

**Submission to the Senate Employment, Workplace Relations and Education  
References Committee Inquiry into Small Business Employment**

**by the Queensland Government Department of Industrial Relations**

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The Queensland Government Department of Industrial Relations administers the state's industrial relations, workplace health & safety and electrical safety legislation, workers' compensation policy.

**Industrial Relations**

**Overview of the Queensland *Industrial Relations Act 1999* as it relates to business**

***Background of legislation***

The development of the *Industrial Relations Act 1999* was based on a report of an independent Taskforce that undertook a comprehensive analysis in a setting of an ever-increasing deregulated labour market. The review was supported by an extensive consultation process. As a result, the Act has been framed in response to the key issues concerning the changing nature of employment and work today, and the state of the labour market. These include the decline in standard time employment, the increase in non-standard or atypical employment, and the increase in insecurity and precarious employment.

The objects of the Act were accordingly directed to providing a framework for the operation of an industrial relations system that supports economic prosperity by, among other objects, providing for an efficient economy with strong growth, high employment, employment security, improved standards of living, low inflation and national and international competitiveness.

***Particulars of legislation***

The Act focuses strongly on creating and maintaining an efficient and viable award system with the capacity to cover all aspects of employment. (The Taskforce found that most small businesses were content with the award system). This is reflected by provisions that:

- Require the Queensland Industrial Relations Commission to review awards every 3 years;
- Allow awards to be varied to provide for fair and reasonable wages and conditions of employment;
- Require the Commission to ensuring wages and conditions are suited to the efficient performance of work according to the needs of particular industries, enterprises and workplaces.

Underpinning the award system are basic entitlements which the Act provides for all employees. Both award and non-award workers now have access to community standards of employment, such as annual leave, sick leave, long service, parental, carer's and bereavement leave whether or not they are covered by awards or agreements. This is significant as there are numbers of low paid workers in areas of precarious employment.

A similarly important initiative is the capacity for the Commission to establish a Queensland minimum wage for award and non-award employees.

Complementary to the award system and the scheme of minimum entitlements, is the provision of a range of enterprise bargaining agreements that may be entered into. One of the issues considered by the Industrial Relations Taskforce was whether, in regulating bargaining, there should be restrictions on the types of agreements that could be made. On the recommendation of the Taskforce, the Act provides for a choice in the type of agreement, including agreements for:

- A single employer or enterprise;
- Multiple employers;
- Projects (including construction); and
- New businesses.

The majority of agreements under the Act are made with single employers or enterprises. A noteworthy feature of the agreements has been an increase in the inclusion of provisions relating to productivity and efficiency measures, such as key performance indicators, and provisions relating to work and family.

The new unfair dismissal laws introduced in the *Industrial Relations Act 1999* recognised the importance of a fair and balanced system which protected the rights of employees and employers. The changes introduced by the Act:

- Removed the exemption provision applying to employers employing 15 or less employees and replaced it with a more equitable provision providing for a 3 month probationary period for all full-time and part-time employees. During this period the employees are excluded from the dismissal provisions unless dismissed for an invalid reason (for example, discrimination); and
- Required the Industrial Relations Commission, where possible, to settle an application during conciliation, and, where conciliation is unsuccessful, issue a certificate informing the parties of the merits of the case and the consequences of proceeding further.

In relation to freedom of association, the Act allows employees to remain free to choose whether they wish to join a union or not, and this right is further protected by provisions which prohibit discrimination based on union membership or otherwise. The provisions disallow preference for union membership and closed shops. As part of the simplification of the freedom of association provisions, the Act provides the Commission with powers to hear freedom of association matters, instead of the Industrial Court. Before the Commission hears the application it must convene a conference of the parties and attempt to resolve the matter by conciliation.

The transmission of business provisions in the Act were clarified and strengthened following consideration by the Taskforce on the issue. The effect of the new provisions is that if an employee remains with the business after the transfer of ownership, their service is deemed to remain unbroken for the purpose of calculating entitlements relating to family leave, notice requirements, unfair dismissal and annual leave. These complement the previous provisions that recognise continuity of service for long service leave and sick leave.

## **Workplace Health and Safety**

### **Overview of the Queensland *Workplace Health And Safety Act 1995* as it relates to business**

The objective of Queensland's workplace health and safety legislative regime is to prevent a person's death, injury or illness being caused by:

- a workplace;
- workplace activities; or
- specified high risk plant.

A workplace is defined very broadly as any place where work is, is to be or is likely to be performed by a worker, self-employed person or employer. Workplace activity includes work at a workplace and workplace operations. Specified high risk plant comprises air-conditioning units, cooling towers, amusement devices, escalators, lifts and gas cylinders.

