of the employee.

Clause 10 amends section 386(2)(a) (Recovery of unpaid wages) to increase the threshold for when an application may be made to the QIRC from $50,000 to $100,000.

Clause 11 amends section 476(1) (Requirements for application) to increase the threshold for when an application may be made to the QIRC from $50,000 to $100,000.

Clause 12 amends section 531(6) (Decisions of the commission and magistrates) to increase the relevant amount from $50,000 to $100,000.

Clause 13 amends sections 554(1) and (2) (Appeal from court or commission in certain circumstances) to allow decisions of a full bench constituted with at least one member who is a presidential member to be appealed directly to the Court of Appeal, rather than being heard by the Industrial Court constituted by a single presidential member.

Clause 14 amends section 557(5) (Appeal from commission) to amend the meaning of *commission* for the purpose of the section.

Clause 15 inserts new section 1103 to confirm the transitional arrangements for an employee's entitlement to late term pregnancy leave and the increased period of flexible parental leave from 30 to 100 days. New subsections (1) and (2) confirm that these entitlements will be available to employees from commencement regardless of whether the employee's entitlement to the relevant leave started before or after commencement.

Clause 16 amends Schedule 5 (Dictionary) to insert the definition for *late term pregnancy leave*.

Part 3 Amendment of *Labour Hire Licensing Act 2017*

Clause 17 provides that part 3 amends the *Labour Hire Licensing Act 2017*.

Clause 18 amends section 69 (Power to require reasonable help) to omit subsection (4).

Clause 19 relocates and renumbers section 71 (Power to require information or attendance) as section 84A in a new part 6, division 3A. Section 71 is currently included in a subdivision that limits the exercise of the power to when an inspector enters a place under section 55 (1)(a), (c) or (d).

The new section 84A does not provide any additional power, but will not require an inspector to have entered a place to exercise the power.

Clause 20 makes a consequential amendment to insert new part 6, division 3A to accommodate the relocation of the former section 71.

Clause 21 inserts new section 107A (Electronic service).

New subsections (1) and (2) confirm that electronic service may be used if the Act requires an inspector or the chief executive to give a document, and, for the purposes of the *Acts Interpretation Act 1954*, that the address of a person's place of residence of business includes the person's postal address.

New subsection (3) provides that a document given to a person by the chief executive or inspector may be sent by email to the person's email address as given by the person, or in a way prescribed by regulation. For example, the email address provided by a person in their application or renewal for a licence.

New subsection (4) and (5) confirm that a document sent by email is taken to be given on the date the email is sent, or on the date prescribed by regulation if sent by in the way prescribed by regulation. If a document is given after 5.00 p.m. on a particular day, the document is taken to be given to the person on the following business day.

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

Clause 22 provides that Part 4 amends the WCR Act.

Clause 23 amends section 5 (Workers' compensation scheme) to clarify the WCR Act's intention that as part of the scheme it is intended workers and employers may seek the advice and support of a registered industrial organisation or lawyer as they consider appropriate.

Clause 24 amends section 11 (Who is a worker) to provide that a person is to be considered a 'worker' if they are:

- a 'regulated worker' under the FW Act and a minimum standards order, minimum standards guideline or collective agreement applies to, or covers, the person under chapter 3A of that Act; and
- they are prescribed by regulation to be a worker.

This amendment seeks to provide flexibility for the government to clarify the status of gig workers in the future. No supporting regulation has been made at this time.

Clause 25 amends section 12 (Entitlements of persons mentioned in subdivision 1) to confirm a volunteer workers' entitlement to a basic weekly payment.

Clause 26 amends section 30(4) (Who is an employer) to clarify that the definitions of 'contract' and 'person' in that section also apply to Schedule 3 (Who is an employer in particular circumstances).

Clause 27 amends section 36E (Deciding number of years) to clarify the method for determining the years a person is employed as a firefighter (a qualifying period) for the purposes of determining whether a specified disease sustained by the person will be presumed to be work-related, includes periods of day-work rotation.

A 12-month period may be counted toward the qualifying period where the firefighter was employed for the purpose of performing 'relevant duties'. The clause retains the existing definition of firefighting (i.e., extinguishing, controlling or preventing the spread of fires) and in addition clarifies relevant duties also includes 'exposure to substances used in or other hazards arising from extinguishing, controlling or preventing the spread of fires'. This may include, for example, exposure when performing other station-based duties such as cleaning or maintaining vehicles and equipment used to respond to a fire and firefighting (for example on call shifts or overtime shifts) or training while otherwise on day work rotation (i.e., in a non-operational role).

