

NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT ACT (No. 2) 1991

No. 59 of 1991

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Out of or in course of employment
6. Interpretation
7. Exclusion of entitlement in respect of certain travel accidents
8. Prescribed children's benefits
9. Long-term incapacity
10. Definition
11. Compensation for permanent impairment
12. Commutation
13. Functions and powers of committee
14. Saving and transitional



NORTHERN TERRITORY OF AUSTRALIA

No. 59 of 1991

AN ACT

to amend the *Work Health Act*

[Assented to 26 September 1991]

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) 1991*.

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(1) of the Principal Act is amended by omitting from the definition of "injury" the words "injury or disease" and substituting the following:

"injury or disease,

but does not include an injury or disease suffered by a worker as a result of reasonable disciplinary action taken against the worker or

Work Health Amendment (No. 2)

failure by the worker to obtain a promotion, transfer or benefit in connection with the worker's employment or as a result of reasonable administrative action taken in connection with the worker's employment".

5. OUT OF OR IN COURSE OF EMPLOYMENT

Section 4 of the Principal Act is amended -

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

"(2A) Notwithstanding subsection (1), an injury to a worker shall be taken not to arise 'out of or in the course of his employment' if the injury is sustained in an accident, as defined in the *Motor Accidents (Compensation) Act*, while he -

- (a) having been at his workplace, is temporarily absent during an ordinary recess;
- (b) except as provided in subsection (2B), is travelling in circumstances referred to in subsection (1)(b) or (g); or
- (c) is travelling between his place of residence and a place referred to in subsection (1)(c)(ii) or (e)(ii).

"(2B) Subsection (2A)(b) does not apply where a worker -

- (a) is travelling between his place of residence and a workplace, which is not his normal or usual workplace, at the request of his employer; or
- (b) is required by his employer to work outside his normal hours of work while he is travelling between his place of residence and a workplace and, in accordance with the terms of his employment, he is paid, in whole or in part, for the time taken to travel to that workplace.";

(b) by omitting from subsection (5) "the nature of";

(c) by inserting after subsection (6) the following:

"(6A) Subject to this section, a disease shall be taken not to have been contracted by a worker or to have not been aggravated, accelerated or exacerbated in the course of the worker's employment unless the employment in which the worker is or was employed materially contributed to the worker's contraction of the disease or to its aggravation, acceleration or exacerbation."; and

(d) by adding at the end the following:

Work Health Amendment (No. 2)

(d) by adding at the end the following:

"(8) For the purposes of this section, the employment of a worker shall not be taken to have materially contributed to an injury or disease or to an aggravation, acceleration or exacerbation of a disease unless the employment was a real, proximate or effective cause of the injury or disease or to the aggravation, acceleration or exacerbation of the disease, as the case may be."

6. INTERPRETATION

Section 49 of the Principal Act is amended -

(a) by omitting paragraph (d) of the definition of "normal weekly earnings" in subsection (1) and substituting the following:

"(d) where -

(i) by reason of the shortness of time during which the worker has been in the employment of his employer, it is impracticable at the date of the relevant injury to calculate the rate of relevant remuneration in accordance with paragraph (a), (b) or (c); or

(ii) subject to paragraph (b) or (c), the worker is remunerated in whole or in part other than by reference to the number of hours worked,

the average gross weekly remuneration which, during the 12 months immediately preceding the date of the relevant injury, was earned by the worker during the weeks that he was engaged in paid employment;"

(b) by omitting from paragraph (a) of the definition of "normal weekly number of hours of work" in subsection (1) all words after "a fixed number of hours" and substituting ", not being hours of overtime other than where the overtime is worked in accordance with a regular and established pattern, in each week - the number of hours so fixed and worked; or";

(c) by omitting from paragraph (b) of the definition of "normal weekly number of hours of work" in subsection (1) "not being hours of overtime" and substituting "not being hours of overtime other than where the overtime is worked in accordance with a regular and established pattern";

Work Health Amendment (No. 2)

- (d) by omitting from the definition of "ordinary time rate of pay" in subsection (1) "exclusive of overtime" and substituting "exclusive of overtime other than where the overtime is worked in accordance with a regular and established pattern";
- (e) by omitting from subsection (2) "industrial allowance,";
- (f) by omitting from subsection (2) "qualification allowance" and substituting "qualification allowance, shift allowance (where shift work is worked in accordance with a regular and established pattern)"; and
- (g) by adding at the end the following:

"(3) In determining whether overtime is worked in accordance with a regular and established pattern for the purposes of the definitions of 'normal weekly number of hours of work' and 'ordinary time rate of pay' in subsection (1), or shift work is worked in accordance with a regular and established pattern for the purpose of the definitions of 'normal weekly earnings' and 'ordinary time rate of pay' as referred to in subsection (2) -

- (a) regard shall be had to the overtime or shift work, as the case may be, worked by a worker in his employment with his employer at the time of the relevant injury during the period of 6 months immediately preceding the date of the injury; or
- (b) where the worker has been employed by his employer at the time of the relevant injury for less than 6 months, regard shall be had to the overtime or shift work, as the case may be, worked by the worker during the period of that employment and whether, in the normal course of that employment, he would have worked overtime or shift work had he not been injured."

