# THE NORTHERN TERRITORY OF AUSTRALIA

No. 42 of 1979

# AN ACT

To amend the Workmen's Compensation Act

[*Assented to 27 April 1979*]

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. This Act may be cited as the Workmen's Compensation Act 1979. Short title

2. The Workmen's Compensation Act is in this Act referred to as the Principal Act. Principal Act

3.(1) Subject to sub-section (2), this Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette. Commencement

(2) Sections 9, 12, 15, 17 and 19 shall come into operation on such later date as is fixed by the Administrator by notice in the Gazette.

4. Section 6(1) of the Principal Act is amended - Interpretation

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

"'Chairman' means the Chairman of the Nominal Insurer appointed under section 16G;

'departmental member' means the member of the Nominal Insurer who is an employee within the meaning of the Public Service Act appointed under section 16E(4);";

(b) by inserting after the definition of "employer" the following definitions:

"'exempt employer' means an employer who has been authorized by the Minister under the proviso to section 18(1) to undertake the liability to pay compensation to his own workmen;

'Fund' means the Nominal Insurer's Fund established under section 16N;";

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(c) by inserting after the definition of "medical and surgical treatment" the following definition:

"'member' means a member of the Nominal Insurer (including the Chairman);"; and

(d) by inserting after the definition of "member of the family" the following definitions:

"'Nominal Insurer' means the Nominal Insurer established by section 16D;

'nominated member' means a member of the Nominal Insurer appointed under section 16E(2);".

Workmen's Compensation Tribunal

5. Section 6A(2) of the Principal Act is amended by omitting "and the Minister may appoint such other members of the Tribunal as he thinks fit".

Unreasonable delay in settlement of compensation

6. Section 6G of the Principal Act is amended by adding at the end thereof the following sub-section:

"(2) Where the Tribunal orders that interest be paid under sub-section (1), it may, in addition, order that punitive damages of an amount not exceeding 100 per cent of such interest be paid by the employer to the person to whom compensation is awarded.".

Compensation in respect of death or incapacity caused by employment

7. Section 9 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

"(1AA) Notice of death or incapacity arising from a disease due to the nature of the employment in which a workman was employed shall be given to his employer and may be so given notwithstanding that the workman voluntarily left his employment.".

Notice of death or incapacity

8. Section 9A of the Principal Act is amended by omitting "The notice of death or incapacity referred to in sub-section (1A) of section 9" and substituting "The notice of death or incapacity referred to in section 9(1AA) or 9(1A), as the case may be,".

9. Section 9B of the Principal Act is repealed and the following section substituted:

Where last employer dead claim may be made against Nominal Insurer

"9B.(1) Where the employer -

(a) who employed the workman at the time when the personal injury occurred; or

(b) who last employed the workman in the employment the nature of which caused the disease,

is dead, cannot be located or, in the case of a company, has been wound up, notice of the injury, death or incapacity shall be given to the Nominal Insurer.

"(2) Where compensation would have been recoverable from an employer who is dead, cannot be located or, in the case of a company, has been wound up, a person who would have been entitled to that compensation may make a claim against the Nominal Insurer for payment of an amount equal to the amount of compensation that would have been recoverable from the employer if that employer were not dead, could be located or, in the case of a company, had not been wound up.

"(3) Where a person who makes a claim against the Nominal Insurer under sub-section (1) establishes that he is entitled to compensation from an employer who is dead, cannot be located or, in the case of a company, has been wound up, the Nominal Insurer shall pay to that person an amount equal to the amount of compensation which would have been recoverable from the employer if that employer were not dead, could be located or, in the case of a company, had not been wound up.

"(4) Where -

(a) the Nominal Insurer pays an amount under sub-section (3) in respect of a liability of an employer; and

(b) the employer was insured in respect of his liability to pay compensation under this Act,

the Nominal Insurer may recover the amount paid from the insurer with whom that employer was insured at the time of the workman's injury, death or incapacity.".

10. Section 11 of the Principal Act is amended - Medical and surgical treatments hospital treatments or nursing and ambulance services

(a) by inserting in sub-section (1)(b) after "no compensation is payable under any other provision of this Ordinance" the words "(other than a payment made under paragraph (1)(c) of the Second Schedule)";

(b) by omitting from sub-section (1)(e) "7 dollars a day" and substituting "an allowance up to a maximum of $20 a day";

(c) by omitting from sub-section (1)(e) sub-paragraph (iii) and substituting the following sub-paragraph:

"(iii) produces evidence of his living expenses incurred at the place at which he is required or advised to undergo treatment."; and

(d) by inserting after sub-section (1) the following sub-section:

"(1A) An employer who is liable to pay an allowance in accordance with sub-section (1)(e) shall pay to the workman either the maximum amount per day referred to in that sub-section or the actual cost of the workman's living expenses, whichever is the lesser.".

