Education, Employment and Small Business Committee

Inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019

Amendments to the *Workers' Compensation and Rehabilitation Act 2003*

Five yearly review of Queensland's workers' compensation scheme

1. The *Workers' Compensation and Rehabilitation Act 2003* (the Act) establishes Queensland's system of workers' compensation. Under the Act, an employer must insure or self-insure against work related injury sustained by a worker of the employer where work is a significant contributing factor to the injury. Queensland's workers' compensation scheme (encompassing both premium-paying employers and 28 self-insurers) covers approximately 162,000 employers and an estimated 2.4 million workers (as at 30 June 2018).

2. Section 584A of the 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. The first review was required to be completed by 30 June 2013.

3. An independent reviewer, Professor David Peetz, was appointed to conduct the second review of Queensland's workers' compensation scheme by 30 June 2018 (the Review). Professor Peetz is a Professor of Employment Relations at Griffith Business School.

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

    a) *The performance of the scheme in meeting the objectives under section 5 of the Act, including:*
        (i) *maintaining a balance between providing fair and appropriate benefits for injured workers or dependants and persons other than workers, and ensuring reasonable cost levels for employers;*
        (ii) *ensuring that injured workers or dependants are treated fairly by insurers;*
        (iii) *providing for the protection of employers' interests in relation to claims for damages for workers' injuries; and*
        (iv) *providing for employers and injured workers to participate in effective return to work programs;*
    b) *Emerging issues facing the Queensland workers' compensation scheme.*
    c) *The effectiveness of current rehabilitation and return to work programs and policy settings, including ways to increase Queensland's current return to work rate.*

5. Professor Peetz conducted targeted consultation and took written submissions from key stakeholders, including unions, employer representatives, legal representatives, medical and allied health associations, and insurers. Stakeholders were provided with an issues paper to facilitate discussion regarding the Review along with individual meetings with the reviewer as part of the consultation process.

6. The Review found 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 and protect workers in the emerging gig economy. The Review made 15 recommendations that would require legislative amendment to implement.

Summary of key provisions in the Bill

7. The Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2019 (the Bill) proposes amendments to the Act to implement the majority of the legislative recommendations made by the Review. The Review was tabled in Parliament on 29 June 2018.

8. To ensure each of the Review's 15 proposed legislative amendments were explored in their entirety, a Stakeholder Reference Group (SRG) comprised of unions, employer groups, insurers, allied health representative bodies, and the legal community considered the proposals.

9. The Bill seeks 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;
    - 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 Act 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;
    - 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 workers with psychiatric or psychological injuries access to reasonable support services relating to their injury during claim determination.

10. 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.

11. The remaining three legislative recommendations from the Review relate to the potential extension of the workers' compensation scheme to certain gig workers and taxi and limousine drivers. This potential extension of the scheme is being considered separately and is subject to a Regulatory Impact Statement consultation process.

Overview of proposed amendments

WorkCover Queensland's ability to fund prevention initiatives (Clauses 70–72, 85 of the Bill)

REVIEW RECOMMENDATION 7.2
The Act should be amended to make it clear WorkCover Queensland's ability to fund prevention activities. Workcover Queensland (WorkCover), like other workers' compensation insurers in Australia, contributes to the funding of the prevention efforts of the relevant jurisdictional work health and safety regulator.

12. WorkCover, like other workers' compensation insurers in Australia, contributes to the funding of the prevention efforts of the relevant jurisdictional work health and safety regulator.

13. Queensland's workers' compensation insurers pay an annual contribution towards the provision of work health and safety services in Queensland. WorkCover makes this contribution through a grant paid to Workplace Health and Safety Queensland (WHSQ) under section 481A of the Act.

14. While it is recognised that effective systematic work health and safety prevention activities are most appropriately managed by WHSQ as the regulator of work health and safety in Queensland, at times certain joint initiatives or prevention activities may be provided and funded by WorkCover to support their employers in achieving improved health and safety performance.

15. The amendments clarify that WorkCover has the power to provide and fund programs and incentives to encourage improved health and safety performance by employers. 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.

    Proposed commencement: Assent.

    Transitional arrangements: Nil required.

Apologies by employers following workplace injuries to be exempt from consideration in any assessment of liability (Clause 69 of the Bill)

REVIEW RECOMMENDATION 7.12
The Act should be amended to exempt apologies provided by employer representatives following a workplace injury from being considered in any assessment of liability.

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

17. The case law, including the High Court decision of *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.

18. Under the *Civil Liability Act 2003* (CLA), apologies regarding other personal injuries matters in Queensland are able to be provided without prejudice, that is, they have no 'liability' consequences.

19. The amendments will 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 Act (specifically a common law claim for damages under chapter 5), to bring the Act in line with the CLA.