This objective is achieved by preventing or minimising a person's exposure to the risk of death, injury or illness caused by the above.

The legislative regime consists of the:

- *Workplace Health and Safety Act 1995*;
- *Workplace Health and Safety Regulation 1997*;
- *Workplace Health and Safety (Miscellaneous) Regulation 1995*;
- *Advisory Standards*; and
- *Industry Codes of Practice*.

### ***Workplace Health and Safety Act 1995***

The *Workplace Health and Safety Act 1995* (WHS Act) establishes a framework for preventing or minimising exposure to risk by:

- Imposing obligations on certain persons;
- Encouraging a risk management approach;
- Establishing a minimum compliance infrastructure; and
- Providing enforcement options.

### ***Obligations***

The WHS Act imposes obligations of the following persons:

- Employers – to ensure the workplace health and safety of:
  - themselves;
  - each worker at work; and
  - others.
- Self-employed persons – to ensure the workplace health and safety of:
  - themselves; and
  - others.

- Persons in control of a workplace – to ensure:
  - minimum risk of injury for persons coming onto the workplace;
  - minimum risk of injury from any plant or substance provided; and
  - that there is appropriate, safe access to and from the workplace for persons other than the person's workers.
- Principal Contractors:
  - to ensure the orderly conduct of work at a construction workplace;
  - to ensure person at a construction workplace are not exposed to risks which are no other person's responsibility;
  - to ensure the safety of the public at or near a construction workplace; and
  - to provide safeguards and take safety precautions specifically prescribed under regulation. Principal contractor must also:
    - direct an employer/self-employed person to comply with their obligation; and
    - if the employer/self-employed person does not comply, to direct the person to stop work until they agree to comply.
- Designers, manufacturers, importers and suppliers of plant;
- Erectors and installers of plant or specified high risk plant;
- Owners of specified high risk plant:
  - to ensure safe design, construction, testing, information, maintenance, etc.
- Manufacturers, importers and suppliers of substances for use at a workplace:
  - to ensure the substance is safe and without risk to health;
  - to ensure the substance undergoes appropriate levels of testing and examination; and
  - to ensure appropriate information about the safe use of the substance is available
- workers and other persons at a workplace:
  - comply with instructions for workplace health and safety given by an employer or PC;
  - use PPE if provided by the employer and the worker is properly instructed in its use;
  - not to wilfully or recklessly interfere with or misuse anything provided for workplace health and safety;
  - not to wilfully place at risk the workplace health and safety of any person at the workplace; and
  - not to wilfully injure themselves.

### ***Risk Management Approach***

The WHS Act encourages persons to manage their workplace health and safety by:

- identifying hazards;
- assessing risks that may result;
- deciding on control measures;
- implementing control measures; and
- monitoring/reviewing their effectiveness.



The WHS Act provides for the following mechanisms to encourage and support collaboration in risk management:

- workplace health and safety officer;
- workplace health and safety representative; and
- workplace health and safety committee.

#### ***Minimum Compliance Infrastructure***

The WHS Act also specifies particular ways in which workplace health and safety must be ensured in particular circumstances. These are outlined in:

- Regulations;
- Ministerial Notices;
- Advisory Standards; and
- Industry Codes of Practice.

The WHS Act provides for industry involvement in the development of legislation, standards and information products through:

- Workplace Health and Safety Board; and
- Workplace Health and safety Industry Sector Standing Committees.

#### Regulations

The Regulations contain administrative matters, such as, notification of building work and registration of workplaces, plant and equipment etc., and matters where it is essential to:

- prohibit exposure to a risk; - for example the use of a hazardous substance; or
- prescribe ways to prevent or minimise exposure to a risk, for example – work in a confined space.

#### Ministerial Notices

These can be made by the Minister for Industrial Relations where a situation has arisen, or is likely to arise, that could create a serious risk to health and safety. These Notices may remain in place for one year but provision exists to extend them for a further year, if required.

These types of instruments have been used rarely. To illustrate the point, there have only been two created since 1993, one about the fitting of LPG fuel tanks in vehicles and the other about the use of mixed gases in underwater diving.

#### Advisory Standards

Advisory Standards state ways to manage exposure to risks common to industry. An Advisory Standard will expire 5 years after it commences to ensure it reflects technological advances.

Advisory Standards are quasi-regulatory, “deemed to comply” provisions, in that persons discharge their obligation by either:

- following the advice recommended in the Standard; or
- adopting another way to manage exposure to the risk and by taking reasonable precautions and exercising proper diligence to prevent to prevent contravention.

#### Industry Codes of Practice

Industry Codes of Practice give practical advice on ways to manage risks identified by an industry or a part of industry as typical in the industry or that part. As with Advisory Standards they will expire 5 years after commencement to ensure they reflect technological changes.