11. Section 15 of the Principal Act is repealed and the following section substituted:

Medical referees

"15.(1) The Tribunal may seek the assistance of any legally qualified medical practitioner residing in or outside the Territory for the purposes of this Act.

"(2) Where the services of a medical practitioner have been used in connexion with a matter by or on behalf of an employer or workman or by an insurer interested, he shall not act for or on behalf of the Tribunal in that matter.

"(3) A legally qualified medical practitioner who assists the Tribunal pursuant to sub-section (1) is in this Act referred to as a 'medical referee'.".

12. Section 17 of the Principal Act is repealed and the following sections substituted:

Establishment of Nominal Insurer

"16D.(1) There is established by this Act a corporation by the name of the Nominal Insurer.

"(2) The Nominal Insurer shall be a body corporate with perpetual succession and a common seal and may acquire, hold and dispose of personal property and shall be capable of suing and being sued in its corporate name.

"(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Nominal Insurer affixed to any document and shall presume that it was duly affixed.

Composition of Nominal Insurer

"16E.(1) The Nominal Insurer shall consist of 3 nominated members and a departmental member.

"(2) Subject to sub-section (3), the Minister may appoint a person to be a nominated member.

"(3) The appointment of the nominated members shall be made on the nomination of the approved insurers and exempt employers or a majority of them or, in default of such a nomination, directly by the Minister.

"(4) The Minister shall appoint a person who is an employee within the meaning of the Public Service Act to be the departmental member.

"(5) The exercise of a power or the performance of a function of the Nominal Insurer is not affected by reason only of there being a vacancy or vacancies in the membership of the Nominal Insurer.

"16F.(1) Subject to this Act - Tenure of office

(a) a nominated member shall be appointed for a period not exceeding 3 years; and

(b) a nominated member shall be eligible for re-appointment.

"(2) The departmental member holds office during the pleasure of the Minister.

"16G.(1) Subject to sub-section (2), the Minister shall appoint a person who is, or is to be, a nominated member to be the Chairman of the Nominal Insurer. Chairman

"(2) The appointment of the Chairman shall be made on the nomination of the approved insurers and exempt employers or a majority of them or, in default of such a nomination, directly by the Minister.

"16H. A nominated member may resign his office by writing signed by him and delivered to the Minister. Resignation

"16J.(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity. Termination of appointment

"(2) Where a member -

(a) is absent, except on leave granted by the Nominal Insurer, from 3 consecutive meetings of the Nominal Insurer; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Minister shall terminate the appointment of the member.

"16K.(1) The Chairman shall call such meetings of the Nominal Insurer as are necessary for the exercise of its powers and the performance of its functions. Meetings of Nominal Insurer

"(2) At a meeting of the Nominal Insurer -

(a) the Chairman, when present, shall preside;

(b) in the absence of the Chairman, the members present and voting shall elect an acting Chairman and that person may exercise the powers and perform the duties of the Chairman for that meeting;

(c) 3 members constitute a quorum;

(d) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the member presiding shall have a casting vote;

(e) the Nominal Insurer shall keep a record of its proceedings; and

(f) subject to this Act, the Nominal Insurer shall determine the procedure to be followed at or in connexion with the meeting.

Protection of members, &c.

"16L. An action or proceeding, civil or criminal, does not lie against the Nominal Insurer or a member for or in respect of an act or thing done in good faith by the Nominal Insurer or member in its or his capacity as the Nominal Insurer or as a member.

Delegation by Nominal Insurer

"16M.(1) The Nominal Insurer may, by instrument in writing, either generally or in relation to a matter or class of matters, delegate to a person all or any of its powers or functions under this Act other than this power of delegation.

"(2) A power delegated in accordance with sub-section (1) may be exercised by the delegate in accordance with the instrument of delegation.

"(3) A delegation under this section is revocable by the Nominal Insurer in writing at will and does not prevent the exercise of a power or the performance of a function by the Nominal Insurer.

Nominal Insurer's Fund

"16N.(1) The Minister shall establish a fund to be known as the Nominal Insurer's Fund.

"(2) The Fund shall be administered by the Nominal Insurer.