As an example, if a person with the following employment history was diagnosed for the first time as having a specified disease, the person will have been employed as an active firefighter for 11 years before the diagnoses:

Length of employment	Capacity	Years counted
1.10.2022 – 2.10.2023	Volunteer firefighter with relevant duties	1 year
1.6.2015 – 31.8.2022	Fire officer with relevant duties	7 years
1.1.1995 – 31.5.2015	Fire officer but without relevant duties	None
1.1.1990 – 31.1.1993	Volunteer firefighter with relevant duties	3 years

Clause 28 amends the heading for Chapter 2, part 1 to better reflect the content of this chapter.

Clause 29 inserts two new offence provisions: section 46A (Employer must not take action to avoid compensation process) and section 46B (Employer must give worker information statement).

New section 46A prohibits an employer from giving a benefit or causing detriment to a person for the substantial reason of influencing an injured worker to refrain from making an application for compensation or pursuing an entitlement to compensation for their injury.

New section 46B requires an employer to give a worker a statement providing information about the workers' compensation scheme before or as soon as practicable after the worker starts employment. The statement and the way in which it is given must comply with any requirements prescribed by regulation. Consistent with this, amendments to the WCR Regulation provide for the statement to be approved and published by the Workers' Compensation Regulator and prescribe minimum content requirements (clause 64).

To minimise administrative burden, an employer is only required to give a statement to a worker before or as soon as practicable after a worker starts employment. This requirement applies unless the worker received the statement in the previous 12 months. For example, a worker who has been employed continuously for five years is only given the statement once, and a worker who has commenced and left the business multiple times over two years will be required to be given a

statement each time they commence or recommence employment unless they received a statement in the previous 12 months.

Clause 30 amends the heading for section 47 (WorkCover's liability confined to compensation) to accurately reflect the function of the section and relocates and renumbers the section to a more appropriate part of the WCR Act.

Clause 31 amends section 51 (Offence of contravening general obligation to insurer) to increase the maximum penalty from 275 to 500 penalty units. This is intended to ensure the penalty reflects the seriousness of the offence and is internally consistent with other penalties, noting section 51 is the primary mechanism for ensuring employers take out workers' compensation insurance consistent with the scheme's objective of providing benefits for workers who sustain work-related injury (section 5(1)(a)).

Clause 32 amends section 52 (Offence to charge worker for compensation or damages for injury) to increase the maximum penalty from 20 to 300 penalty units. This is intended to ensure the penalty reflects the seriousness of the offence and is internally consistent with other penalties, noting section 52 prevents the shifting of workers' compensation costs and liabilities from employers to workers. Currently, section 52 has the second lowest penalty unit value of any offence in the WCR Act (20 penalty units, within a penalty unit range of 10 to 1,000).

Clause 33 amends section 109 (Who must pay compensation) to insert a maximum penalty of 300 penalty units. Section 109 seeks to prevent employers from circumventing the scheme by prohibiting employers from paying amounts as compensation (or in lieu of compensation) to workers have suffered a work-related injury. While section 109 is not currently an offence provision, this is now considered appropriate to effectively deter employers from engaging in this conduct.

Clause 34 inserts a new section 132AA (Insurer must give worker and employer information statement) which requires an insurer to give the worker and the employer a statement providing information about the workers' compensation scheme as soon as practicable after an application for compensation is lodged. Like section 46B, statements, and the way in which they are given, must comply with any requirements prescribed by regulation. Consistent with this, amendments to the WCR Regulation provide for the statement to be approved and published by the Workers' Compensation Regulator and prescribe minimum content requirements.

Clause 35 inserts a new Division 2A (Commencement of weekly payments) within Chapter 3, Part 9 which imposes obligations on insurers and employers to facilitate the prompt payment of weekly compensation to injured workers with an accepted workers' compensation claim.

New section 146A (Employer to provide necessary information to WorkCover) requires WorkCover to request information necessary to calculate a worker's weekly compensation entitlement from the worker's employer before or immediately after allowing the worker's application for compensation. An employer who fails to comply without a reasonable excuse will commit an offence (with a maximum penalty of 300 penalty units) and may be required to pay a penalty to WorkCover where WorkCover pays the worker basic weekly (default) payments under new section 146B. The employer may apply to WorkCover to waive or reduce a penalty and may have WorkCover's decision reviewed by the Workers' Compensation Regulator under Chapter 13.

