

NORTHERN TERRITORY OF AUSTRALIA

WORKERS REHABILITATION AND COMPENSATION LEGISLATION
AMENDMENT ACT 2012

Act No. 16 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 16 of 2012

An Act to amend the *Workers Rehabilitation and Compensation Act* and
Workers Rehabilitation and Compensation Regulations

[Assented to 27 April 2012]
[Second reading 22 February 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Workers Rehabilitation and Compensation Legislation Amendment Act 2012*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Workers Rehabilitation and Compensation Act

3 Act amended

This Part amends the *Workers Rehabilitation and Compensation Act*.

4 Section 3 amended

(1) Section 3(1), definitions *this Act* and *worker*

omit

(2) Section 3(1)

insert (in alphabetical order)

worker means a natural person:

(a) who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person unless:

(i) the natural person:

(A) is paid to achieve a specified result or outcome;
and

(B) has to supply plant, and equipment or tools of trade, needed to perform the work or service; and

(C) is, or would be, liable for the cost of rectifying any defect arising out of the work or service performed;
or

(ii) a personal services business determination relating to the natural person performing the work or service is in effect under section 87-60 of the *Income Tax Assessment Act 1997* (Cth); or

(b) who is a person, or a member of a class of persons, prescribed for this definition as a worker;

but does not include a natural person:

(c) who is employed in the service of the Commonwealth; or

(d) subject to subsection (2), who is a member of the immediate family of the employer; or

(e) subject to subsection (3), who is a director (by whatever name called) of a body corporate; or

(f) subject to paragraph (b) and to subsections (7), (8) and (9), who is employed in voluntary work and receives in relation to that work, if anything, nothing more than reasonable travelling, accommodation or other out-of-pocket expenses; or

- (g) who is a person, or a member of a class of persons, prescribed for this definition as not being a worker; or
 - (h) in relation to the work or service under consideration – who is an employer of another natural person engaged in the performance of the work or service; or
 - (i) subject to subsection (5) – who is employed or engaged by a householder; or
 - (j) who is employed or engaged otherwise than for the purposes of the employer's trade, business or enterprise and in respect of whom the employer does not make any withholding payments under the PAYG provisions.
- (3) Section 3(1), definition *insurer*
omit (all references)
authorized
insert
authorised
- (4) Section 3(2) and (3)
omit
all words from "who" to "such employment and"
- (5) Section 3(6) and (6A)
omit
- (6) After section 3(11)
insert
- (12) This section is not relevant for determining whether a person is or is not a worker or employee under another Act unless the other Act otherwise provides.

5 Section 49 amended

- (1) Section 49(1)
omit
, unless the contrary intention appears

(2) After section 49(3)

insert

(4) In determining a worker's remuneration for the definitions ***normal weekly earnings*** and ***ordinary time rate of pay***, the value of a benefit, that is provided by the worker's employer to the worker in a form other than an amount of money paid or credited to the worker, must not be taken into account unless the benefit relates to the provision of any of the following:

- (a) accommodation;
- (b) meals;
- (c) electricity.

6 Section 65 amended

(1) Section 65(1)

omit, insert

- (1) This section applies to a worker who is totally or partially incapacitated for work as the result of an injury out of which his or her incapacity arose or that materially contributed to his or her incapacity.
- (1A) However, this section does not apply to a worker who, at the injury date for the worker, has attained the age of 67 years unless the normal retiring age for the worker is more than 67 years.
- (1B) A worker to whom this section applies must be paid compensation, in accordance with subsections (1C) to (1H) as is applicable, equal to whichever of the following is the lesser at the time the payment is made:
- (a) 75% of the worker's loss of earning capacity;
 - (b) 150% of average weekly earnings.
- (1C) Compensation under subsection (1B):
- (a) is payable to a worker only after the first 26 weeks of incapacity (for which compensation is payable under section 64 to the worker); and
 - (b) is in addition to any other compensation to which, under this Part, the worker is entitled; and

(c) is otherwise subject to this Part.

Note for subsection (1C)

Compensation under this section and section 64 is not payable for the same period. That is, a worker is not entitled to double dip for the first 26 weeks of incapacity.

