

NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT ACT 2007

Act No. 3 of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 3 of 2007

AN ACT

to amend the *Work Health Act*

[Assented to 8 March 2007]

[Second reading 30 November 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Work Health Amendment Act 2007*.

2. Commencement

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

PART 2 – AMENDMENT OF WORK HEALTH ACT

3. Act amended

This Part amends the *Work Health Act*.

4. Amendment of section 3 (Interpretation)

(1) Section 3(1), definition "ship"

omit

(2) Section 3(1)

insert (in alphabetical order)

"ship" means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter, or other floating vessel; and
 - (b) an air-cushioned vehicle, or similar craft;
- used wholly or primarily in navigation by water;

"Territory worker" means a person whose employment is determined, under section 53AA, to be connected with the Territory;

5. Amendment of section 51 (Application to sailors)

(1) Section 51, heading

omit

seamen

insert

sailors

(2) Section 51(1) and (1A)

repeal

(3) Section 51(2)

omit

all the words from "The" to "modifications:"

substitute

This Act applies with the following modifications in respect of a disability occurring to a Territory worker employed on a ship:

(4) Section 51(3)

omit, substitute

(3) Without prejudice to any other means of proof available, for proceedings under this Act:

- (a) a ship is taken to have been lost with all hands on board if:

- (i) the ship was expected to arrive at a port at a time; and
 - (ii) the ship did not arrive and has not been heard of for at least 12 months since that time; and
- (b) an official list of the crew, or the certificate of a proper authority stating that certain sailors were on board the ship, in the absence of proof to the contrary, is sufficient evidence that the sailors were on board the ship at the time of its loss.

6. Amendment of section 53 (Compensation in respect of injuries)

(1) Section 53

omit

Subject to this Part, where a worker

substitute

(1) Subject to this Part, if a Territory worker

(2) At the end

insert

(2) Compensation under this Act is payable only in respect of employment that is connected with the Territory.

(3) The fact that a worker is outside the Territory when the worker suffers an injury does not prevent compensation being payable under this Act in respect of employment that is connected with the Territory.

(4) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) applies to the worker's employment.

7. New sections 53AA, 53AB and 53AC

After section 53

insert

53AA. Worker's employment connected with a State

(1) A worker's employment is connected with a particular jurisdiction if:

(a) the worker usually works in that employment in that jurisdiction; or

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- (b) if no jurisdiction or no one jurisdiction is identified by paragraph (a) – the worker is usually based in the jurisdiction for the purposes of that employment; or
- (c) if no jurisdiction or no one jurisdiction is identified by paragraph (a) or (b) – the principal place of business in Australia of the worker's employer is located in the jurisdiction.

(2) If a worker is working on a ship and no jurisdiction or no one jurisdiction is identified by subsection (1), the worker's employment is connected with the jurisdiction in which the ship is registered or (if the ship is registered in more than one jurisdiction) the jurisdiction in which the ship most recently became registered.

(3) If no jurisdiction is identified by subsection (1) (or, if applicable, subsection (2)), the worker's employment is connected with the Territory if:

- (a) the worker is in the Territory when the worker suffers an injury; and
- (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

(4) In deciding whether a worker usually works in a particular jurisdiction, regard must be had to:

- (a) the worker's work history with the employer over the preceding period of 12 months; and
- (b) the intentions of the worker and employer;

but regard must not be had to any temporary arrangement under which the worker works in a particular jurisdiction for a period of not longer than 6 months.

(5) In deciding whether a worker is usually based in a particular jurisdiction, regard may be had to the following matters:

- (a) the work location specified in a worker's contract of employment;
- (b) the location the worker routinely attends during the term of employment to receive directions or collect materials or equipment in relation to the work;
- (c) the location the worker reports to in relation to the work;
- (d) the location from which the worker's wages are paid.

(6) In deciding the principal place of business in Australia of the worker's employer, regard may be had to the following matters:

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- (a) the address registered on the Australian Business Register in connection with the employer's Australian Business Number ("ABN");
- (b) if the employer is not registered for an ABN, the State or Territory indicated on the ASIC National Names Index as the principal place of business for the employer;
- (c) if the employer is not registered for an ABN and is not listed on the National Names Index, the State or Territory indicated by the employer's business mailing address.

(7) Subject to subsection (4) or (5), in deciding whether a worker usually works in a particular jurisdiction or is usually based in a particular jurisdiction for the purposes of employment, regard must be had to any period during which the worker works in a particular jurisdiction or is in a particular jurisdiction for the purposes of employment whether or not under the statutory workers' compensation scheme of that jurisdiction the person is regarded as a worker or as working or employed in that jurisdiction.