"(3) The Fund shall consist of -

(a) contributions by approved insurers and exempt employers paid under section 16Q(3);

(b) any moneys recovered by or on behalf of the Nominal Insurer in the exercise of its powers and the performance of its functions;

(c) the interest from time to time accruing from the investment of moneys standing to the credit of the Fund;

(d) all moneys paid into the Fund in accordance with section 27A; and

(e) such other moneys as may lawfully be paid into the Fund.

Payments out of Fund

"16P. There shall, from time to time, be paid out of the Fund -

(a) the amount of all claims, including costs allowed or established against the Nominal Insurer, in accordance with this Act;

(b) the costs and expenses of the administration of the Fund, including the costs and expenses of exercising the powers and performing the functions of the Nominal Insurer, the legal expenses incurred by the Nominal Insurer in applications to the Tribunal or otherwise incurred in relation to the Fund; and

(c) such other moneys as may lawfully be paid out of the Fund.

Estimates and contributions to Fund

"16Q. (1) The Nominal Insurer shall, as early as is practicable in each financial year -

(a) make an estimate of the total of the amounts already paid and the amounts to be paid from the Fund during that financial year;

(b) determine what amounts, if any, shall be set aside as provision to meet expenditure from the Fund in future years, and specify for what purpose or purposes each such provision is being made;

(c) make an estimate of the total amounts, including the amounts already received, to be received into the Fund during that financial year, other than contributions from approved insurers and exempt employers under this section;

(d) determine the total amount to be contributed to the Fund during that financial year by approved insurers and exempt employers under this section, after having regard to the amount standing to the credit of the Fund at the beginning of the year, including any amounts set aside in earlier years as provision to meet expenditure in later years, and the amount estimated to be received into the Fund during the year otherwise than from approved insurers and exempt employers under this section; and

(e) submit in writing to the Minister the estimates, provisions and amount to be contributed to the Fund by approved insurers and exempt employers.

"(2) The estimates, provisions and amount to be contributed to the Fund by approved insurers and exempt employers referred to in sub-section (1) shall not have any force or effect until they are approved by the Minister.

"(3) Each approved insurer and exempt employer shall, in the year which commences on 1 July 1979 and in each subsequent financial year, contribute to the Fund an amount of money that is equal to a percentage, determined by the Nominal Insurer in accordance with this section, of -

(a) in the case of an approved insurer - the premium income (whether received by or owing to the insurer) of the approved insurer in respect of policies of insurance or indemnity effected with the approved insurer by employers in the preceding financial year for the purpose of complying with section 18(1); or

(b) in the case of an exempt employer - the premium that would have been payable by the exempt employer if he had obtained, in respect of that year, or the part of that year during which he was an exempt employer, a policy in accordance with section 18(1).

"(4) The percentage determined by the Nominal Insurer under sub-section (3) shall be -

(a) such as, in the opinion of the Nominal Insurer, will be sufficient to yield the total amount to be contributed to the Fund by approved insurers and exempt employers during the then current financial year as determined under sub-section (1)(d); and

(b) uniform for all approved insurers and exempt employers.

"(5) An approved insurer or exempt employer shall pay to the Nominal Insurer an amount required by this section to be contributed by him to the Fund in such instalments and at such times as are determined by the Nominal Insurer.

"(6) The Nominal Insurer shall, by notice in writing, notify each approved insurer and exempt employer of particulars of the contribution, including the amounts of the instalments and the times at which they are payable, required by this section to be contributed by him to the Fund.

"(7) Where an approved insurer or exempt employer fails to pay the full amount of an instalment within 30 days of the time specified in a notice under sub-section (6) -

(a) the full amount of the contribution referred to in sub-section (3) or of the balance then remaining unpaid shall, if it is not already payable, immediately become payable and be a debt due to the Nominal Insurer by the approved insurer or exempt employer and may be sued for and recovered by the Nominal Insurer in a court of competent jurisdiction; and

(b) the approved insurer or exempt employer shall be guilty of an offence against this Act.

Penalty: $200.

"17.(1) Where, at any time, the amount of the Fund is insufficient to meet any payment required by this Act out of the Fund, the Treasurer may make temporary advances to the Fund out of the Consolidated Fund.

Temporary advances to Fund

"(2) The Consolidated Fund is appropriated to the extent necessary for the purpose of sub-section (1).

"(3) Where a temporary advance is made under this section out of the Consolidated Fund, the amount of the advance together with interest at such rate as the Treasurer determines shall be a first charge on the Fund and shall be recouped to the Consolidated Fund progressively as moneys are paid into the Fund.".

