

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AMENDMENT ACT 1995

No. 17 of 1995

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NORTHERN TERRITORY OF AUSTRALIA

No. 17 of 1995

AN ACT

to amend the *Work Health Act*

[Assented to 26 June 1995]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act* 1978 of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Work Health Amendment Act* 1995.

2. COMMENCEMENT

The several provisions of this Act shall come into operation on a date that is or such dates as are 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. LONG TITLE

The long title to the Principal Act is amended by inserting after "injuries and diseases," the words "to protect the health and safety of the public in relation to work activities,".

5. INTERPRETATION

(1) Section 3 of the Principal Act is amended -

(a) by omitting the definition of "worker" in subsection (1) and substituting the following:

"'worker' means -

- (a) for the purposes of sections 10(d), (g) and (r) and 187 and Part IV - a natural person 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; and
- (b) for all other purposes - a natural person -
 - (i) 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 and who is a P.A.Y.E. taxpayer in respect of any remuneration or other benefit received in relation to the performance of such work or service; or
 - (ii) who is a person, or a member of a class of persons, prescribed for the purposes of this definition;

but does not include a person -

- (iii) who is employed in the service of the Commonwealth;
- (iv) subject to subsection (2), who is a member of the immediate family of the employer;
- (v) subject to subsection (3), who is a director (by whatever name called) of a body corporate;
- (vi) subject to subparagraph (b)(ii) of this definition and to subsections (7), (8) and (9), who is employed in voluntary work and who receives in relation to that work, if anything, nothing more than reasonable travelling, accommodation or other out-of-pocket expenses; or

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- (vii) who is a person, or a member of a class of persons prescribed for the purposes of this definition";
- (b) by inserting in subsection (2), after "family of an employer", the words "who is a P.A.Y.E. taxpayer in respect of such employment and";
- (c) by omitting from subsection (3) "body corporate," and substituting "body corporate who is a P.A.Y.E. taxpayer in respect of such employment and";
- (d) by inserting after subsection (8) the following:

"(9) A natural person who, without remuneration or reward (other than reasonable travelling, accommodation or other out-of-pocket expenses), voluntarily engages in work or training of a kind by reference or in relation to which a person or class of persons is prescribed for the purposes of paragraph (b)(ii) of the definition of "worker" in subsection (1), shall be deemed to be a worker employed under a contract of employment by the person or organization prescribed.";

- (e) by omitting from subsection (10) "Subject to subsection (9) but notwithstanding anything else in this Act," and substituting "Notwithstanding anything in this Act,";
- (f) by omitting from subsection (10) all words after paragraph (c) and substituting the following:

"unless, under the contract, he is entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in his receiving remuneration of not less than that amount.".

(2) The amendment made by subsection (1)(a), to the extent that it makes paragraph (b)(vi) of the definition of "worker" subject to paragraph (b)(ii), shall be deemed to have come into operation on 19 December 1991.

6. DEFINITIONS

Section 28 of the Principal Act is amended -

- (a) by inserting after the definition of "officer" the following:

"owner', in relation to a building, structure or plant, means a person who has right or title to, and management of, or control over, the

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building, structure or plant, and includes a person who is exercising such management or control as an agent of the owner;"; and

(b) by omitting the definition of "worker".

7. DUTIES OF OCCUPIERS OF WORKPLACES

Section 30 of the Principal Act is amended by adding at the end the following:

"Penalty: In the case of a body corporate - \$50,000.

In the case of a natural person - \$5,000."

8. NEW SECTION

The Principal Act is amended by inserting after section 30 the following:

"30A. DUTIES OF SELF-EMPLOYED PERSONS

"A self-employed person shall, so far as is practicable -

(a) take reasonable care to ensure that his health or safety at a workplace; and

(b) ensure that the health and safety of any other person, whether or not at a workplace,

is not adversely affected as a result of the work in which the self-employed person is engaged.

Penalty: \$5,000.

"30B. DUTIES OF MANUFACTURERS, &c.

"(1) A person who designs, manufactures, imports or supplies any plant or substance for use at a workplace shall, so far as is practicable -

(a) ensure that the design and construction of the plant, or the characteristics of the substance, are such that a person who properly uses the plant or substance is not exposed to hazards in doing so;

(b) test and examine, or arrange for the testing and examination of, the plant or substance to ensure that it complies with paragraph (a); and

(c) ensure that adequate information in respect of -

(i) any danger associated with the plant or substance;

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(ii) the specifications of the plant or substance and the data obtained at the testing of the plant or substance under paragraph (b); and

(iii) the conditions necessary to ensure that a person properly using the plant or substance is not exposed to hazards in so doing,

is provided when the plant or substance is supplied.

"(2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is erected or installed so that a person who properly uses the plant is not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

"(3) A person who manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided when the substance is supplied and thereafter whenever requested.

Penalty: In the case of a body corporate - \$50,000.

In the case of a natural person - \$5,000.

