

**WORKPLACE AND  
EMPLOYMENT LAW  
ALERT**

JUNE 2006

**FOR FURTHER INFORMATION  
PLEASE CONTACT**

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**SUMMARY OF AMENDMENTS UNDER *WORKPLACE HEALTH & SAFETY AND OTHER ACTS AMENDMENT ACT 2006***

The majority of the amendments particularly with respect to the *Workplace Health & Safety Act 1995* is the Queensland Government's response to the Federal Work Choices Legislation containing restrictions on the ability of Union officers to enter workplaces.

This Act was given assent on 17 May 2006 and is described as an Act to amend the *Workplace Health & Safety Act 1995* and for other purposes.

Some of the more significant provisions include as follows:

**Section 90D Appointment of Authorised Representative**

- (1) The Industrial Registrar may appoint a person as an authorised representative for an employee organisation, for a specified term of not more than three years, if-
  - (a) The person is an employee of, or holds an office with, the employee organisation; and
  - (b) The person has satisfactorily finished training approved by the Chief Executive for this section; and
  - (c) The Industrial Commission has not, within the previous three years, cancelled an appointment of the person as an authorised representative.

(balance of section omitted)

**Section 90E Limitation of Authorised Representative's Powers**

The powers of an authorised representative may be limited-

- (a) Under a Regulation; or
- (b) By a condition of appointment imposed under s.90D or amended under s.90Q(4)(a) or 90R(5)(a).

**Division 4 Authorised Representative's Powers**

Section 90I powers of a suspected contravention of the Act involves workplace health and safety.

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- (1) An authorised representative for an employee organisation may enter a place if-
  - (a) The place is a workplace or a relevant workplace area; and
  - (b) A worker working at the place is an eligible member of the employee organisation; and
  - (c) The authorised representative reasonably suspects that a contravention of the Act involving workplace health and safety has happened or is happening at the place that relates to or affects eligible member of the employee organisation at the place.
  
- (2) After entering the place, the authorised representative may
  - (a) Inspect any plans, substance or other thing at the place relevant to the suspected contravention mentioned in the sub-section 1(c); or
  - (b) Observe work carried on at the place; or
  - (c) Speak to a person, with the person's consent, who is an eligible member of the employee organisation; or
  - (d) Speak to the occupier of the place about anything relevant to the suspected contravention mentioned in sub-section (1)(c); or
  - (e) Require the production for inspection of documents including employment records, relevant to the suspected contravention mentioned in sub-section (1)(c); or
  - (f) Copy a document at the place relevant to the suspected contravention mentioned in sub-section (1)(c); or
  - (g) Require the occupier to give the authorised representative reasonable help to exercise the authorised representative's powers under paragraphs (a) to (f).
  
- (3) A person required to give reasonable help under a sub-section(2)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum Penalty - 40 penalty units

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- (4) If the requirement is to be complied with by the person giving information, or producing a document, it is a reasonable excuse for the person, if the person is an individual, to fail to comply with the requirements, if complying with the requirement might tend to incriminate the person.
- (5) In this section - **employment records** means a record relating to the employment of a worker-
- (a) Setting out the type of industrial instrument regulating the employment of the worker; or
- (b) Relating to any of the following matters-
- (i) hours of work;
- (ii) overtime;
- (iii) remuneration or other benefits;
- (iv) leave;
- (v) superannuation contribution;
- (vi) termination of employment;
- (vii) type of employment, including whether the employment is permanent, temporary, casual, full-time or part-time;
- (viii) personal details of the worker;
- (ix) another matter prescribed under a regulation.

An authorised representative also has powers to enter a place for the purposes of discussing matters relating to workplace health and safety at a place if

- (a) the place is a workplace or a relevant workplace area; and
- (b) a worker working at the place is an eligible member of the employee organisation. See s.90J powers for 'discussing' workplace health and safety for further details.