(1D) If:

- (a) the injury pension age for the worker is 65 years; and
- (b) at the injury date, the worker has not attained 63 years;

compensation is to be paid until:

- (c) if the normal retiring age for the worker is more than the injury pension age for the worker – the worker attains that normal retiring age; or
- (d) otherwise – the worker attains the future pension age for the worker.

(1E) If:

- (a) the injury pension age for the worker is 65 years; and
- (b) at the injury date, the worker has attained 63 years;

compensation is to be paid until:

- (c) if the normal retiring age for the worker is more than the injury pension age for the worker – the later of the following:
 - (i) the worker attains that normal retiring age;
 - (ii) the worker attains 67 years; or
- (d) otherwise – the first of the following:
 - (i) the expiration of 104 weeks immediately after the worker's incapacity commences (which period includes the first 26 weeks of incapacity for which compensation is payable under section 64 to the worker);
 - (ii) the worker attains 67 years.

(1F) If:

- (a) the injury pension age for the worker is 65.5 years, 66 years or 66.5 years; and

- (b) at the injury date, the worker has not attained the age equivalent to the injury pension age for the worker less 2 years;

compensation is to be paid until:

- (c) if the normal retiring age for the worker is more than the injury pension age for the worker – the worker attains that normal retiring age; or
- (d) otherwise – the worker attains the future pension age for the worker.

Examples for subsection (1F)

- 1 *If the injury pension age for a worker is 66.5 years, the injury pension age for the worker less 2 years equals 64.5 years. Therefore if, at the injury date, the worker has attained 64 years but not attained 64.5 years, the worker has not attained the injury pension age less 2 years.*
- 2 *If, before the worker attains 66.5 years the age at which the worker is entitled to the age pension changes to 67 years and subsection (1F)(d) applies to the worker, compensation would be payable under subsection (1F)(d) until the worker attains the future pension age of 67 years.*

(1G) If:

- (a) the injury pension age for the worker is 65.5 years, 66 years or 66.5 years; and
- (b) at the injury date, the worker has attained the age equivalent to the injury pension age for the worker less 2 years but has not attained 67 years;

compensation is to be paid until:

- (c) if the normal retiring age for the worker is more than the injury pension age for the worker – the later of the following:
- (i) the worker attains that normal retiring age;
- (ii) the worker attains 67 years; or
- (d) otherwise – the first of the following:
- (i) the expiration of 104 weeks immediately after the worker's incapacity commences (which period includes the first 26 weeks of incapacity for which compensation is payable under section 64 to the worker);
- (ii) the worker attains 67 years.

- (1H) If the injury pension age for the worker is 67 years, compensation is to be paid until:
- (a) if the normal retiring age for the worker is more than the injury pension age for the worker – the worker attains that normal retiring age;
 - (b) otherwise – the worker attains 67 years.
- (2) Section 65(7) and (8)
- omit (all references)*
- subsection (1)
- insert*
- subsection (1B)
- (3) After section 65(13)
- insert*
- (14) In this section:
- future pension age***, for a worker, means the age at which (once attained) the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* (Cth).
- injury date***, for a worker, means the date of the injury the result of which is the worker's total or partial incapacity for work or that materially contributed to the worker's total or partial incapacity for work.
- injury pension age***, for a worker who is totally or partially incapacitated, means the age that, at the injury date, the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* (Cth).
- Note*
- The injury pension age for a worker may be 65, 65.5, 66, 66.5 or 67 years.*

normal retiring age, for a worker, means the age that workers in the industry or occupation in which the worker is employed usually retire.

Note

The normal retiring age may be expressed other than as a whole number of years, for example, 68.5 years or 68 years and 8 months.

