

NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT ACT (NO. 2) 2002

Act No. 42 of 2002

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 42 of 2002

AN ACT

to amend the *Work Health Act*

[Assented to 13 September 2002]

[Second reading 20 June 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Work Health Amendment Act (No. 2) 2002*.

2. Commencement

This Act comes into operation on the date, or respective dates, 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 49 of the Principal Act is amended by inserting after the definition of "medical practitioner" in subsection (1) the following:

" 'mental stress' means anxiety, depression or other mental condition that affects a person's psychological, emotional or physical well-being;".

5. Lump-sum compensation in respect of death

Section 62 of the Principal Act is amended by omitting from subsection (1)(b) "156" and substituting "260".

6. Compensation during first 26 weeks of incapacity

Section 64 of the Principal Act is amended by omitting from subsection (1) "65A and" and substituting "65A, 65B and".

7. Long-term incapacity

Section 65 of the Principal Act is amended –

- (a) by omitting from subsection (2)(b) all the words after "undertaking" and substituting the following:

"if –

- (i) in respect of the period to the end of the first 104 weeks of total or partial incapacity – he or she were to engage in the most profitable employment (including self-employment), if any, reasonably available to him or her; and
- (ii) in respect of the period after the first 104 weeks of total or partial incapacity – he or she were to engage in the most profitable employment that could be undertaken by that worker, whether or not such employment is available to him or her,

and having regard to the matters referred to in section 68.";

- (b) by omitting from subsection (4)(a) "apprentice immediately" and substituting "apprentice (including an adult apprentice) immediately";
- (c) by omitting from subsection (4)(a)(ii) "apprenticeship;" and substituting "apprenticeship; and"; and
- (d) by adding at the end of subsection (4) the following:

"(b) in the case of a worker who was a junior employee immediately before the date on which he or she first became entitled to compensation –

- (i) as from the date on which he or she would otherwise have ceased to earn wages at a junior rate of pay – the full award wage for a person performing the work that the junior worker performed; and

- (ii) until that date – the normal weekly earnings that would have been his or hers had he or she continued performing that work."

8. Compensation not payable while worker in prison

Section 65A is amended by omitting all the words after "period" and substituting "the worker is detained in a penal institution within or outside the Territory".

9. New section

The Principal Act is amended by inserting after section 65A the following:

"65B. Compensation not payable while worker resides outside Australia

"A worker is not entitled to be paid compensation under section 64 or 65 during any period the worker resides outside Australia unless the worker's rehabilitation is complete."

10. Assessment of most profitable employment

Section 68 of the Principal Act is amended by omitting from paragraph (e) "the" and substituting "in respect of the period referred to in section 65(2)(b)(i) – the".

11. Cancellation or reduction of compensation

Section 69 of the Principal Act is amended –

- (a) by omitting from subsection (1)(b)(iv) "and";
- (b) by omitting from subsection (1)(b)(v) "unsuccessful." and substituting "unsuccessful; and"; and
- (c) by inserting after subsection (1)(b)(v) the following:
 - "(vi) to the effect that, despite subparagraphs (iv) and (v), the claimant may commence a proceeding for an interim determination under section 107 at any time after the claimant has applied to the Authority to have the dispute referred to mediation."

12. Compensation for permanent impairment

Section 71 of the Principal Act is amended by adding at the end the following:

"(4) Compensation payable under this section is to be paid to the worker –

- (a) if no application is made under section 72(3) for a reassessment of the level of the worker's permanent impairment – not later than 14 days after the end of the 28 day period allowed for that application; or
- (b) if an application is made under section 72(3) for a reassessment of the worker's level of permanent impairment – not later than 28 days after the applicant is notified of the reassessment."

13. Assessment of permanent impairment

Section 72 of the Principal Act is amended by omitting from subsection (4) all the words after "impairment" (first reference) and substituting the following:

"of a worker –

- (a) is taken to be the level of permanent impairment suffered by the worker for the purposes of section 71; and
- (b) is not subject to review."

14. Commutation

Section 74 of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) The maximum amount that may be paid as a result of a commutation under this section is not to be greater than an amount equal to 156 times the worker's normal weekly earnings indexed in accordance with section 65(3) or 156 times average weekly earnings (whichever is the greater amount) at the time the payment is made.

"(4) Where the calculated commutation exceeds the maximum amount referred to in subsection (3), the Court is not prevented from authorising the commutation of a payment to that maximum amount if it appears to the Court fair and equitable to do so."

15. Employer to assist injured worker to find suitable employment

Section 75A of the Principal Act is amended –

- (a) by omitting from subsection (2) all the words from and including "An" to and including "incapacitated worker." and substituting the following:

"Where an employer liable under this Part to compensate an injured worker is unable to provide the worker with suitable employment in accordance with subsection (1)(a), the employer must refer the worker to an alternative employer incentive scheme developed by the Authority."; and

- (b) by omitting subsection (4).

