

NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT ACT (No. 2) 1993

No. 78 of 1993

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NORTHERN TERRITORY OF AUSTRALIA

No. 78 of 1993

AN ACT

to amend the *Work Health Act*

[Assented to 23 November 1993]

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 (No. 2) 1993*.

2. COMMENCEMENT

This Act shall come into operation on a date to be 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 -

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

"'Judicial Registrar' means the Judicial Registrar of the Court appointed under section 100;"; and

- (b) by inserting at the end of the definition of "Registrar" the words "and includes the Judicial Registrar".
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5. INTERPRETATION

Section 49(1) of the Principal Act is amended by omitting the definition of "Panel".

6. CANCELLATION OR REDUCTION OF COMPENSATION

Section 69 of the Principal Act is amended -

(a) by inserting after subsection (2)(a) the following:

"(aa) the person receiving the compensation fails to provide to his employer a certificate under section 91A within 14 days after being requested to do so in writing by his employer;"; and

(b) by adding at the end the following:

"(4) For the purposes of subsection (1)(b), the reasons set out in the statement referred to in that subsection shall provide sufficient detail to enable the worker to whom the statement is given to understand fully why the amount of compensation is being cancelled or reduced.".

7. ASSESSMENT OF IMPAIRMENT

Section 72 of the Principal Act is amended -

(a) by omitting subsection (1);

(b) by omitting from subsection (2) "an authorized medical practitioner" and substituting "a medical practitioner";

(c) by omitting from subsection (3) "an authorized medical practitioner" and "3 authorized medical practitioners" and substituting "a medical practitioner" and "3 medical practitioners" respectively; and

(d) by omitting from subsection (3) "he may" and substituting "he may, not later than 28 days after being notified of the assessment,".

8. FORM OF CLAIM

Section 82 of the Principal Act is amended -

(a) by omitting from subsection (2) "the claim for compensation" and substituting "the remaining document shall be given or served on the employer within 28 days after the first document is given or served and the claim for compensation"; and

(b) by adding at the end the following:

"(4) A worker shall authorise the release to his employer of all information concerning the worker's injury or disease, if required to do so in the prescribed form referred to in subsection (1)(a), and the claim for compensation by the worker shall be deemed not to have been made until the authorisation is given.

"(5) An authorisation under subsection (4) is irrevocable."

9. REPEAL AND SUBSTITUTION

Section 85 of the Principal Act is repealed and the following substituted:

"85. DECISION AS TO ELIGIBILITY FOR COMPENSATION

"(1) An employer shall, on receiving a claim for compensation -

- (a) accept liability for the compensation;
- (b) defer accepting liability for the compensation;
or
- (c) dispute liability for the compensation,

and shall notify the person making the claim of the employer's decision within 10 working days after receiving the claim.

"(2) Where an employer accepts liability for the compensation claimed, the employer shall, in the case of a claim for weekly payments (whether or not other compensation is claimed), commence those payments within 3 working days after accepting liability.

"(3) Where a claim for compensation is for a lump-sum payment of compensation or for a benefit other than a weekly payment, the employer shall, where liability for the compensation claimed is accepted, make the payment or provide the benefit as soon as practicable after the claim is accepted.

"(4) Where an employer defers accepting liability for the compensation claimed -

- (a) the deferral shall remain in force for 28 days from the date of notification under subsection (1) is given or such longer period as the Court may allow unless, within that period, the employer notifies the person making the claim that the employer accepts or disputes liability for the compensation; and

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- (b) where the claim is for weekly payments (whether or not other compensation is claimed), the employer shall, within 3 working days of making the decision to defer accepting liability for the compensation claimed, commence those payments.

"(5) Where an employer accepts or disputes liability for compensation under subsection (4)(a), the employer shall notify the person making the claim of the employer's decision.

"(6) Notification required to be given to a person under this section shall be in writing and given to the person by -

- (a) delivering it personally to the person;
- (b) placing it in a properly addressed envelope and leaving it with a person who has apparently attained the age of 16 years at the person's address as shown in the prescribed form given to or served on the employer under section 82; or
- (c) sending it in a properly addressed envelope by pre-paid post to the person at the person's address as shown in the prescribed form given or served on the employer under section 82, and notification shall be deemed given when the envelope is posted.

"(7) Where weekly payments are made to a person under subsection (4)(b), those payments -

- (a) are made on a without prejudice basis and are not, in any subsequent proceedings under this Act, to be construed as an admission of liability;
- (b) shall continue to be made until the employer under subsection (5) notifies the person making the claim of the employer's decision to accept or dispute liability for the compensation claimed;
- (c) are to be taken into account in determining the amount of the employer's liability under the claim, where liability is accepted or deemed accepted or an order for compensation is made; and
- (d) are not able to be recovered by the employer notwithstanding that the employer may not be liable under this Act to pay the compensation claimed.

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"(8) Where an employer disputes liability for the compensation claimed, the employer shall, at the same time as the employer notifies the claimant under this section, give to the claimant a statement, in the prescribed form, indicating that the claimant has a right to commence proceedings before the Court for the recovery of compensation to which the claimant believes he is entitled and setting out the reasons for the employer's decision to dispute liability for the compensation claimed.