7 Section 65B replaced

Section 65B

repeal, insert

65B Entitlement to compensation of worker residing outside Australia

- (1) The entitlement of a worker to receive weekly payments of compensation mentioned in section 64 or 65 is suspended when the worker begins to reside outside Australia unless the entitlement continues under this section.
- (2) The entitlement (the ***continued entitlement***) to the weekly payments of compensation mentioned in section 64 or 65 continues even if the worker is residing outside Australia if:
 - (a) the worker complies with the requirements prescribed by regulation when so residing outside Australia; and
 - (b) the employer is satisfied about the worker's continued incapacity.
- (3) However, the continued entitlement ceases when, in aggregate, the worker is paid compensation because of the application or applications of subsection (2) for 104 weeks (the period of 104 weeks includes the first 26 weeks referred to in section 64).
- (4) Despite subsection (3), the Court may order the continued entitlement does not cease after 104 weeks if the Court is satisfied:
 - (a) the worker continues to be totally and permanently incapacitated; and
 - (b) the circumstances of the worker residing outside Australia are otherwise exceptional because of the nature of the worker's incapacity or other circumstances applying to the worker; and

-
- (c) the worker would suffer undue hardship if the Court did not make an order under this subsection.

Note for subsection (4)

See section 104 for applications to the Court.

- (5) The Court's order must:
- (a) be made in accordance with the Regulations; and
 - (b) specify the period (the ***extended period***) for which the continued entitlement is extended.
- (6) The extended period:
- (a) must be a single period that does not exceed 104 weeks; and
 - (b) starts, or is taken to have started, on a date specified in the order of the Court (which may be a date before the date of the order).
- (7) At the end of the extended period in relation to a worker's entitlement, the entitlement ceases while the worker is residing outside Australia.

8 Section 89 amended

- (1) Section 89

omit

Where a person

insert

- (1) If a person (the ***liable person***)

- (2) Section 89(1)

omit

he or she is required to do so, the worker shall

insert

the liable person is required to do so, the worker must

(3) After section 89(1)

insert

- (2) If the liable person disputes liability for compensation and the dispute is later resolved wholly or partly in favour of the worker, for the purpose of calculating interest under subsection (1), weekly payments are taken to have fallen due when they would have fallen due had there been no dispute.

9 Section 116 amended

Section 116(2)

omit, insert

- (2) In deciding the appeal, the Supreme Court may:
- (a) confirm or vary the decision or determination; or
 - (b) set aside the decision or determination and substitute its own decision or determination; or
 - (c) set aside the decision or determination and remit the matter to the Work Health Court.
- (2A) For subsection (2), the Supreme Court may make the orders and give the directions it considers appropriate.

10 Part 12 inserted

At the end

insert

Part 12 Transitional matters for Workers Rehabilitation and Compensation Legislation Amendment Act 2012

198 Provision of ABN before commencement

- (1) A person (a *relevant person*) may be a worker within the meaning of this Act as in force after the commencement of this section even if the relevant person was not a worker within the meaning of this Act as in force immediately before the commencement.

- (2) For subsection (1), it is irrelevant if, before the commencement, the relevant person:
- (a) gave written notice to the person for whom the relevant person performed work or a service of a number that was, or purported to be, the ABN of the relevant person; and
 - (b) agreed with the other person mentioned in paragraph (a) that the relevant person was or was not a worker for this Act.

199 Consideration of benefits provided to worker in form other than an amount of money paid or credited to worker

- (1) This section applies to a worker if, before the commencement of this section, the worker suffered an injury that:
- (a) resulted in, or materially contributed to, the worker's total or partial incapacity for work before the commencement; or
 - (b) results in, or materially contributes to, the worker's total or partial incapacity for work after the commencement.
- (2) In determining the worker's remuneration for the definitions *normal weekly earnings* and *ordinary time rate of pay* in section 49, that section as in force immediately before the commencement applies as if section 5 of the *Workers Rehabilitation and Compensation Legislation Amendment Act 2012* had not commenced.

200 Continuation of entitlement under section 65 before commencement

- (1) This section applies to a worker who, before the commencement, was totally or partially incapacitated for work as mentioned in previous section 65.

Note for subsection (1)

The date of the injury of a worker incapacitated as mentioned in previous section 65 would be before the commencement.

- (2) Subject to subsection (3), the worker's right to the payment of compensation under previous section 65 continues as if section 6 of the *Workers Rehabilitation and Compensation Legislation Amendment Act 2012* had not commenced.
- (3) Unless one of the following happened before the commencement, compensation under previous section 65 must be paid until:
- (a) if the normal retiring age for the worker is more than the injury pension age for the worker – the worker attains that normal retiring age; or

(b) otherwise – the worker attains the future pension age for the worker.

