

## EMPLOYMENT (AMENDMENT) BILL 2011

### EXPLANATORY MEMORANDUM\*

The purpose of this Bill is to address issues concerning the application of the legislation and the administration of claims by removing eligibility for worker's compensation in respect of work related stress arising from or caused by reasonable employer management decisions or proposed termination from employment or disciplinary action; and to establish a statutory basis for the Employment Liaison Officer who will be the supervisor of employment inspectors and manage workplace related matters under the Employment Act as well as being the primary decision maker under the Worker's Compensation Scheme and related purposes.

The Bill adopts the approach of other jurisdictions in the Commonwealth in seeking to avoid claims of work-related stress arising from normal employment processes. In providing for this the Bill includes several new definitions including that of what constitutes an "injury". This definition excludes from the definition of injury that which results from *reasonable administrative action* taken in a reasonable manner in respect of the employee's employment. This *reasonable administrative action* is in turn defined to relate to reasonable action taken in the workplace by or on behalf of an employer. The intention is to avoid the possibility of action to undermine normal discipline by claiming that it has resulted in a stress injury.

The Bill also seeks to make the administrative process clear by vesting responsibility in the Employment Liaison Officer (ELO) who is to have the day to day management and control of the investigation and determination of claims and other matters under the Act. While the ELO is subject to direction by the Chief Executive Officer and the Minister, the ELO cannot be directed by either in matters that affect employees of the Administration, public sector agencies or territory instrumentalities.

The Bill is divided into 4 clauses.

Clauses 1-3 are the usual introductory clause referring to the Bill and the principal Act being amended and provides for the date of coming into effect. Clause 4 consists of a Schedule that details the amendments to be made to the principal Act.

**Item 1** replaces the definitions of "disease" to mean something that must have been contributed to, to a *significant degree*, by the employee's employment where the *significant degree* is required to be a degree that is substantially more than material; and "work related accident" to mean a situation or event that occurs at work or arises out of the employee's work.

The definition of an employee for the purposes of compensation is expanded beyond the definition that relates to the whole Act to make it clear that it applies to any person who works in the employer's business in any capacity and includes a self-employed person.

The new definition of "injury" is extensive and explicitly excludes alleged injuries that are connected to reasonable administrative action.

**Item 2** inserts an explanation of the expression “reasonable administrative action” out of which an injury claim might be said to arise. Such claims might, for example, include a person claiming to have suffered stress because of being disciplined or because of their employment being terminated. The effects of normal and reasonable workplace actions are not such that employees should be able to use them for strategic purposes or pecuniary benefit. Accordingly the exclusion relates to reasonable administrative action which is extensively described as is the expression “reasonable” in the context.

**Item 3** inserts a new section that is intended to establish the position of Employment Liaison Officer which is intended to be an appointment of the Chief Executive Officer in accordance with the *Public Sector Management Act 2000*. The ELO is intended to have the day to day management and control of the procedures and administration of claims under the compensation scheme established by the executive member and while he or she may be subject to the directions of the CEO or the Minister, independence and freedom from potential undesirable influence is established by providing that neither may give any direction concerning employees of the Administration or a public sector agency or a territory instrumentality. The ELO is also responsible for certifying employment contracts under the Act, has the supervision and control of the inspectors and will carry out such other functions and exercise powers and responsibilities as may be required or permitted to be carried out under the Act or the Regulations or as may be delegated by the CEO or the Minister. The ELO is also authorised to delegate his powers and functions other than the power to delegate or powers delegated by the CEO or Minister.

**Item 4** provides a new heading for section 45 and makes it clear that claims for incapacity, injury, illness or mental condition of an employee that are attributable to work-related stress caused by or arising out of disaffection or disagreement by an employee with a decision or action or proposed decision or proposed action of an employer or to any dispute with any other employee of the same employer are excluded from compensation but only if, in the circumstances, the decision or action of the employer was both lawful and reasonable. This is necessary as it is possible for such action to be lawful but not reasonable or reasonable but not lawful.

**Item 5** inserts a new provision providing a clear system for the claims procedure.

**Item 6** corrects a long-standing error in a section reference.

**Item 7** is intended to make it clear that damage to the body or mind of an employee is not incapacity and therefore cannot be compensated, if the damage is merely a normal aspect of aging and is not caused by or arise from a work-related accident.

**Item 8** inserts new provisions relating to the ELO in relation to matters involving misconduct. The ELO is empowered to conduct investigations to establish if a claim for compensation should be disallowed under section 45, to determine whether an action of an employer was lawful and reasonable in the circumstances and requires that the finding and reasons for the finding of the ELO be made in writing and given to the employee and the employer.

**Item 9** inserts a new definition into Part 4 of the Act dealing with safe working practices. An extensive definition of “bullying” is inserted. The intent of this is to back up a later amendment that makes it clear that part of working in a safe environment is to be free of bullying in the workplace.

**Item 10** adds a provision to section 49 that deals with the responsibilities of employers and makes it clear that one of the duties of an employer is to provide and maintain a workplace free of bullying and requires employers to take steps to prevent bullying or if it occurs to stop it.

**Item 11** amends section 55 of the Act in order to include the ELO as a person (along with inspectors) as being empowered and required to receive and investigate complaints.

**Item 12** includes as a complaint that may be lodged with a member of the Employment Conciliation Board a complaint or grievance arising out of a worker’s unsuccessful compensation claim

8 March 2011

\*This memorandum refers to the Bill as originally tabled in the House as amended by the detail stage amendments dated 8 March 2011