New section 146B (Basic weekly payment while waiting for information) requires an insurer to commence basic weekly (default) payments of compensation to an injured worker where the insurer has allowed the worker's application for compensation and does not have the information

necessary to calculate their actual weekly compensation entitlement. The payment must commence on the later of the expiry of five business days after the day the insurer allows the worker's application or the expiry of the excess period in relation to the worker.
New section 146C (Commencing full weekly payment) requires an insurer to, as soon as practicable after making a decision to allow a worker's application for compensation, commence making the weekly payment of compensation to which the worker is entitled.

Clause 36 amends section 179 (Assessment of permanent impairment) to require assessments of permanent impairment to be made, and reports of assessments to be prepared and given, as required by the scheme directions. This is a consequential amendment to enable the Guidelines for the Evaluation of Permanent Impairment to be transitioned to a scheme direction made under new section 329A. The amended provision also creates a head of power to enable regulations to prescribe the necessary qualifications, training and experience required of medical specialists and audiologists who conduct permanent impairment assessments in the scheme as part of a broader governance framework to ensure authorisation, appropriate training and ongoing due diligence checks for these individuals.

Clause 37 omits section 183 (Guidelines for assessing a worker's degree of permanent impairment and deciding DPI). The Guidelines for Evaluation of Permanent Impairment currently made under section 183 will be transitioned to a scheme direction under amended section 179.

Clause 38 omits Chapter 4, part 1 (Application) and inserts three new provisions to clarify the objects and application of Chapter 4 and the rights of a worker in relation to medical treatment.

New section 208 (Objects of Ch 4) expands the objects of Chapter 4 to recognise the operation of existing Part 5A (Support for workers with psychiatric or psychological injuries) and new Part 5B (Minimising risk of psychological harm).

New section 208A (Application) clarifies the application of certain parts of Chapter 4.

New section 208B (Rights of worker in relation to medical treatment) provides that an insurer or employer must not interfere or act inconsistently with the worker's right to choose the registered person who will provide medical treatment for an injury sustained or who is present during medical treatment for the injury.

Clause 39 inserts a new subjection into section 219 (Extent of liability for travelling expenses) which requires an insurer to pay any necessary and reasonable travelling expenses for services provided for under Part 5A or Part 5B.

Clause 40 amends section 220 (Insurer's responsibility for rehabilitation and return to work) to separate out the existing obligation in section 220 into three discrete sections for clarity.

New section 220(1A) clarifies an insurer's general obligation to take all reasonable steps to secure the rehabilitation and early return to suitable duties of certain workers under section 220 includes the additional steps required by new sections 221 (Steps for rehabilitation and return to work – rehabilitation and return to work plans) and 221A (Steps for rehabilitation and return to work – provider of rehabilitation services).

The maximum penalty for section 220 is increased from 50 to 1000 penalty units to align with the existing penalty for an insurer not complying with a code of practice (section 486B) or self-insurer licensing conditions (section 105D) and to act as an appropriate deterrent against offending.

Section 220 currently has one of the lowest penalty unit values in the WCR Act (50 penalty units, within a penalty unit range of 10 to 1,000). It is considered the penalty unit value does not reflect the seriousness of offending against this provision, which can directly impact a worker's prospects of being successfully rehabilitated and returned to meaningful and durable employment and result in significant personal impacts for the worker as well as impacts on the scheme's viability.

Clause 41 inserts new section 221 (Steps for rehabilitation and return to work – rehabilitation and return to work plan) and new section 221AA (Steps for rehabilitation and return to work – provider of rehabilitation services).

New section 221 builds on existing RRTW planning requirements by introducing a new requirement for RRTW plans to be in place within 10 business days after the worker's application for compensation is allowed. In recognition that not all relevant information may be available to prepare a comprehensive plan for the worker within 10 business days, plans must be kept under review and modified as further information becomes available, the worker's progress against the plan is assessed and decisions are made. Additionally, plans must be prepared and reviewed in consultation with the worker, the employer and registered persons to the extent that it is reasonably practicable to do so. For example, the timing of consultation with a worker on their RRTW plan may depend on medical advice provided by a doctor or whether they are an inpatient.