Proposed commencement: Assent.

Transitional arrangements: Any expression of regret or apology made prior to assent will be inadmissible if a relevant notice of claim for damages is made after assent. This will protect both the employer and the workers' interests.

Rehabilitation and Return to Work Coordinators (Clauses 37, 63 of the Bill)

> **REVIEW RECOMMENDATION 6.8**
> The requirement that rehabilitation and return to work coordinators in larger organisations be appropriately qualified should be reintroduced, but with a transition period, partial or full credit for prior relevant training, and consideration given to the inclusion of industry-specific modules in the accredited training.
>
> **REVIEW RECOMMENDATION 6.10**
> The Act should be amended to oblige employers that are required to engage a rehabilitation and return to work coordinator (RRTWC) to provide a list of all RRTWCs engaged by the employer and include in this list the RRTWC contact details and the workplace/s they have responsibility for. This information should be available to the workers' compensation regulator and insurers for the purposes of educating and supporting these officers and validating requirements.

20. Under section 226 of the Act, large and/or high-risk employers are required to appoint an appropriately qualified person to undertake the functions of a rehabilitation and return to work coordinator (RRTWC). The Review found that since the requirement for coordinators to be accredited was removed in 2013, stakeholders consider that the skill level of this group has reduced.

21. To address concerns, the amendments will allow the Workers' Compensation Regulator to approve a list of training courses or qualifications for RRTWCs relevant to the industry of the employer. If a training course is approved and the RRTWC has completed that course, then a statement that the RRTWC has successfully completed the approved training 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, as currently required under the Act, be required to demonstrate how the RRTWC is appropriately qualified.

22. The amendments will also require employers to provide details of their RRTWC to the employer's insurer. These details include the RRTWC's name, contact details, the workplace/s they have responsibility for, and a statement of how the RRTWC is appropriately qualified. This information should be provided within 12 months after the RRTWC's appointment and updated within 12 months when the information has changed. For administrative ease it is proposed that this be implemented through the workers' compensation premium renewal process.

    Proposed commencement: clause 37 – assent, clause 63 – 1 July 2020.

    Transitional arrangements: For employers that currently have rehabilitation and return to work coordinators, they will be required to provide their insurer with the new prescribed details within 12 months of 1 July 2020. This will allow for sufficient time for employers to prepare the information and submit to their insurer at the same time as their usual annual premium declarations, which will minimise any additional administrative requirements on the employer.

Insurer responsibility for rehabilitation and return to work (Clauses 38, 52, 53, 60–62, 64, 75 of the Bill)

REVIEW RECOMMENDATION 6.4
The Act should be amended to specify that an insurer retains responsibility for rehabilitation and return to work even after the entitlement to compensation ceases for a defined period, to ensure as much as possible that the worker either achieves or has had every reasonable opportunity to achieve a durable return to work.

REVIEW RECOMMENDATION 6.5
Insurers should be required to assess the rehabilitation and return to work needs of all workers during the management of a claim and refer them to the accredited program if the assessment identifies a significant risk to the worker's return to work. However, decisions such as these (or any other by the insurer) should be made on the basis of human judgement by staff of the insurer, and not purely on the basis of algorithmic outcomes. An insurer should also be required to refer an injured worker to an accredited RTW program if, at the end of entitlement to compensation, the worker has not achieved a return to work. The entitlement to participate in the program should continue until the worker achieves a durable return to work or the insurer decides that either: the worker is not reasonably participating in the accredited program; or further participation will not reasonably contribute to achieving a durable return to work.

REVIEW RECOMMENDATION 6.6
Workers should have a right to request a referral to an accredited return-to-work program.

23. Currently, an injured worker's entitlement to rehabilitation and return to work support from the insurer can end before rehabilitation and return to work has been achieved due to the operation of various provisions of the Act which mechanically cease an injured worker's entitlement to statutory compensation upon the occurrence of particular events. For example:
    - section 119 - entitlement to compensation ends if damages claim is finalised;
    - section 144A - when weekly payments of compensation stop;
    - section 144B - when payment of medical treatment, hospitalisation and expenses stops;
    - section 168 - review of compensation and associated payments;
    - section 176 - no compensation after redemption payment made; and
    - section 190 - no further compensation after fixed time.

24. While all insurers have accredited return to work programs (section 220(2) of the Act), access to these accredited programs is only mandated for workers who lodge a notice of claim for damages. As a result, the Review concluded that many workers 'fall through the gaps' or have their rehabilitation and return to work progress stalled when they may benefit from access to an accredited return to work program during, or at the end of, their statutory claim.