16. Decision as to eligibility for compensation

Section 85 of the Principal Act is amended –

- (a) by omitting from subsection (4)(a) "and";
- (b) by omitting from subsection (4)(b) "payments." and substituting "payments; and";
- (c) by adding at the end of subsection (4) the following:

"(c) where the claim is for weekly payments and relates to an injury involving mental stress – sections 75A(1) and 75B apply during the period of deferral to the employer and the person making the claim as if the employer had accepted liability for the compensation claimed.";

- (d) by omitting from subsection (7) all the words before paragraph (a) and substituting the following:

"Where payments are made to a person under subsection (4)(b) or by virtue of subsection (4)(c), or where the employer pays the costs of a worker's reasonable rehabilitation treatment or training or workplace return to work programs before accepting liability for or being found liable to pay compensation, those payments –";

- (e) by omitting from subsection (7)(b) "shall continue" and substituting "if they are made under subsection (4)(b) or by virtue of subsection (4)(c) – are to continue";
- (f) by omitting from subsection (8)(d) "and";
- (g) by omitting from subsection (8)(e) "unsuccessful." and substituting "unsuccessful; and"; and
- (h) by adding at the end of subsection (8) the following:

"(f) to the effect that, despite paragraphs (d) and (e), the claimant may commence a proceeding for an interim determination under section 107 at any time after the claimant has applied to the Authority to have the dispute referred to mediation.".

17. Conduct of mediation

Section 103D of the Principal Act is amended by omitting from subsection (3) "14" and substituting "28".

18. Pre-condition to court proceedings

Section 103J of the Principal Act is amended –

- (a) by omitting from subsection (1) "A" and substituting "Subject to subsection (3), a"; and
- (b) by adding at the end the following:

"(3) A claimant is entitled to commence proceedings for an interim determination of his or her entitlement to compensation under section 107 at any time after the claimant has applied to the Authority under section 103D to have the dispute referred to mediation."

19. Applications

Section 104 of the Principal Act is amended by omitting from subsection (3) "103J applies" and substituting "103J(1) applies".

20. Contribution towards administration costs

Section 121A of the Principal Act is amended –

- (a) by omitting "In" and substituting "(1) In"; and
- (b) by adding at the end the following:

"(2) The Authority may establish and maintain procedures relating to payments to be made under this section, including procedures for the payment of mediators participating in the mediation service provided by the Authority."

21. Transitional provisions

The transitional provisions set out in the Schedule have effect.

SCHEDULE

Section 21

TRANSITIONAL PROVISIONS

1. Definition

In this Schedule –

"relevant commencement", in relation to a specified provision of this Act, means the date on which that provision comes into operation.

2. Compensation: lump-sum in respect of death

The increase in the amount payable to a worker's dependants effected by section 5 applies only in relation to the death of a worker that resulted from or is materially contributed to by an injury that occurred on or after the relevant commencement.

3. Compensation: incapacity and loss of earning capacity

(1) The amendments effected by sections 7(a) and 10 apply only in relation to the assessment of the loss of earning capacity of an incapacitated worker whose entitlement to compensation under section 65 of the Principal Act arises on or after the relevant commencement.

(2) The amendment effected by section 7(d) applies, on and after the relevant commencement, in relation to a junior employee even though his or her entitlement to compensation under section 65 of the Principal Act arose before the relevant commencement.

(3) The amendment effected by section 8 applies, on and after the relevant commencement, in relation to a worker detained in a penal institution within or outside the Territory even though that period of detention commenced before the relevant commencement.

(4) The amendment effected by section 9 applies only in relation to a worker who begins residing outside Australia on or after the relevant commencement.

4. Compensation: permanent impairment

(1) The amendment effected by section 12 applies in relation to compensation payable following the assessment or reassessment of a worker's level of permanent impairment made on or after the relevant commencement even though the application for that assessment or reassessment was made before the relevant commencement.

(2) The amendment effected by section 13 applies in relation to a reassessment a worker's level of permanent impairment made on or after the relevant commencement even though the application for reassessment was made before the relevant commencement.

5. Commutation

The amendment effected by section 14 applies only in relation to an application for the commutation of payments of compensation lodged with the Court on or after the relevant commencement.

6. Rehabilitation: alternative employer incentive scheme

(1) The amendment effected by section 15 applies, in relation to an injured worker and the employer of that worker, only if the employer first becomes liable under Part V of the Principal Act to pay compensation to the worker on or after the relevant commencement.

(2) If immediately before the commencement of section 15 an employer is liable under Part V of the Principal Act to pay compensation to an injured worker, section 75A(2) of the Principal Act as in force immediately before the relevant commencement continues to apply in relation to that employer and worker as if section 15 had not come into operation.

7. Claim procedures: decision as to eligibility for compensation

The amendment effected by section 16(d) applies in relation to payments made by an employer before accepting liability for or being found liable to pay compensation, whether those payments were made before, on or after the relevant commencement.

8. Mediation

The amendment effected by section 17 applies in relation to a mediation conducted on or after the relevant commencement even though the application for the referral to mediation was received by the Authority before the relevant commencement.

9. Commencing proceeding for interim determination during mediation

The amendment effected by section 18 applies only in relation to a claimant who, on or after the relevant commencement, is given (or should have been given) a statement referred to in section 69(1)(b) of the Principal Act as amended by section 11 or referred to in section 85(8) of the Principal Act as amended by section 16(h).