"(9) For the purposes of subsection (8), the reasons set out in the statement referred to in that subsection shall provide sufficient detail to enable the worker to whom the statement is given to understand fully why the employer disputes liability for the compensation claimed."

10. REPEAL AND SUBSTITUTION

Section 87 of the Principal Act is repealed and the following substituted:

"87. FAILURE TO DECIDE WITHIN SPECIFIED PERIOD

"Where, within the times specified in section 85, an employer does not comply with that section, the employer shall, until such time as the Court orders otherwise, be deemed to have accepted liability for the compensation claimed in so far as the claim is in respect of compensation payable under Subdivisions B and D of Division 3."

11. REPEAL AND SUBSTITUTION

Sections 91A, 91B, 91BA, 91C, 91D, 91E and 91F of the Principal Act are repealed and the following substituted:

"91A. WORKER TO PROVIDE MEDICAL CERTIFICATE

"(1) A worker receiving weekly payments of compensation because he is incapacitated for work shall ensure that his employer is provided with a certificate from a medical practitioner certifying that the worker is incapacitated for work for the periods he remains incapacitated for work.

"(2) Nothing in subsection (1) shall be construed as requiring a worker to provide his employer with more than one certificate for a period during which he remains incapacitated for work.

"91B. MEDIATION OF DISPUTES

"(1) For the purposes of this section, the Minister may appoint a person to be a mediation officer.

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"(2) A worker aggrieved by the decision of his employer -

- (a) to dispute liability for compensation claimed by the worker; or
- (b) to cancel or reduce compensation being paid to the worker,

may apply to a mediation officer appointed under subsection (1) for the officer to mediate in the dispute.

"(3) A mediation officer shall, within 14 days of receiving an application under subsection (2) -

- (a) attempt to resolve the matter in dispute and, for that purpose, may request the worker, the employer and/or the employer's insurer to attend before the mediation officer; and
- (b) inform the worker of the results of any mediation undertaken under this section.

"(4) Anything said, written or done in the course of mediation under this section is not admissible in any other proceedings under this Act.".

12. WORK HEALTH COURT

Section 93(3) of the Principal Act is amended by omitting "shall constitute" and substituting "or the Registrar or Judicial Registrar when exercising powers under section 102 shall constitute".

13. POWERS OF COURT

Section 94 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "such claims; and" and substituting "such claims;"; and
- (b) by inserting after subsection (1)(a) the following:
 - "(aa) an application for an order cancelling an interim determination of a person's entitlement to compensation made under section 107 and for the repayment of all or part of the compensation paid under the interim determination; and".

14. INCIDENTAL POWERS AND ENFORCEMENT OF ORDERS

Section 97 of the Principal Act is amended -

- (a) by inserting after subsection (2) the following:

"(2A) Where, in pursuance of section 71, compensation is payable to a worker and that compensation has not been paid, the Registrar shall, on application by or on behalf of the worker or his employer and on payment of the prescribed fee (if any), and on being satisfied as to the amount of compensation payable under that section, issue to or for that worker or employer a certificate in the prescribed form of that amount and shall make a minute or memorandum of the issue.";

- (b) by omitting from subsection (3) "subsection (2)" and substituting "subsection (2) or (2A)";
- (c) by omitting from subsection (3) "award" and substituting "award or the amount of compensation"; and
- (d) by omitting from subsection (3) (a) "awarded" and substituting "awarded or to be paid as compensation".

15. REGISTRAR AND JUDICIAL REGISTRAR

Section 100 of the Principal Act is amended by adding at the end "and may appoint a person to be the Judicial Registrar of the Court".

16. REGISTRARS MAY EXERCISE CERTAIN POWERS OF COURT

Section 102 of the Principal Act is amended -

- (a) by omitting from subsection (1) "subject to the directions of the Court, exercise prescribed powers of the Court" and substituting "subject to the directions of the Chief Magistrate, within the meaning of the *Magistrates Act*, exercise such powers of the Court as the Chief Magistrate may, from time to time, determine"; and
- (b) by omitting from subsection (2) "a prescribed power of the Court" and substituting "a power of the Court under subsection (1)".

17. APPLICATIONS

Section 104 of the Principal Act is amended -

- (a) by omitting from subsection (3) "under section 85" and "that section" and substituting "under section 69 to cancel or reduce an amount of compensation or under section 85 to dispute liability for compensation" and "the section" respectively; and

- (b) by adding at the end the following:

"(4) The failure to make a claim within the period specified in subsection (3) shall not be a bar to the commencement of the proceedings if it is found that the failure was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.".

18. CONCILIATION/DIRECTIONS CONFERENCE

Section 106 of the Principal Act is amended -

- (a) by omitting from subsection (1) "28 days" and substituting "14 days";
- (b) by omitting from subsection (1) "or a magistrate"; and
- (c) by omitting "preliminary" (wherever occurring).