25. To address this identified gap in the provision of rehabilitation services, the amendments will:
    - include a mandatory requirement to refer an injured worker to an accredited rehabilitation and return to work program if the worker's entitlement to compensation has ceased and the worker has not returned to work because of the injury; and
    - provide workers with the right to request referral to an accredited rehabilitation and return to work program at any stage during their statutory claim.

26. Insurers will continue to have the ability to refer a worker to an accredited program at any earlier stage in the claim process, and there will be no changes in responsibilities in relation to treatment, care and support needs for workers with serious personal injuries.

27. A worker's entitlement to remain in the accredited program continues until the worker is unwilling or unable to participate in the program; or the program is not able to further assist the worker with rehabilitation. Examples of when this might occur include:
    - 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;
    - all appropriate rehabilitation and return to work initiatives have been considered;
    - 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;
    - the worker unreasonably refuses to participate;
    - the worker's participation is not satisfactory, for example, not attending agreed meetings, or failing to participate in host employment programs;
    - the worker's damages claim is finalised or redemption payment has been made, which effectively finalises the worker's claim by compensating them for all future costs associated with the claim; or
    - the worker has received compensation for the injury for 5 years.

28. Further, an employer's current 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. Additionally, 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.

29. To complement the enhanced insurer obligations with respect to accredited rehabilitation and return to work programs, the amendments:
    - 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).

    Proposed commencement: Assent.

    Transitional arrangements: The enhanced rehabilitation and return to work obligations for insurers to refer a worker who has been unable to return to work because of their injury to the insurers accredited program will apply only if the worker stopped receiving the compensation after assent. This provides certainty to the employer, worker and insurer that further entitlement will not be created for a claim that ceased prior to assent.

Notification of injuries (Clauses 40, 42, 48, 49 of the Bill)

> **REVIEW RECOMMENDATION 9.3**
> The Act should be amended to require all injuries to be reported to the relevant insurer, with no exemption for self-insurers. The insurer should then pass that information to the regulator.

30. 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 resulting in underreporting and created the potential for self-insured employers to avoid their obligations to injured workers.

31. The amendments will require self-insured employers to notify their insurer when a worker sustains an injury for which compensation may be payable (section 133).

32. Amendment of this section also requires amendment of section 133A, which states that an employer, other than a self-insurer, must give written notice if a worker asks the employer for compensation, the employer pays the worker an amount, either in compensation or instead of compensation, that is payable under the Act for an injury sustained by the worker. Consequential amendment is also required to section 109 to ensure that there is no disconnect or inconsistency within the Act. In addition, section 66 will be amended so that all employers, regardless of their insurance status, are able to pay an excess for each claim.

    Proposed commencement: 1 July 2020.

    Transitional arrangements: The new reporting requirements for self-insured employers to report various information to their insurer will apply for injuries sustained on or after 1 July 2020. This will allow sufficient time and certainty to self-insured employers to adjust their reporting systems.

Time to lodge an application of compensation (Clauses 46, 51 of the Bill)

> **REVIEW RECOMMENDATION 4.1**
> The Parliament should amend the Act to give insurers the discretion to accept a claim lodged more than 6 months after being assessed by a doctor, if the worker lodges their claim within 20 business days of certification of an incapacity. The regulator should develop a practice note specifying that it will allow such claims where the medical practitioner uses the work capacity certificate or where the worker can provide other evidence that they did not know before that date that the injury was covered by workers' compensation.

33. Under section 131 of the 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. When an entitlement to compensation for an injury arises is defined by section 141 as the day on which the worker is assessed by a doctor.

34. 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. It is felt by stakeholders that this interpretation has negatively impacted 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.

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

36. The amendments will provide for a further circumstance in which an insurer may waive the time limit, which is if the worker is certified with an incapacity (either total or partial) and lodges their claim within 20 business days of the certification.

    Proposed commencement: Assent.

    Transitional arrangements: The new power for an insurer to accept claims made more than six months after the injury has been assessed by a doctor will apply for all applications for compensation made after assent.

Coverage for unpaid interns (Clauses 39, 78, 79 of the Bill)

REVIEW RECOMMENDATION 3.2
The Act should be amended to enable coverage of unpaid commercial interns, with exemptions for interns already covered by injury insurance arrangements (including student internships undertaken as part of a course). For the purposes of calculating premiums, employers would be asked to report to WorkCover the number of hours worked by interns who were not covered by other injury compensation insurance. Volunteers for non-profit organisations would not be covered.

37. Under internships, a person undertakes 'work experience' for an employer, including performing work which a reasonable person would expect to be undertaken by a paid worker, without pay, as a way of gaining entry into the labour market for that industry.

38. If an intern is paid, they will generally be covered by Queensland's workers' compensation scheme as a worker. The Act also currently allows WorkCover Queensland to enter into a contract of insurance with schools and registered training organisations only that cover students for injury arising out of, or in the course of, work experience or vocational placement.