(4) In this section:

commencement means the commencement of this section.

future pension age, for a worker, see section 65(14).

injury pension age, for a worker, see section 65(14).

normal retiring age, for a worker, see section 65(14).

previous section 65 means section 65 as in force immediately before the commencement.

11 Act further amended

Schedule 1 has effect.

Part 3 Amendment of Workers Rehabilitation and Compensation Regulations

12 Regulations amended

This Part amends the *Workers Rehabilitation and Compensation Regulations*.

13 Regulation 3A amended

(1) Regulation 3A(1) and (2)(b)

omit (all references)

the purposes of

(2) Regulation 3A(2)

omit

the purposes of paragraph (b)(vii)

insert

paragraph (g)

(3) Regulation 3A(2)(d)

omit

child,

insert

child;

14 Regulation 6A inserted

After regulation 6

insert

6A Entitlement to compensation of worker residing outside Australia

For section 65B(2)(a) of the Act, the worker must give the employer, at intervals of not less than 3 months, a declaration, in the approved form, made by each of the following:

- (a) the worker;
- (b) a medical practitioner or, if the worker is living in another country, a person registered under the law of the country that provides for the registration of persons practising the medical profession.

15 Regulation 14 replaced

Regulation 14

repeal, insert

14 Late payment of weekly payments

For section 89 of the Act, the prescribed rate of interest is the rate applicable to a judgment debt under a judgment of the Supreme Court.

16 Regulation 17A replaced

Regulation 17A

repeal, insert

17A Late payment of premiums

For section 131(3) of the Act, the prescribed rate of interest is the rate applicable to a judgment debt under a judgment of the Supreme Court.

17 Regulations further amended

Schedule 2 has effect.

Part 4 Expiry of Act

18 Expiry

This Act expires on the day after this section commences.

Schedule 1 Workers Rehabilitation and Compensation Act further amended

section 11

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1 and Part 5, Division 1, headings, at the end		matters
Part 5, Division 3, Subdivision D, heading	&c.	etc.
section 73, heading	, &c.	and other costs
Part 7, Division 1, heading, at the end		matters
section 117	, unless the contrary intention appears	
section 124A(1)(a) and (b)	or fails to comply with	
section 124A(1)	or failure (<i>all references</i>)	
section 124A(2)(a)	or failure;	; and
section 124A(2)(b)	or failure occurred;	occurred; and
section 124A(4)	or failure	
section 130(2)	or fails to comply with	
section 135(2)	by reason of the fact that	merely because
section 135(2)(a), at the end		or

section 136(1)(d)	breach or a failure by that employer to comply with such a term, condition, warranty or provision	contravention
section 136(2)(b)	breach of or failure to comply with breach or failure	contravention of contravention
section 149	, unless the contrary intention appears	
section 165, heading	, &c.	or otherwise received by Nominal Insurer
section 165(2)	authorize	authorise
Part 7, Division 7, heading	, &c.	
section 167, heading	or dead, &c.	, is dead etc.
section 177, heading	, &c.,	etc.
section 178	or fails to comply with	
section 179, heading	, &c.,	etc.
section 187A(7)	or fails to comply with	
section 187B	or failed to comply with or failure <i>(all references)</i>	
sections 189 and 191, headings	, &c.,	etc.

Schedule 2 Workers Rehabilitation and Compensation Regulations further amended

section 17

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulations 4, 4A(1) and (2), 5 and 6	the purposes of	
regulation 8	the purposes of shall be	is
regulation 9(1)	the purposes of	
regulation 9(2)	shall	must
regulation 14A(1)(a) and (2)(a), at the end		and
regulation 15	the purposes of	
regulation 16	all words from "(2) For" to "verified, where"	For section 130(4)(b) of the Act, a statement must be verified, if
regulation 16(a)	whole paragraph	(a) a natural person – by the natural person; or
regulation 16(b), at the end		or
regulation 16(d)	officer,	officer;
regulation 17	the purposes of in accordance with Form 7	