Under **90K** Notice of Entry or Exercise of Particular Powers the following applies:

- (2) The authorised representative must give the occupier of the

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place written notice of the entry and the reasons for the entry-

- (a) for entry under section 90J - at least 24 hours before the entry; or
  - (b) otherwise as soon as practicable after the entry.
- (3) For entry in any case the authorised representative must as soon as practicable after entry, tell the occupier of his/her presence.
- (4) For the exercise of the power to inspect, or produce, documents that are employment records on entry under s.90I, the authorised representative must at least 24 hours before exercising the power, give the occupier written notice of his/her intention to exercise the power and the reasons for the exercise of the power.

**Section 90M When Powers may not be Exercised**

- (1) An authorised representative must not, under this part-
- (a) enter any part of a place that is used as domestic premises without the consent of the occupier or the place or
  - (b) enter any part of a place or exercise any power at the place if under another Act the authorised representative is not permitted to enter the part of the place or exercise the power at the place.
- (2) An authorised representative must not enter or remain at a place under this part if-
- (a) the occupier of the place requests the authorised representative to comply with the workplace health and safety requirement that applies to the place; and
  - (b) the request is a reasonable request; and
  - (c) the authorised representative fails to comply with the request.

**Section 90N Conduct of Authorised Representative**

- (1) An authorised representative or an employee organisation must not, while acting or purporting to act under this part-

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- (a) unreasonably hinder or obstruct the worker or other person at a workplace or relevant workplace area;
- (b) intimidate or threaten a worker or other person at a workplace or relevant workplace area.....

Relevantly under Section 90O either the Chief Executive or an occupier of a place entered into by an authorised representative can apply to the Industrial Commission to suspend or cancel the appointment of an authorised representative or amend their conditions of appointment.

Under Section 173A a person must not obstruct an authorised representative in the exercise of a power unless the person has a reasonable excuse for the obstruction.

A maximum penalty of 40 penalty units applies.

Where a person has obstructed an authorised representative and that representative decides to proceed with the exercise of the power the authorised representative must warn the person that their actions constitute an offence unless the person has a reasonable excuse and if the person continues to obstruct the authorised person that representative may ask the inspector to help the representative exercise the power.

**AMENDMENT OF THE WORKERS' COMPENSATION AND  
REHABILITATION ACT 2003**

Section 19 of the *Workplace Health & Safety and Other Acts Amendment Act 2006* inserts section 108 into the WCRA as follows:

- (3) A worker's entitlement to compensation is in addition to the worker's entitlement to sick leave under the *Industrial Relations Act 1999*, Chapter 2, Part 1, Division 2 or another Act.

Further protection for injured workers has also been inserted as follows:

**Section 232A Definitions for Part 6**

**Dismiss** an injured worker includes a situation where-

- (a) an unreasonable employment condition that is designed to make the worker leave employment is imposed on the worker; and
- (b) the worker leaves the employment.

**Former position** of an injured worker means, at the worker's option-

- (a) the position from which the injured worker was dismissed;  
or
- (b) if the worker was transferred to a less advantageous position before dismissal, the position held by the worker when the worker became unfit for employment.

**Section 232B Dismissal of Injured Worker after only 12 months**

- (1) Within 12 months after a worker sustained an injury the employer must not dismiss the worker solely or mainly because the worker is not fit for employment in a position because of the injury. Maximum penalty is 40 penalty units.
- (2) This section applies to a dismissal after the commencement of this section even if the worker became unfit before the commencement.

**Section 232D Reinstatement of Injured Worker**

Where an injured worker applies for reinstatement to the worker's former position the worker must give the employer a doctor's certificate that certifies the worker as fit for employment in the former position. Such application to be made within 12 months after the injury for reinstatement.

Section 232E Application to Industrial Commission where the employer fails to immediately reinstate the worker under section 232D the person may apply to the Industrial Commission for an order that the employer reinstate the worker to the worker's former position, but the reinstatement order will only be made if the Commission is satisfied the worker is fit for employment in the former position.

For further information on these amendments and implications please contact:-

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