39. Where an unpaid intern is engaged outside of these circumstances, they will not be covered by the workers' compensation scheme.

40. Where an unpaid work arrangement is not a vocational placement, the arrangement can only be lawful if no employment relationship exists. If there is an employment relationship, the person is actually an employee and entitled to conditions under Fair Work legislation, including a minimum wage (meaning they would become a "worker" under the Act).

41. Although an unlawfully unpaid intern could seek recovery of unpaid wages through a court of relevant jurisdiction and gain access to workers' compensation following a successful outcome, the aim to is ensure vulnerable interns have access to workers' compensation when it is required (i.e. at the time or shortly after an injury) rather than having to pursue unpaid wages before gaining access to workers' compensation.

42. To remove any doubt as to whether interns are entitled to access workers' compensation benefits or not, the amendments add a new category of worker into Schedule 2, Part 1 of the Act.

    Proposed commencement: 1 July 2020.

    Transitional arrangements: Nil required.

Definition of psychological injury (Clause 34 of the Bill)

REVIEW RECOMMENDATION 5.1
The current definition of injury for psychiatric or psychological disorders in the Act should be revised to remove 'the major' as a qualifier for work's 'significant contribution' to the injury, to bring Queensland into line with other jurisdictions.

43. The 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 the amendments made in 2013, the definition of compensable psychological injury only required the worker's employment to be 'a significant' contributing factor in line with the definition for physical injuries.

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

45. Analysis of claims data shows the change made in 2013 had a negligible impact on the rejection rate for psychological and psychiatric claims. Prior to the 2013 change, the rejection rate was 61.5 per cent (for the two years prior from 2011 to 2013). For the two-year period after the 2013 amendments, the rate increased slightly and gradually declined to 62.1 per cent.

46. The proposed amendment will ensure parity in the work relatedness test between physical and psychological injuries. This aligns with the approach taken in other jurisdictions and addresses the Review's recommendation that there be consistency in the treatment of physical and psychological injuries within the workers' compensation scheme.

    Proposed commencement: Assent

    Transitional arrangements: The change to the work-relatedness test for psychiatric or psychological disorders will apply for all injuries sustained on or after assent.

Early intervention in psychological and psychiatric injury claims (Clauses 47, 52, 59, 65, 74 of the Bill)

> **REVIEW RECOMMENDATION 5.4**
> Early intervention in cases of potential psychological or psychiatric injury should be promoted by requiring insurers (on a 'no prejudice' basis) to cover the costs of treatment for such injuries before liability has been assessed, up to a limit (defined by reference to a time period). These costs would not form part of the experience rating of the relevant employer, if the claim is subsequently rejected.

47. The Act currently only provides that payments are able to be made to injured workers where they have an accepted workers' compensation claim. This means that workers with psychological injury must satisfy the insurer that they are a worker, their injury is work-related, and their injury did not arise due to reasonable management action taken in a reasonable way in order to receive any support from the scheme. Due to the complexity of these claims they can take longer to decide, and workers must 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.

48. To reduce the severity, duration, return to work outcomes and recurrence of psychological injuries, the Review recommended insurers meet the costs of a prescribed number of treatment services up until the time the claim is determined.

49. To meet the intent of the Review recommendation, the amendments will require that insurers must take all reasonable steps to provide reasonable services to support workers with a psychological injury during claim determination on a without prejudice basis, excluding hospitalisation costs. An insurer commits an offence if they fail to comply with this obligation. This method of implementation facilitates a flexible and tailored approach to intervention, which will best meet the worker's unique needs.

50. 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.

51. An insurer's decision not to pay for services until the determination of the claim is not a reviewable decision as it is not a decision regarding liability. However, there is a requirement for an insurer to conduct an internal review of the decision.

    Proposed commencement: Assent.

Transitional arrangements: The new support services provided to workers during the claim determination process of a psychiatric or psychological injury application will commence for all injuries that are sustained on or after assent.

Regulatory simplification and clarification amendments

Replace monetary values with a multiple of QOTE (Clauses 41, 43, 44, 50, 54–58, 66–68, 76, 82–84, 86–90 of the Bill):

52. Under the 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).
53. Under section 205 of the Act, if QOTE varies, each payment or amount under part 3, divisions 4 or 5 or parts 6, 10 or 11 of the Act that is not expressed as a percentage of QOTE must be varied proportionately, rounded up to the nearest five dollars.

54. The Act and Regulation contain 301 references to dollar amounts. Many of these references are obsolete as they refer to amounts current when the Act was passed or Regulation was made, but which have been indexed in accordance with section 205 of the Act. This has led to unnecessary complexity and potential stakeholder confusion.