(8) For subsection (2):

- (a) a ship is taken to be registered in the Territory in the following circumstances:
 - (i) the ship is required under the *Marine Act* to be surveyed;
 - (ii) the ship would, but for section 75 of the *Marine Act*, be required under that Act to be surveyed; and
- (b) the registration of the ship is taken to be from:
 - (i) for a vessel surveyed under the *Marine Act* – the date of initial survey under that Act; or
 - (ii) for a vessel exempted under section 75(2)(e) of the *Marine Act* – 1 January 1989; or
 - (iii) for a vessel otherwise exempted under the *Marine Act* – the date of commencement of this section, or the date of the vessel's arrival (or launch) in the Territory, whichever is later.

(9) In this section:

"jurisdiction" means a State or a Territory of the Commonwealth and, in a geographical sense, includes the adjacent area of the State or Territory as set out in Schedule 1A.

53AB. Determination of jurisdiction with which worker's employment is connected

(1) If the question of whether a worker's employment is connected with the Territory arises in proceedings in a court in relation to a claim for compensation under this Act, the court must:

- (a) determine, in accordance with section 53AA, the particular jurisdiction with which the worker's employment is connected; and
- (b) cause that determination to be entered in the records of the court.

(2) Subsection (1) does not apply if there is a determination that must be recognised under section 53AC.

53AC. Recognition of previous determination

(1) This section applies if a determination has been made as to the particular jurisdiction with which a worker's employment is connected by a court of the Territory, another Territory or a State.

(2) The jurisdiction determined must be recognised for this Act as the jurisdiction with which the worker's employment is connected.

(3) This section does not prevent an appeal in relation to a determination.

(4) If a determination is changed on appeal, subsection (2) applies in relation to the changed determination.

8. Amendment of section 57 (Compensation not payable in certain circumstances)

(1) Section 57(1)

omit

(1) Compensation is not

substitute

Compensation is not

(2) Section 57(2) and (3)

omit

9. Amendment of section 126 (Compulsory insurance)

(1) After section 126(2)

insert

(2A) It is a defence to a prosecution for an offence against subsection (1) if the Court is satisfied that at the time of the alleged offence:

- (a) the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because the worker was not a Territory worker; and
- (b) the employer had, in respect of the worker's employment, insurance or registration required in respect of liability for statutory workers compensation under the law of the jurisdiction with which the employer believed on reasonable grounds the worker's employment was connected.

(2B) Section 31 of the Criminal Code does not apply in relation to an offence against subsection (1).

(2) Section 126(7)

omit

subsection (1), (3)

substitute

subsection (3)

10. New Schedule 1A

After Schedule 1

insert

SCHEDULE 1A

ADJACENT AREAS

Section 53AA(9)

1. Definitions

In this Schedule:

"continental shelf", see the *Seas and Submerged Lands Act 1973* (Cth);

"Joint Petroleum Development Area", see the *Petroleum (Timor Sea Treaty) Act 2003* (Cth);

"territorial sea", see the *Seas and Submerged Lands Act 1973* (Cth).

2. Adjacent areas

(1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is so much of the scheduled area described in Schedule 1 to the *Offshore Petroleum Act 2006* (Cth) in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.

(2) The adjacent area for Queensland is:

(a) so much of the scheduled area described in Schedule 1 to the *Offshore Petroleum Act 2006* (Cth) in relation to Queensland as is within the outer limits of the continental shelf; and

(b) the Coral Sea area (within the meaning of section 7(2) of the *Offshore Petroleum Act 2006* (Cth)) other than the territorial sea within the Coral Sea area; and

(c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under section 7 of the *Seas and Submerged Lands Act 1973* (Cth); and

(d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The adjacent area for Western Australia is so much of the scheduled area described in Schedule 1 to the *Offshore Petroleum Act 2006* (Cth) in relation to Western Australia as:

(a) is within the outer limits of the continental shelf; and

(b) is not within the Joint Petroleum Development Area;

and includes the space above and below that area.

(4) The adjacent area for the Northern Territory is:

(a) so much of the scheduled area described in Schedule 1 to the *Offshore Petroleum Act 2006* (Cth) in relation to the Northern Territory as:

(i) is within the outer limits of the continental shelf; and

(ii) is not within the Joint Petroleum Development Area; and

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- (b) the offshore area for the Territory of Ashmore and Cartier Islands (within the meaning of section 7(1) of the *Offshore Petroleum Act 2006* (Cth)) other than the territorial sea within that area; and
- (c) the space above and below the areas described in paragraphs (a) and (b).

(5) However, the adjacent area for a State or Territory does not include any area inside the limits of any State or Territory.

PART 3 – OTHER AMENDMENTS

11. Amendment of *Work Health Amendment Act 1995*

- (1) This section amends the *Work Health Amendment Act 1995*.
- (2) Sections 10, 11 and 15

repeal

12. Amendment of *Work Health Amendment Act 1998*

- (1) This section amends the *Work Health Amendment Act 1998*.
- (2) Section 41

repeal

13. Expiry of Part

This Part expires on the day after it commences.