New section 221AA allows the Workers' Compensation Regulator to set service delivery, competency and professional standards for workplace rehabilitation providers. This will be given effect through a scheme direction issued by the Workers' Compensation Regulator that aligns with nationally agreed *Principles of Practice for Workplace Rehabilitation Providers* to ensure transparent and uniform standards. Insurers must ensure each workplace rehabilitation provider meets the scheme directions.

New subsections 221AA(4) and (5) give workers the right to choose a different workplace rehabilitation provider if they are dissatisfied with the initial provider selected by the insurer. The insurer must accommodate the request unless it would not be reasonably practicable to do so (e.g., the chosen provider is unable to attend the worker's location due to its remoteness or the provider's availability) or would be likely to adversely affect the worker's rehabilitation and early return to suitable duties (e.g. the chosen provider lacks relevant knowledge or experience about the worker's injury, work or industry).

Clause 42 replaces the requirement in existing section 228 (Employer's obligation to assist or provide rehabilitation) for rehabilitation to be of a suitable standard with a requirement that employers take all reasonable steps required by scheme directions to be taken to assist or provide the worker with rehabilitation during the prescribed period for the worker. The current standard for rehabilitation (contained in guidelines made under regulation 116 of the WCR Regulation) will be transitioned to scheme directions and will remain mandatory for employers to comply with.

The maximum penalty for non-compliance will increase from 50 to 500 penalty units to ensure internal consistency with other penalties in the WCR Act and provide an appropriate deterrent to offending. The proposed penalty unit value is less than the value proposed for contravention of an insurer's rehabilitation duty (section 220; 1,000 penalty units) due to the different nature of employers' RRTW responsibilities and the fact that unlike insurers, not all employers are large, well-resourced organisations.

Amendments to section 228 also strengthen existing requirements on employers to give insurers evidence that suitable duties programs are impracticable by inserting a new requirement for an insurer to consider an employer's evidence and form their own opinion as to whether the provision of such programs by the employer is impracticable. If the insurer considers the provision of suitable duties programs is practicable, the insurer may consider penalising the employer under section 229 for failing to take reasonable steps to assist or provide a worker with rehabilitation.

Clause 43 inserts a new Part 4A (Obligation of person to whom labour hire worker supplied) within Chapter 4 to address reduced RRTW outcomes for labour hire workers. New section 229A requires host employers to cooperate with labour hire providers by taking all reasonable steps to support providers to meet their RRTW obligations as an employer under section 228 (which includes the provision of suitable duties programs). It is important to note this amendment does not make the host employer the employer of the labour hire worker.

Clause 44 amends section 232AB (Insurer's responsibility for providing support to worker) to increase the maximum penalty from 50 to 500 penalty units. This is intended to reflect the seriousness of the offence and ensure internal consistency with other penalties in the WCR Act. Offending against section 232AB delays the commencement of treatment for workers who ultimately have their claim accepted, increasing the risk of further decompensation and a poor RRTW outcome. Despite this, section 232AB currently has one of the lowest penalty unit values in the WCR Act (50 penalty units, within a penalty unit range of 10 to 1,000).

Clause 45 amends section 232B (Dismissal of injured worker only after 12 months) to increase the maximum penalty from 40 to 500 penalty units. This is intended to reflect the seriousness of the offence and ensure internal consistency with other penalties in the WCR Act. Offending against section 232B can impact the ability of a worker to undertake suitable duties with their pre-employer employer, undermining the employer's rehabilitation duty under section 228. Despite this, the section currently has one of the lowest penalty unit values in the Act (40 penalty units, within a penalty unit range of 10 to 1,000).

Clause 46 inserts a new Part 5B (Minimising risk of psychological harm) into Chapter 4 of the Act. This includes two new provisions aimed to minimise the risk of secondary psychiatric or psychological injury claims.

Section 232AC (Minimising risk of psychological harm) applies if an insurer allows an application for compensation for a physical injury sustained by a worker. It requires the insurer to take all reasonable steps to minimise the risk of the worker sustaining a psychiatric or psychological injury arising from the physical injury; this also includes providing reasonable services. The insurer's obligation continues until the worker's entitlement to compensation ends.

Section 232AD (Extent of liability for fees and costs) requires the insurer to pay fees and costs for medical treatment or other services provided under section 232AC as accepted by the insurer to be reasonable having regard to the relevant table of costs, or otherwise as approved by the insurer.