55. The amendments will replace, where applicable and practicable, relevant dollar amounts with percentages or multiples of QOTE reflecting current day amounts, but not provisions of the Act or Regulation dealing with employer premiums or legal costs.

    Proposed commencement: 1 July 2020 (except clauses 66–68 which commence on assent).

    Transitional arrangements: All previously notified percentage differences of QOTE are valid.

Power to require information or documents from particular persons (Clause 73 of the Bill):

56. This amendment clarifies the circumstances that enable an authorised person to request information or documents under section 532C of the Act. This section allows an authorised person to require information that is relevant to a person's liability to insure as an employer; a person's entitlement to compensation or damages, or any offence the authorised person believes has been committed against the Act. The amendment will replace 'offence' in section 532D(1)(d) with 'contravention' so that it is clear that a penalty unit does not need to be applied for the powers to apply.

    Proposed commencement: Assent.

    Transitional arrangements: Nil required.

Reference to 'x-rays' within the Act (Clauses 35, 45 of the Bill):

57. In 2017, amendments were introduced to provide additional benefits for workers diagnosed with pneumoconiosis. 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.

58. Due to the speed of change regarding medical imaging availability and sensitivity, the amendments replace references to 'x-rays' within the Act with the broader term 'imaging'. This will ensure workers with pneumoconiosis are not disadvantaged by changes and advancements in technology.

    Proposed commencement: Assent.

    Transitional arrangements: Nil required.

Life expectancy to qualify for terminal condition lump sum (Clause 36 of the Bill):

59. The Act currently defines a terminal condition as being a condition that is expected to terminate the worker's life within 2 years after the terminal nature of the condition is diagnosed (section 39A). Experience from silicosis claims has shown that some workers are being diagnosed with a terminal condition that is expected to terminate the worker's life within 5 years. A worker with a terminal condition greater than 2 years is excluded from entitlement to the latent onset terminal lump sum compensation. The amendment will extend entitlement to the latent onset terminal entitlements by removing the reference to 2 years.

    Proposed commencement: Assent.

    Transitional arrangements: The change to the meaning of what is a terminal condition will apply for all diagnoses 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.

Consultation undertaken on proposed amendments

60. To ensure each of the Review's 15 proposed legislative amendments were explored in their entirety, a Stakeholder Reference Group (SRG) comprised of unions, employer groups, insurers, allied health representative bodies, and the legal community considered the proposals.

61. The SRG included senior representatives from the following organisations:
    - WorkCover Queensland;
    - Association of Self-Insured Employers Qld;
    - Australian Lawyers Alliance;
    - Queensland Law Society;
    - Housing Industry Association;
    - Master Builders QLD;
    - AiGroup;
    - Australian Rehabilitation Providers Association;
    - Occupational Therapy Australia;
    - Australian Workers Union;
    - Construction Forestry Maritime Mining Energy Union Construction and Mining Divisions;
    - Queensland Council of Unions;
    - SDA Queensland;
    - Bar Association of Queensland;
    - Chamber of Commerce and Industry Queensland;
    - Taxi Council Queensland;
    - Limousine Association;
    - Uber;
    - Ride Share Drivers' Association; and
    - Consultative Committee for work-related fatalities and serious incidents.

62. The SRG met on the following dates to consider the legislative amendments arising from the Review: 19 September and 11 October 2018, 7 March 2019, 5, 15 and 29 July 2019. Stakeholders were also provided with various opportunities to provide written submissions and feedback to specific issues raised at SRG meetings. At the July 2019 meetings, the SRG considered consultation drafts of the Bill.

Financial impact of proposed amendments

63. Estimates of the cost to implement the proposed amendments on the workers' compensation scheme totals $18.6 million per annum. Approximately 90 per cent of this total would be apportioned to WorkCover Queensland (i.e. $16.7 million). The remaining $1.9 million would be apportioned to the 28 licenced self-insurers, depending on the claims experience of each. These costs are able to be absorbed within the scheme's current funding arrangements.

Amendments to the *Further Education and Training Act 2014*

Background

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

65. However, since the introduction of the FET Act, 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.

66. The Queensland Training Ombudsman (the Ombudsman) released the report *Review of group training arrangements in Queensland* in January 2018. This report may be viewed at http://trainingombudsman.qld.gov.au/wp-content/uploads/2018/09/Review-of-Group-Training-Arrangements-in-Queensland.pdf. 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.

67. 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. This report may be viewed at http://trainingombudsman.qld.gov.au/wp-content/uploads/2018/10/Queensland-Training-Ombudsman-Annual-Report-2017-18.pdf.

68. 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.