19. HOLDING OF CONCILIATION/DIRECTIONS CONFERENCE

Section 107 of the Principal Act is amended -

- (a) by omitting from subsection (1) "preliminary conference" and substituting "conference under section 106";
- (b) by omitting from subsection (1) "or a magistrate";
- (c) by omitting from subsection (2) "or magistrate";
- (d) by omitting from subsection (2) "preliminary conference," and substituting "conference under section 106, shall attempt to resolve by conciliation the matter and questions at issue between the parties and";
- (e) by omitting from subsection (2)(a) all words after "before it";
- (f) by omitting from subsection (2)(b) "or he";
- (g) by omitting from subsection (2)(c) all words after "before it";
- (h) by omitting from subsection (2)(d) "or his" and "or he";
- (j) by omitting subsection (3)(c);
- (k) by omitting from subsection (3)(e) "preliminary conference" and substituting "conference under section 106"; and

- (m) by omitting subsection (4) and substituting the following:

"(4) For the purposes of attempting to resolve a matter or issue at a conference under section 106, the Court may require a party to produce at the conference all medical reports and certificates and other documents (including oral or visual recordings) on which the party intends to rely and which may assist in resolving the matter or issue."

20. NEW SECTIONS

The Principal Act is amended by inserting after section 110, in Division 4, the following:

"110A. PROCEDURE

"(1) The procedure of the Court under this Division is, subject to this Act, the Regulations and any rules or practice directions made or given specifically for the conduct of the business of the Court, within the discretion of the Court.

"(2) The proceedings of the Court under this Division shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matter permits.

"(3) Subject to this Act, the Court in proceedings under this Division is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit.

"110B. LEGAL PROFESSIONAL PRIVILEGE AND SECTION 12(2) OF EVIDENCE ACT NOT TO APPLY

"(1) In this section -

'hospital report' means a statement in writing concerning a worker made by or on behalf of a hospital, rehabilitation centre or other medical institution;

'medical expert' means a person lawfully practising in a branch of medicine, dentistry, pharmacology, occupational therapy, physiotherapy, rehabilitation, ergonomics or related field;

'medical report' means a statement in writing by a medical expert concerning a worker and includes a document which the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document which he obtained or caused to be brought into existence subsequently.

"(2) The common law rule, known as legal professional privilege, does not apply to a medical report, hospital report or other medical document that relates to a claim for compensation under this Act.

"(3) Section 12(2) of the *Evidence Act* does not apply to or in relation to civil proceedings under this Act."

21. ENFORCEMENT OF DECISION

Section 114(1) of the Principal Act is amended by omitting "or an appeal under section 116".

22. NEW SECTION

The Principal Act is amended by inserting after section 126 the following:

"126A. LIABILITY AS BETWEEN APPROVED INSURERS

"(1) Subject to subsection (2), where an employer is liable under this Act to pay compensation to a worker, the approved insurer of the employer at the time the claim is made shall indemnify the employer for the full amount of the employer's liability to the worker notwithstanding that the approved insurer may allege that, at the time the injury was sustained or the disease was caused, the liability to indemnify the employer (whether in whole or in part) was that of another approved insurer.

"(2) Where an approved insurer who has indemnified an employer for the employer's liability to pay compensation to a worker under this Act is aware that another approved insurer may be liable to indemnify the employer for all or a part of the compensation paid, the first-mentioned insurer -

- (a) shall notify the other insurer as soon as practicable after becoming aware of the insurer's potential liability; and
- (b) may, within 6 months after becoming aware of the other insurer's potential liability or such longer period as the Court may allow -
 - (i) commence proceedings under Division 4 of Part VI to recover from the other insurer all or a part of the compensation paid; or
 - (ii) where other proceedings in respect of the claim for compensation have been commenced under that Division, join the other insurer as a party to those proceedings.

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"(3) Where an approved insurer has indemnified an employer for the employer's liability to pay compensation to a worker under this Act and it is subsequently established that another approved insurer was liable to indemnify that employer in whole or in part, that other insurer shall reimburse the first-mentioned insurer such amount or amounts -

- (a) as agreed between the 2 insurers; or
- (b) in the absence of such agreement, as the Court determines."

23. CLAIMS FOR PAYMENT AGAINST NOMINAL INSURER WHERE EMPLOYER DEFAULTS OR DEAD, &c.

Section 167(1)(b)(i) of the Principal Act is amended by omitting "section 85(1)(a)" and substituting "section 85".

24. REGULATIONS

Section 187(1) of the Principal Act is amended by inserting after paragraph (h) the following:

- "(ha) the powers and functions that may be exercised or performed by persons appointed as mediation officers under this Act and the procedures to be followed by mediation officers when exercising those powers or performing those functions;"

25. TRANSITIONALS

(1) Section 72 of the Principal Act, as amended by section 7 of this Act, applies to and in relation to an assessment made after the commencement of this Act notwithstanding that the claim for compensation was made before that commencement.

(2) An order under section 87 of the Principal Act, as amended by section 10 of this Act, may be made in respect of a claim for compensation notwithstanding that the claim was made before the commencement of this Act.