Clause 47 amends section 232K (Meaning of excluded treatment, care or support) to update the definition of 'register of providers'. This is a consequential amendment noting registers kept will be made under the new head of power in new section 329B.

Clause 48 omits Chapter 6B, Part 5 (Requirement to report non-compliance with chapter) as a consequential amendment noting reporting obligations are consolidated under new Chapter 12, Part 3 (discussed below).

Clause 49 inserts two new provisions: section 329A (Scheme directions) and section 329B (Scheme registers).

Section 329A enables the Workers' Compensation Regulator to make scheme directions where this is specifically required or permitted by another provision of the WCR Act or a regulation. Scheme directions are exempt subordinate legislation and not required to be drafted by Parliamentary Counsel but are still subject to fundamental legislative principles. Transitioned scheme directions include the Guideline for the Evaluation of Permanent Impairment and the Guidelines for Standard for Rehabilitation.

Section 329B consolidates provisions for existing registers for persons authorised to make permanent impairment assessments (under section 179) and for providers of attendant care and support and other services (under section 232K). The Workers' Compensation Regulator must endeavour to keep the registers up to date and may make a register publicly available on the department's website or available to insurers or employers by other means as appropriate.

Clause 50 expands the Minister's power to makes codes of practice (section 486A) to include action to be taken by insurers, employers or other persons (such as host employers under new section 229A) in performing functions, exercising powers or complying with obligations under the WCR Act. Examples include action in relation to training and development for claims managers or other staff or contractors; referring workers to early support services for psychiatric or psychological injuries; or managing complaints against providers of workplace rehabilitation services or employers. Codes of practice are exempt subordinate legislation and not required to be drafted by Parliamentary Counsel but are still subject to fundamental legislative principles.

Clause 51 amends section 486B (Effect of code of practice) to replace references to 'an insurer' to 'a person' to align with the expanded scope in section 486A. It will be a defence to a prosecution for an offence if the defendant can prove that they took action that is as effective as, or more effective than, the action stated in the code of practice.

Clause 52 omits section 536 (Duty to report fraud or false or misleading information or documents) to enable existing reporting obligations to be consolidated into a new provision in Chapter 12, Part 3.

Clause 53 inserts a new Part 3 (Duty to report) and Part 4 (Compliance Notices) within Chapter 12.

New section 537A within new Part 3 consolidates existing reporting requirements in section 325Y (Insurer's duty to report non-compliance) and section 536 (Duty to report fraud or false or misleading information or documents) into a single provision. It makes minor changes to test for reporting by requiring reporting entities to inform the Workers' Compensation Regulator or WorkCover (as applicable) if they form a reasonable belief that a reportable offence is being or has been committed. A regulation may prescribe additional reportable offences and how and when information must be given to the Workers' Compensation Regulator or WorkCover.

New section 537B within new Part 3 supports the reporting requirements in section 537A by introducing new protections for persons who give information to the Workers' Compensation Regulator or WorkCover. This provision prohibits a person from causing detriment to another person for the reason that the other person has (or is believed to have) made, or intends to make, an enforcement disclosure. The reason needs to be a substantial reason for causing the detriment

and Chapter 4 of the *Public Interest Disclosure Act 2010* (PID Act) applies as if an enforcement disclosure were a public interest disclosure and contravention of the section were a reprisal under the PID Act.

New Part 4 (Compliance notices) creates a new enforcement tool to secure compliance with the WCR Act by issuing compliance notices to obligation holders. This is intended to enable authorised persons appointed by the Workers' Compensation Regulator to respond quickly and proportionately to identified contraventions without commencing a prosecution.

New section 537C (Compliance notice) enables an authorised person appointed by the Workers' Compensation Regulator to give a person a written compliance notice requiring the person to take stated action, or to refrain from taking stated action, to prevent a contravention of the WCR Act from continuing or being repeated. A compliance notice may only be issued if the authorised person is satisfied on reasonable grounds that the person has contravened the WCR Act and the contravention is continuing or being repeated.

New section 537D (Review by Regulator) enables a person to whom a compliance notice is issued to apply to the Workers' Compensation Regulator for a review of the compliance notice. An application for review must be made within 10 business days after the person receives the compliance notice unless extended by the Workers' Compensation Regulator. The Workers' Compensation Regulator must decide a review application within 10 business days after the application is made (unless extended to receive or consider further information) by confirming the notice, withdrawing the notice, or withdrawing the notice and reissuing it in a form the Workers' Compensation Regulator considers appropriate (that is, substituting the terms of the notice with different terms).