Summary of key provisions in the Bill

69. The Bill provides amendments to the FET Act to enable the Department of Employment, Small Business and Training (DESBT) to assist stakeholders in achieving more equitable outcomes in the case of contested cancellations, temporary suspensions or to address inadequate training.

70. The objective of the Bill is to:

- protect the positions of apprentices and trainees, who are vulnerable workers and do not have the same bargaining power 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 FET Act 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 FET Act.

71. In addition, one party cancellation, temporary suspension and one party suspension decisions will be appealable to the Queensland Industrial Relations Commission (QIRC).

Overview of proposed amendments

Cancellation of registered training contracts – application by one party (Clauses 9–10, 24 of the Bill)

72. Currently, the FET Act provides for the cancellation of a registered training contract on application by the parties to the contract under section 33, or by the chief executive if reasonably satisfied one or more grounds under section 36 apply.

73. The Bill includes a new provision 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 cannot successfully complete that party's obligations under the contract.

74. This new provision addresses the existing legislative gap that exists in the FET Act to provide a mechanism to enable applications for cancellation of a training contract to be considered by the Chief Executive, before employment is terminated. This new provision reintroduces a single party cancellation provision that was previously available under the VETE Act and will open communication lines between the employer, apprentice/trainee and DESBT, allowing DESBT the opportunity to discuss alternative options with the parties.

75. All parties will be provided with the opportunity to make a submission to the chief executive under fair procedures and the decision of the chief executive will be appealable to the QIRC.

    Commencement: Assent.

    Transitional: Nil.

Cancellation of registered training contracts – amendment of section 36 (Clauses 11–12 of the Bill)

76. Currently, the FET Act provides for the cancellation of a registered training contract by the chief executive if reasonably satisfied one or more grounds under section 36 apply. Section 36(i) currently provides for the grounds that the employment of the apprentice or trainee by the employer has ceased.

77. The current interpretation and practice for section 36(i) provides that a training contract is only cancelled after 21 days (the applicable time allowed to make an unfair dismissal application) has passed from the date the employment ceased, or after any unfair dismissal or similar proceeding in relation to the employment contract is finalised.

78. The Bill amends the FET Act to provide that the chief executive may not cancel a training contract under section 36(i) (amended to 36(1)(i) under the Bill) within 21 days after the employment of the apprentice or trainee has ceased to allow for a notice of a contested event, as defined in the Bill under new section 58A.

79. Additionally, the Bill includes a new subsection under section 36 to provide 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, and the contested event has not been finalised.

    Commencement: Assent.

    Transitional: Nil.

Obligations of apprentice or trainee and employer (Clauses 15–16 of the Bill)

80. In order to give effect to rights of an apprentice or trainee to contest the cessation of employment through an unfair dismissal or similar proceeding, the Bill includes 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. A contested event is defined under this new section 58A.

81. Additionally, the Bill provides for an amendment of the employer's obligation to report a notifiable event to the chief executive under section 58 to include that an employer must give the chief executive signed notice of a contested event, as defined in the Bill under new section 58A, within 14 days after the contested event happens

    Commencement: Assent.

    Transitional: Nil.

Re-registration of cancelled contract in particular circumstances (Clause 13 of the Bill)

82. Currently, the FET Act does not provide for the re-registration of a registered training contract if the contract has been cancelled, and the apprentice or trainee successfully contests the cessation of their employment by having their employment contract reinstated to the same or similar position as an order of an IR proceeding.

83. The Bill includes 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 QIRC or the Fair Work Commission under the *Fair Work Act 2009* (Cwlth) in relation to a contested event, as defined in the Bill under new section 58A, is to reinstate the employment of the apprentice or trainee who was a party to a cancelled contract.

84. Additionally, the Bill provides that it is the obligation of each person that was a party to the registered training contract that was cancelled (employer and apprentice/trainee) to notify the chief executive as soon as possible after becoming aware of the decision of the QIRC or the Fair Work Commission to reinstate the employment of the apprentice or trainee who was a party to a cancelled contract.

    Commencement: Assent.

    Transitional: Nil.

Application for temporary Suspension by employer and stand down of employment (Clauses 8 and 24 of the Bill)

85. The FET Act currently provides for the suspension of a registered training contract through mutual agreement. Stakeholders are concerned that apprentices or trainees may be pressured to agree to a suspension when the circumstances indicates it is likely a type of work or training availability related stand down is occurring.

86. Legislative provisions previously under the VETE Act provided for the temporary stand down of an apprentice or trainee from the apprenticeship or traineeship, but was not included in the FET Act due to the links to employment contracts. However, the VETE Act provisions enabled the consideration of training issues, which are a much broader consideration than the stand down provisions for employment contracts available to employers under the provisions of the *Fair Work Act (FWA) 2009* (Cwth).