#### Industry Guidance Material

Where there is no Regulation, Advisory Standard or Industry Code of Practice about a risk then a person can discharge the obligation by choosing an appropriate way that manages the risk and by taking reasonable precautions and exercising due diligence.

These are not part of the legislative framework but still provide parts of industry with practical advice on how to meet their obligation about particular risks. Some examples are the Workplace Health and Safety Guides for Laundry and Dry Cleaning, Meat, Poultry and the Road Freight Industry. Other information products devoted to issues such as violence at the workplace and solar radiation also assist persons to meet their obligations.

#### ***Enforcement***

The WHS Act provide for the following enforcement options when compliance fails:

- Improvement Notice;
- Prohibition Notice;
- Infringement Notice (“on-the-spot” fine);
- Prosecution.

#### **Workers’ Compensation**

##### **Overview of the *WorkCover Queensland Act 1996* as it relates to business**

It is intended that Queensland’s workers compensation scheme should:

- Maintain a balance between:
  - Providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
  - Ensuring reasonable premium levels for employers; and ensure that injured workers or dependants are treated fairly by WorkCover and self-insurers; and
- Provide for the protection of employers’ interests in relation to claims for damages for workers’ injuries;
- Provide for employers and injured workers to participate in effective return to work programs;
- Provide for flexible insurance arrangements suited to the particular needs of industry; and
- Be maintained in a fully funded state that meets insurance industry solvency standards.

### **Lowest Premiums**

The WorkCover Queensland Board has maintained the average premium rate for workers' compensation in Queensland at the lowest level in Australia for 2002-03. The average rate of 1.55% is the lowest for any state and follows three cuts from the average rate of 2.145% since the Queensland Labor Government took office in 1998.

WorkCover Queensland, the monopoly provider of workers' compensation insurance in Queensland, is fully funded and maintains a solvency level which exceeds the insurance industry standards required under the *Insurance Act 1973* (Cwth). It is the best performing workers' compensation insurance scheme in Australia.

### **Increased Benefits**

The *WorkCover Queensland – Leading Australia Policy 2001* committed a second term Labor Government inter alia to introducing:

*'a responsible and integrated workers' compensation package to give seriously injured workers and their dependants greater compensation without increasing employer premiums'.*

In order to satisfy the detail of the Government's commitment to the *WorkCover Queensland – Leading Australia Policy 2001*, the *WorkCover Queensland Act 1996* required amendment. The *WorkCover Queensland – Leading Australia Policy 2001* included commitments to:

- Maintain full common law access including the 20% threshold test, while reducing legal costs for those less seriously injured;
- Increase statutory benefits for workers to ensure that seriously injured workers and their dependants receive greater compensation including:
  - Increasing the lump sum benefit on the death of a worker to \$250 000;
  - Increasing the maximum statutory benefit able to be received by an injured worker by 24% to \$150 000;
  - Increasing the amount available for dependants of those fatally injured;
- Improving the criteria to access statutory gratuitous care;
- Improve common law pre-proceedings processes and administrative arrangements to ensure claims are resolved earlier;
- Repeal the unjust contributory negligence and mitigating loss provisions introduced by the previous Coalition Government; and
- Allow the courts to have discretion to make awards for costs, interest on damages and loss of consortium.

The *WorkCover Queensland—Leading Australia Policy 2001* stated that these reforms were to be introduced within the disciplines of ensuring:

- Equity and fairness for both employers and employees; and
- Maintaining employers' premium rates at competitive levels, with no increase for 2001-02.

The Premier announced to Parliament on 16 May 2001 that this package of reforms is a significant job initiative of the Government, making beneficial changes to the WorkCover system while still achieving reduced premium rates for employers.

The Act meets the Government's policy objectives, and achieves equity and fairness for both employers and employees, by introducing reforms that:

- Maintain all workers' rights to proceed to common law, while retaining some control on legal costs for the less seriously injured;
- Establish a new pre-proceedings claims process;
- Repeal provisions that prescribe consideration of possible sources of contributory negligence;
- Maintain the responsibility of injured workers to minimise the effect of their injury by compulsory attendance for rehabilitation;
- Repeal limitations on damages awarded by the court; and
- Introduce new provisions for the awarding of costs.

WorkCover's actuary advises that the proposed changes can be successfully implemented from 1 July 2001 without necessitating an increase in employers' premium rates.

The *WorkCover Queensland Amendment Act 2001* increases benefits to injured workers and their dependants for all injuries that occur after 1 July 2001. The Act was passed on 18 October 2001 and received Assent on 25 October 2001.