New section 537E (Appeal to industrial commission) enables a person who has applied for a review of a compliance notice to appeal the Workers' Compensation Regulator's decision to the QIRC. The appeal must be made within 20 business days after the Workers' Compensation Regulator's notice is given to the person unless extended by the QIRC.

New section 537F (Offence of failure to comply with compliance notice) is an offence provision which requires a person to take the action or refrain from taking the action as stated in a compliance notice.

Clause 54 amends section 540 (Application of pt 2) to insert a new review right for an employer for a decision by WorkCover to penalise the employer for failing to comply with a notice under new section 146A (Employer to provide necessary information to WorkCover) and section 220(3) and (4) (Insurer's responsibility for rehabilitation and return to work).

Clause 55 amends section 544 (Decision-maker must give information to Regulator) to specify the way in which information, documents and reasons requested from a decision-maker must be given to the Workers' Compensation Regulator.

Clause 56 amends section 579 (Summary proceedings for offences other than against ch 8) to enable offences against new Parts 3 and 4 in Chapter 12 to be prosecuted summarily.

Clause 57 replaces section 587 (Service of documents) with a new provision governing the service of documents required or permitted to be given to a person by the Workers' Compensation Regulator, WorkCover or an authorised person under the WCR Act. This section permits documents to be sent to the person by email or made available to the person or given in a way prescribed by regulation.

Clause 58 inserts a new Chapter 38 (Transitional provisions for Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024) which includes various transitional provisions.

New section 748 (Definitions for chapter) includes definitions relevant to the transitional provisions.

New section 749 (Application of amendments relating to firefighters) provides that the amended presumptive firefighter provisions in section 36E and schedule 4A applies to applications made but not yet decided by an insurer and any applications for compensation made after commencement.

New section 750 (Commencing weekly payments) provides that new sections 146A to 146C apply to an application for compensation made after the commencement.

New section 751 (GEPI taken to be scheme directions) provides that from the commencement, the Guidelines for the Evaluation of Permanent Impairment under section 183 in force immediately before the commencement are taken to be scheme directions for new section 179.

New section 752 (Guideline for rehabilitation to be scheme directions) provides that from the commencement, the guidelines for standard for rehabilitation (second edition) made by the Regulator under section 228(2) in force immediately before the commencement are taken to be scheme directions for new section 228(1)(a).

New section 753 (Register of providers) provides that from the commencement, the register kept under section 232K is taken to be a register kept under new section 329B(1)(b).

Clause 59 amends Schedule 3 (Who is an employer in particular circumstances) to insert a new clause 9. The new clause provides that a person is the employer of a person who is a worker under section 11(1)(b) if the person is a regulated business under the FW Act and a minimum standards order, minimum standards guideline or collective agreement applies to or covers the person under chapter 3A of that Act, and the person is prescribed by regulation to be the employer of the worker.

Clause 60 amends Schedule 4A (Specified diseases) to include 10 additional deemed diseases. The provision also reduces the qualifying period for primary site oesophageal cancer from 25 to 15 years.

Clause 61 amends Schedule 6 (Dictionary) to remove the definition of 'GEPI' and insert new definitions of 'compliance notice', 'employee organisation', 'provider of workplace rehabilitation services', 'registered industrial organisation' and 'scheme directions'. It also amends the definitions of 'DPI', 'table of costs' and 'workplace'.

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

Clause 62 provides that Part 5 amends the *Workers' Compensation and Rehabilitation Regulation 2014.*

Clause 63 omits section 116 (Standard for rehabilitation – Act, s 228(2)). This is a consequential amendment to enable the Guidelines for Standard for Rehabilitation for employers to be transitioned to a scheme direction under amended section 228(1)(a) and new section 329A.

Clause 64 inserts a new section 144D (Information statements – Act, s 46B and 1322AA) which provides that the information statement must be in the form approved by the Workers' Compensation Regulator and include information about certain list provisions.

Part 6 Other amendments

Clause 65 notes that the legislation is amended as set out in Schedule 1.

Schedule 1 (Other amendments) makes various minor and consequential amendments to the WCR Act, including to update section references, update references to 'registered industrial organisation', correct heading titles, and to remove gender-based references and replace these with more contemporary and gender-neutral language.