87. Accordingly, in order to improve compatibility with industrial relations provisions, the Bill includes a new provision which provides that an employer of an apprentice or trainee may apply 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 is not able to provide the training stated in the training plan for the apprentice or trainee.

88. 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.

89. The decision of the chief executive to temporarily suspend a training contract under this new provision is appealable to the QIRC.

    Commencement: Assent.

    Transitional: Nil.

Training Plans for apprentices or trainees (Clauses 18–22 of the Bill)

90. Currently, the training plan for an apprentice or trainee must be negotiated, and agreed to, by all parties to the plan, that is the employer, apprentice/trainee and the Supervising Registered Training Organisation (SRTO). However, stakeholders have expressed concerns that apprentices and trainees may not have the latitude to negotiate the training plan if the employer and SRTO do not actively include the apprentice or trainee in the negotiation process. The end effect of this could be the apprentice's or trainee's inability to make progress due to an inappropriate mode of delivery of the training and assessment under the training plan.

91. Furthermore, DESBT has investigated and intervened in instances where apprentices and trainees are failing to progress in accordance with their training plan. The main issue has been identified as the mode of delivery of the training and assessment, and failure to address this issue ultimately undermines the preservation of the training contract. Examples include, but are not limited to, apprentices and or trainees not coping with online or blended training modes of training delivery, or these modes being incapable of providing the quality training required to achieve a completion certificate.

92. While DESBT currently attempts to achieve a mediated outcome with the parties, this is not always possible as the employer and SRTO combined can limit the bargaining position of the apprentice or trainee. It is expected that the development of the training plan and selection of the SRTO are negotiated by the parties and mutually agreed to achieve a quality outcome, noting that changes may need to be made during the life of the training contract in order to meet the standards to justify the issuing of a government issued completion certificate.

93. The Bill includes 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 or on the chief executive's own initiative, if the party or the chief executive considers an apprentice or trainee has not made sufficient progress to achieve the qualification or statement of attainment under the training plan.

94. 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.

    Commencement: Assent.

    Transitional: Nil.

Supervising registered training organisations (Clauses 4 and 17 of the Bill)

95. The current interpretation and practice of the SRTO's obligations when assessing the capacity of any employer to provide or arrange to provide the range of work, facilities and supervision required under an apprentice's or trainee's training plan is to complete an employer resource assessment in the form approved by the chief executive.

96. The Bill includes a new provision which provides clarification of the SRTO's obligation to complete and retain an employer resource assessment in the approved form, as defined under the amendments to the Schedule 1 Dictionary in the Bill, when negotiating the training plan with the employer and apprentice or trainee. Further, the SRTO 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.

97. Hence, the Bill amends section 17(5)(f)(ii) to clarify the SRTO's obligation in relation to an employer resource assessment when accepting the nomination to be the SRTO for an apprentice or trainee.

    Commencement: Assent.

    Transitional: Nil.

Amending a registered training contract (Clauses 5, 23, 26 of the Bill)

98. Under section 23 of the FET Act, the parties to a registered training contract and the SRTO for the apprentice or trainee may apply to the chief executive to extend the nominal term of the training contract if the contract is to end before the apprentice or trainee completes the apprenticeship or traineeship.

99. Similar application provisions currently under the FET Act requires the signed consent of a parent of the apprentice or trainee if the apprentice or trainee under the training contract is under 18 years, unless it is inappropriate in all the circumstances for a parent to give signed consent. Currently, section 23 does not provide for the requirement of the signed consent of a parent.

100. The Bill 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 training contract is under 18 years, unless it would be inappropriate in all the circumstances for a parent to give signed consent.

    Commencement: Assent.

    Transitional: An application made under section 23 before commencement of the Bill and, immediately before commencement the chief executive had not decided the application, will be decided under the FET Act as in force immediately before the commencement.

Suspension of registered training contracts (Clauses 6, 7, 24 of the Bill)

101. Currently, parties to a registered training contract may apply to the chief executive under section 30 of the FET Act to suspend the training contract for a period not exceeding one year if the parties agree. However, there is no provision enabling one party to make an application to the chief executive to suspend a training contract when circumstances prevents the other party from being able to apply. The intention of the party applying would be to preserve the training contract that may otherwise be cancelled due to the other party being unable to meet their obligations under the contract.

102. The Bill includes a new provision which provides that a party to a training contract may apply 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 cannot, under section 30 of the FET Act, agree to a proposed suspension. For example, a party who cannot agree to a proposed suspension under section 30 may have suffered a medical condition that has left the party in a coma.

103. 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.

104. The decision of the chief executive to suspend a training contract under this new provision is appealable to the QIRC.

Commencement: Assent.

Transitional: Nil.