"30C. DUTIES OF OWNERS

"The owner of -

(a) a building or structure at or used as a workplace, including fixtures and fittings under his control; or

(b) plant used at a workplace,

shall ensure, so far as is practicable, that the health and safety of any person is not adversely affected as a result of its condition or use.

Penalty: In the case of a body corporate - \$50,000.

In the case of a natural person - \$5,000."

9. REPEAL

Sections 48B, and 48C of the Principal Act are repealed.

10. COMPENSATION IN RESPECT OF INJURIES

Section 53 of the Principal Act is amended -

- (a) by omitting "worker suffers" and substituting "worker of the Territory suffers"; and
- (b) by adding at the end the following:

"(2) A worker is a worker of whichever State or Territory is -

- (a) the State or Territory in which the worker usually carries out the work of the employment concerned;
- (b) if no State or Territory, or no one State or Territory, is identified by paragraph (a) - the State or Territory in which the worker's base for the purposes of that employment is located; or
- (c) if no State or Territory, or no one State or Territory, is identified by paragraph (a) or (b) - the State or Territory in which the worker was hired for or otherwise taken into that employment.

"(3) If a worker usually carries on the work of his employment in one State or Territory ('the home State or Territory') but pursuant to a temporary arrangement that is part of that employment carries out work in another State or Territory or other States or Territories, then, subject to subsection (4), the worker is nevertheless to be regarded as a worker of the home State or Territory while carrying out that work in the other State or Territory or States or Territories.

"(4) For the purposes of subsection (3), an arrangement is temporary if, and only if, it may reasonably be thought likely to be of less than 6 months duration and in any case shall be taken to have ceased to be temporary on the expiration of the 6 months period if the worker continues to carry out the work after that expiration.

"(5) A worker who suffers an injury in the Northern Territory is taken to be a worker of the Northern Territory if he is not a worker of a State or another Territory and is not entitled to compensation in respect of the injury under the enacted law of any other country.

"(6) An injury suffered by a worker of the Territory while outside Australia is taken, for the purposes of this section, to have been received in the Territory."

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11. COMPENSATION NOT PAYABLE IN CERTAIN CIRCUMSTANCES

Section 57 of the Principal Act is amended by omitting subsections (2) and (3).

12. LONG-TERM INCAPACITY

Section 65 of the Principal Act is amended -

- (a) by omitting from subsections (2)(b) all words after and including "during normal working hours" and substituting "in work he is capable of undertaking if he were to engage in the most profitable employment, if any, reasonably available to him, and having regard to the matters referred to in section 68."; and
- (b) by omitting from subsection (6) all words after and including "during normal working hours" and substituting "if he were to engage in the most profitable employment, if any, reasonably available to him, and having regard to the matters referred to in section 68."

13. COMMUTATION

Section 74 of the Principal Act is amended -

- (a) by inserting in subsection (1)(a), after "regular payments of compensation", the words "under section 63 or 65";
- (b) by omitting from subsection (1)(b) "compensation payments" and substituting "regular payments of compensation under section 65";
- (c) by omitting from subsection (1) all words after paragraph (b)(iii) and substituting the following:
 - "(iv) he has received financial counselling before so applying,

and, in either case, it is satisfied that the person to whom that compensation is payable is fully aware of the effects of the proposed commutation in relation to future benefits under this Act, the Court may, in writing, authorise the commutation of those section 63 or 65 payments at discounted present values and those payments may be commuted and, subject to subsection (3), the commuted amount paid accordingly";

(d) by inserting at the end of subsection (2) "and where payment of compensation is commuted as a result of an authorisation under this section, no person is entitled to any future payments under section 63 or 65 in respect of the injury to which the compensation relates."; and

(e) 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 shall be not greater than an amount equal to 156 times average weekly earnings at the time the payment is made; but the Court is not prevented from authorising the commutation of a payment under this section to the maximum 156 times average weekly earnings level, where the calculated commutation exceeds that maximum, if it appears to the Court fair and equitable so to do.".

14. WORKER TO UNDERTAKE REASONABLE TREATMENT AND TRAINING, OR ASSESSMENT

Section 75B(3) of the Principal Act is amended by inserting after "in similar circumstances," the words "having regard to the matters referred to in section 68,".

15. COMPULSORY INSURANCE

Section 126 of the Principal Act is amended by inserting after subsection (2) the following:

"(2A) It is a defence to a prosecution for an offence of contravening or failing to comply with subsection (1) if the court is satisfied that, at the time of the alleged offence, the employer believed on reasonable grounds that he did not have a liability under this Act in respect of the worker because the worker was a worker of a State or another Territory within the meaning of section 53.".

16. REGULATIONS

Section 187 of the Principal Act is amended by inserting in subsection (1), after paragraph (qj), the following:

"(qk) providing for the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or for a breach of the Regulations;

(ql) providing for the service of notices on persons alleged to have infringed this Act or breached the Regulations and particulars to be included in such notices;

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(qm) relating to fees and charges payable under the Regulations;".
