

NORTHERN TERRITORY OF AUSTRALIA  
WORK HEALTH AMENDMENT ACT 2004

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Act No. 63 of 2004

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# **NORTHERN TERRITORY OF AUSTRALIA**

Act No. 63 of 2004

## **AN ACT**

to amend the *Work Health Act*

*[Assented to 9 December 2004]  
[Second reading 14 October 2004]*

**The Legislative Assembly of the Northern Territory enacts as follows:**

**1. Short title**

This Act may be cited as the *Work Health Amendment Act 2004*.

**2. Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

**3. Principal Act**

The *Work Health Act* is in this Act referred to as the Principal Act.

**4. Interpretation**

Section 3 of the Principal Act is amended by omitting paragraph (b) of the definition of "self-insurer" in subsection (1) and substituting the following:

"(b) except in Part VII, subject to section 118(2) – the Territory;"

## 5. Interpretation for Part V

Section 49 of the Principal Act is amended –

- (a) by omitting paragraph (a) of the definition of "medical, surgical and rehabilitation treatment" in subsection (1) and substituting the following:

"(a) an attendance, examination or treatment on or of the worker by –

- (i) a person registered under the *Health Practitioners Act* in the category of health care practice of medicine, dentistry, Aboriginal health work, chiropractic, occupational therapy, osteopathy, physiotherapy or psychology;
- (ii) a person registered under a corresponding law of a State or another Territory of the Commonwealth in one of those categories of health care practice; or
- (iii) if there is no such corresponding law – a person providing an attendance, examination or treatment which, if provided or carried out at the place where the person normally provides services, would be recognised for compensation purposes under a law providing for compensation to injured workers in that place;"

- (b) by omitting from paragraph (f) of the definition of "medical, surgical and rehabilitation treatment" in subsection (1) all the words after "person" and substituting the following:

"registered under the *Health Practitioners Act* in the category of health care practice of pharmacy or under a corresponding law of a State or another Territory of the Commonwealth in that category of health care practice"; and

- (c) by inserting after subsection (1) the following:

"(1A) For the purposes of the definition of 'normal weekly earnings' in subsection (1), a worker's remuneration does not include superannuation contributions made by the employer.

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"(1B) Subsection (1A) is taken to have come into operation on 1 January 1987.

*Note for section 49(1B) –*

*Section 195 contains transitional matters specifying when subsection (1A) does not affect the calculation of compensation by reference to remuneration otherwise excluded by that subsection."*

### **6. Cancellation or reduction of compensation**

Section 69 of the Principal Act is amended by omitting from subsection (1)(b)(ii) "may apply" and substituting "may, within 90 days after receiving the statement, apply".

### **7. Form of claim**

Section 82 of the Principal Act is amended –

- (a) by inserting in subsection (4) "and the employer's insurer" after "employer"; and
- (b) by inserting after subsection (5) the following:

"(6) A certificate referred to in subsection (1)(b) has effect only for the prescribed period."

### **8. Decision as to eligibility for compensation**

Section 85 of the Principal Act is amended by omitting from subsection (8)(b) "may apply" and substituting "may, within 90 days after receiving the statement, apply".

### **9. New section 90B**

The Principal Act is amended by inserting after section 90A the following:

#### **"90B. Initial medical opinion**

"(1) This section applies in relation to an employer after a claim for compensation is made under section 82, whether the employer decides under section 85 to accept, defer accepting, or dispute liability for the claim.

"(2) If the employer requires a medical opinion about the injury to which the claim relates, the employer must initially request the opinion of a medical practitioner who is treating or has treated the worker for the injury.

"(3) The request must be in writing and must include the following information:

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- (a) the medical opinion is required by the employer within 14 days after the treating medical practitioner receives the request;
- (b) if the opinion is not provided to the employer within that time, the employer may seek the opinion of another medical practitioner.

"(4) If the treating medical practitioner does not provide the medical opinion to the employer within the period specified in the request, the employer may seek the medical opinion of another medical practitioner.

"(5) This section does not prevent the employer from obtaining a medical opinion from any medical practitioner after the treating medical practitioner has provided the opinion as requested."

**10. Medical examinations**

Section 91 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) Before each appointment for an examination under subsection (1), the employer must notify the medical practitioner who is treating the worker for the injury to which the claim relates of the name and contact details of the medical practitioner who will be examining the worker.

"(1B) The employer must give the worker's treating medical practitioner a copy of the report of the medical practitioner who examined the worker."

**11. Application for and conduct of mediation**

Section 103D of the Principal Act is amended --

- (a) by inserting after subsection (1) the following:

"(1A) If the dispute relates to a decision specified in section 103B(a) or (b), the claimant must apply under subsection (1) within 90 days of receiving the statement referred to in section 85(8) or 69(1)(b) respectively."; and

- (b) by inserting after subsection (3) the following:

"(4) A claimant who fails to apply for mediation within the period referred to in subsection (1A) may apply to the Court under section 104(1) for an extension of the period.

"(5) The Court may extend the period if it is satisfied the failure to apply within the period was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause."

**12. Heading to Part IX**

The heading to Part IX of the Principal Act is amended by omitting "**SAVINGS AND TRANSITIONAL**" and substituting "**AND TRANSITIONAL MATTERS FOR WORK HEALTH ACT 1986**".

**13. New Part X**

The Principal Act is amended by inserting after Part IX the following:

**"PART X – TRANSITIONAL MATTERS FOR WORK HEALTH  
AMENDMENT ACT 2004**

**"194. Definition**

"In this Part –

'commencement date' means the commencement date of the *Work Health Amendment Act 2004*.

**"195. Calculation of normal weekly earnings**

"(1) Section 49(1A) does not affect the following compensation, the calculation of which involved the calculation of normal weekly earnings by reference to remuneration that included a superannuation contribution referred to in section 49(1A):

- (a) compensation paid under section 64 or 65 before the commencement date;
- (b) compensation payable under section 64 or 65 in respect of a period before the commencement date in accordance with an order of the Court or Supreme Court made before the commencement date.

"(2) Despite anything to the contrary in section 12 of the *Interpretation Act* or in any other law in force in the Territory, and subject to subsection (1), section 49(1A) and (1B) applies in relation to the calculation of compensation –

- (a) paid before the commencement date; or
- (b) payable on or after the commencement date, even if the right to claim compensation arose before the commencement date.

"(3) To avoid doubt, section 49(1A) applies in relation to compensation under section 64 or 65 that is, on the commencement date, the subject of any of the following:

- (a) a dispute to which Part VIA, Division 1 applies;
- (b) proceedings under Part VIA, Division 2;

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- (c) an appeal, review or special case being considered under Part VIA, Division 3, 4 or 5;
- (d) a commutation under section 74 not yet authorised by the Court.

**"196. Limitation of time for application for mediation**

"Section 103D(1A) applies only in relation to a claimant who, after the commencement date, receives a statement containing the information referred to in section 69(1)(b)(ii) or 85(8)(b) as amended by the *Work Health Amendment Act 2004*."

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