Completion of registered training contract (Clause 14 of the Bill)

105. Currently, the parties to a registered training contract and the SRTO must sign a completion agreement before the chief executive decides whether or not to issue a completion certificate for the apprenticeship or traineeship. However, there is no provision for the parties to make application if the SRTO stops operating as a registered training organisation before a completion agreement is signed with the parties.

106. The Bill includes a new provision which provides that the parties to a training contract may apply 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 SRTO has stopped operating as a registered training organisation and not able to sign a completion agreement with the parties.

Commencement: Assent.

Transitional: Nil.

Other Minor amendments (Clauses 25, 27 of the Bill)

107. These are minor amendments that either update the definitions in the Dictionary in Schedule 1 of the FET Act (Clause 27) or provide for the expiry of declarations saved under Section 208 of the FET Act (Clause 25).

Commencement: Assent.

Transitional: Nil.

Consultation

108. 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.

Amendments to the *TAFE Queensland Act 2013*

Background

109. In 2013, the *TAFE Queensland Act 2013* (TAFEQ Act) provided for the establishment of TAFEQ as a statutory body and body corporate. The Act provides for a board of seven to nine members for TAFEQ.

110. TAFEQ is one of the largest tertiary education providers in the country, annually delivering programs to more than 112,000 students, within Australia, nationally and overseas. TAFEQ offers practical, industry relevant training from foundation skills and entry level workforce qualifications to higher education degrees across more than 50 locations across Queensland, covering an area from Thursday Island in the north, Coolangatta in the south, Hervey Bay in the east and Mount Isa in the west.

Summary of key provisions in the Bill

111. The Bill provides amendments to the TAFEQ Act to stipulate 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, establishing a more representative Board to support quality training outcomes for all Queensland stakeholders.

Overview of proposed amendments

112. In 2013, the TAFEQ Act provided for the establishment of TAFEQ as a statutory body and body corporate. The Act provides for a board of seven to nine members for TAFEQ.

113. TAFEQ is one of the largest tertiary education providers in the country, annually delivering programs to more than 112,000 students, within Australia, nationally and overseas. TAFEQ offers practical, industry relevant training from foundation skills and entry level workforce qualifications to higher education degrees across more than 50 locations across Queensland, covering an area from Thursday Island in the north, Coolangatta in the south, Hervey Bay in the east and Mount Isa in the west.

114. 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.

115. The Queensland Government's Moving Ahead strategy aims to increase the participation of Aboriginal and Torres Strait Islander people in Queensland's economy in 2016–2022. The Queensland Government also has an opportunity to model best practice cultural capability and one mechanism would be to increase the proportion of Aboriginal and Torres Strait Islander people on Government boards.

116. International evidence indicates that diversity on boards has positive impacts on decision making, commercial outcomes and supports cultural capacity. A board comprised of diverse individuals may bring a variety of experiences, capabilities and strengths to the boardroom, providing opportunity for diversity of thought and a broader opportunity for perspectives and views in relation to the issues facing the organisation.

117. In 2018, TAFEQ launched its *Reconciliation Action Plan September 2018–August 2020* (Reconciliation Action Plan). Recognising the role it can play in supporting reconciliation and closing the gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians' participation in education, training and work, TAFEQ's Reconciliation Action Plan commits to an Aboriginal and Torres Strait Islander Advisory Group; a cultural learning strategy; a cultural protocol reference guide; and Aboriginal and Torres Strait Islander employment and retention strategy; a procurement policy; and an education strategy.

118. The proposed amendments to the TAFEQ Act will provide for the input of Aboriginal and Torres Strait Islander peoples to strategic decision-making, contribute to the leadership and the functions of the board, and for TAFEQ to benefit from Aboriginal and Torres Strait Islander knowledge and perspectives.

119. The Bill will amend section 12 of the TAFEQ Act to stipulate 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, establishing a more representative Board to support quality training outcomes for all Queensland stakeholders.

    Commencement: Assent.

    Transitional: If on commencement, the TAFEQ board does not consist of a member who is an Aboriginal person or Torres Strait Islander, transitional provisions allow that the board is taken to be validly constituted until the first day on which, after the commencement, a member is appointed to the board.

Consultation

120. TAFEQ has been consulted.

Repeal of *Commonwealth Games Arrangements Act 2011*

Overview of proposed amendments

Repeal of the *Commonwealth Games Arrangements Act 2011* (Clause 90 of the Bill)

121. The *Commonwealth Games Arrangements Act 2011* (the CG Act) established the Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) to plan, organise and deliver 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.

122. 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 *Commonwealth Games Arrangements Act 2011*), the CG Act has become redundant and should be repealed.

Commencement: Assent.

Transitional: Nil.