7. EXCLUSION OF ENTITLEMENT IN RESPECT OF CERTAIN TRAVEL ACCIDENTS

Section 60 of the Principal Act is amended -

- (a) by omitting from subsection (1) "in travelling in circumstances referred to in section 4(1)(b), (c), (e) or (g)"; and
- (b) by inserting at the end of subsection (1) ", or while under the influence of a drug".

Work Health Amendment (No. 2)

8. PRESCRIBED CHILDREN'S BENEFITS

Section 63 of the Principal Act is amended -

- (a) by omitting from subsection (1) "7%" and substituting "10%"; and
- (b) by omitting from subsection (2) "70%" (twice occurring) and substituting "100%".

9. LONG-TERM INCAPACITY

Section 65 of the Principal Act is amended -

- (a) by omitting subsection (1) "70%" and "of 150%" and substituting "75%" and "150%" respectively;
- (b) by omitting from subsection (2) "subsection (1)" and substituting "this section";
- (c) by inserting in subsection (3) after "loss of earning capacity" the words "or for the purposes of subsection (8) or (9)";
- (d) by omitting from subsection (4) all words after paragraph (a); and
- (e) by omitting subsection (7) and substituting the following:

"(7) Where a worker is totally incapacitated for work and the compensation the worker is entitled to under subsection (1) is less than the amount calculated in accordance with subsection (12), the worker shall, notwithstanding subsection (1), but subject to subsection (10), be entitled to compensation equal to 90% of his loss of earning capacity or the amount so calculated, whichever is the lesser.

"(8) Where a worker is partially incapacitated for work and 75% of his normal weekly earnings indexed in accordance with subsection (3) is less than the amount calculated in accordance with subsection (12), the worker shall, notwithstanding subsection (1), but subject to subsection (10), be entitled to compensation equal to 90% of his loss of earning capacity or the percentage of his loss of earning capacity as determined in accordance with subsection (9), whichever is the lesser.

"(9) For the purposes of subsection (8), the percentage is the amount calculated in accordance with subsection (12) expressed as a percentage of the worker's normal weekly earnings.

Work Health Amendment (No. 2)

"(10) Subsections (7) and (8) do not apply where the normal weekly earnings of the spouse of the worker is equal to or more than 150% of average weekly earnings.

"(11) For the purposes of subsection (10), normal weekly earnings of the spouse of a worker shall be determined, as for a worker, in accordance with section 49 and, for that purpose, a reference to a worker shall be construed as a reference to the spouse of a worker.

"(12) For the purposes of subsections (7) and (8), the amount is 50% of average weekly earnings and, in addition -

- (a) 12.5% of average weekly earnings, where the worker has a spouse who is, at the date of the relevant injury and at the time when compensation is paid under this section, wholly or mainly dependent on the worker; and
- (b) 6.25% of average weekly earnings for each prescribed child of the worker.

"(13) In subsection (12), 'prescribed child' means a child of the worker, or a child in relation to whom the worker stood *in loco parentis*, and who -

- (a) has not attained the age of 16 years; or
- (b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped,

other than such a child who is the spouse of another person."

10. DEFINITION

Section 70 of the Principal Act is amended by omitting "15%" and substituting "5%".

11. COMPENSATION FOR PERMANENT IMPAIRMENT

Section 71 of the Principal Act is amended -

- (a) by omitting from subsections (1) and (2) "104" and substituting "208";
- (b) by omitting from subsection (2) "A worker" and substituting "In addition to any other compensation payable under this Part, a worker"; and

Work Health Amendment (No. 2)

(c) by adding at the end the following:

"(3) In addition to any other compensation payable under this Part, where a worker suffers permanent impairment assessed at a percentage of the whole person equal to less than 15%, the worker shall be paid compensation equal to the percentage specified in column 2 of the Table to this section of the relevant assessed percentage of permanent impairment specified opposite in column 1 of 208 times average weekly earnings at the time the payment is made.

"TABLE

Column 1 Degree of permanent impairment	Column 2 Percentage of compensation payable
not less than 5% but less than 10%	2
10%	3
11%	4
12%	6
13%	8
14%	12

12. COMMUTATION

Section 74 of the Principal Act is amended -

- (a) by omitting from subsection (1)(b) "section 65(6)" and substituting "section 65(6); and";
- (b) by omitting subparagraph (iv) from subsection (1)(b); and
- (c) by adding at the end the following:

"(3) Nothing in this section shall be construed as permitting the payment of a commuted amount which is greater than an amount equal to 156 times average weekly earnings at the time the payment is made."

13. FUNCTIONS AND POWERS OF COMMITTEE

Section 145 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) It is also a function of the Committee to consider and report on the effectiveness of the premiums offered by insurers -

- (a) in encouraging employers to develop and maintain safe working practices; and

Work Health Amendment (No. 2)

(b) in penalizing employers which do not ensure the maintenance of safe working practices."

14. SAVING AND TRANSITIONAL

Sections 70 and 71 of the Principal Act, as amended by this Act, apply only to and in relation to a claim for compensation by a worker who suffers an injury causing permanent impairment after the commencement of this Act.