13. Section 17B of the Principal Act is amended by omitting "Subject to section 17C" and substituting "Subject to this Act".

Payments by Nominal Insurer

14. Section 17C(1) of the Principal Act is amended by omitting "Where a claim is made against the nominal insurer he may apply" and substituting "Where a claim is made against the Nominal Insurer it may apply".

Re-opening of agreements and awards

15. After section 17C of the Principal Act, the following section is inserted:

"17CA. An amount payable to a person by the Nominal Insurer from the Fund may be sued for and recovered by that person in a court of competent jurisdiction.".

Amount due recoverable by action

16. Section 17D of the Principal Act is amended by omitting "(not being an employer in respect of whom an authority under the proviso to sub-section (1) of section 18 was in force at the relevant time)" and substituting "(not being an exempt employer at the relevant time)".

Intervention by Nominal Insurer

17. Sections 17F and 17H of the Principal Act are repealed.

Repeal

Compulsory insurance

18. Section 18 of the Principal Act is amended -

(a) by inserting after sub-section (6) the following sub-section:

"(7) Where an employer is convicted of an offence with respect to sub-section (1), the court may, in addition to any penalty imposed under sub-section (6), impose a penalty not exceeding an amount equal to the amount of the premium that would have been payable by that employer if he had obtained, in respect of the period or, where that period exceeds 2 years the last 2 years of the period, during which he has failed to comply with sub-section (1), a policy of insurance or indemnity in accordance with that sub-section.";

(b) by inserting after sub-section (9B) the following sub-sections:

"(9C) Subject to this Act, where an insurer is approved for the purposes of this Act, the approval shall continue in force for a period of 2 years commencing on the date on which the approval is granted under sub-section (9B).

"(9D) An approved insurer shall, not less than 28 days prior to the date of expiry of the approval, apply in writing to the Minister for a renewal of that approval.

"(9E) Upon receipt of an application made under sub-section (9D), the Minister may, in his discretion, renew the approval of that insurer for the purposes of this Act."; and

(c) by inserting after sub-section (11) the following sub-section:

"(12) In this section, unless the contrary intention appears, 'approval' includes a renewal of an approval granted under sub-section (9E).".

19. After section 18 of the Principal Act the following sections are inserted:

Recovery of compensation from insurer

"18A.(1) Where -

(a) a claim has been made against an employer that the employer is liable to pay compensation in respect of an injury, incapacity or death in the circumstances referred to in section 17A(1)(a);

(b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established in accordance with this Act;

(c) the employer is entitled to be indemnified against his liability to pay the compensation referred to in paragraph (b) under a policy of insurance or indemnity obtained in accordance with this Act; and

(d) the employer defaults in payment of any amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the approved insurer for payment of the amounts of compensation payable and to become payable.

"(2) A claim under sub-section (1) shall be made within a period of one month after the right to make the claim arose or within such further time as the Minister, on an application made before or after the expiration of that period of one month, allows.

"(3) The approved insurer shall give notice in writing to the employer who has defaulted in payment of the compensation of the making of a claim under sub-section (1).

"(4) For the purposes of this section and sections 18B to 18F inclusive -

'compensation' includes the same matters as are referred to in section 17A(4);

'the approved insurer' means the relevant approved insurer who issued to an employer a policy of insurance or indemnity in accordance with this Act.

Payments by approved insurer

"18B.(1) Where a person makes a claim against the approved insurer in accordance with section 18A, the approved insurer shall pay to the person the compensation payable at the date of the claim or becoming payable after that date.

"(2) An amount payable to a person by the approved insurer may be sued for and recovered by that person in a court of competent jurisdiction.

Effects of payment by approved insurer

"18C. Where the approved insurer pays an amount under section 18B in respect of a liability of an employer, the payment operates to the extent of the payment -

(a) to discharge the liability of the employer to the person entitled to the compensation; and

(b) to discharge the liability, if any, of the approved insurer to the employer.

Act or omission of employer not a defence of approved insurer

"18D.(1) It shall not be a defence by the approved insurer to a claim under section 18A that he is not liable under the policy of insurance or indemnity by reason of an act committed or omission made by the employer who has defaulted in payment of the compensation.

"(2) In particular and without prejudice to the generality of sub-section (1), it shall not be a defence by the approved insurer to a claim under section 18A that he is not liable under the policy of insurance or indemnity by reason of the fact that -

(a) the policy was obtained by a false statement or misrepresentation or non-disclosure whether fraudulent, material or otherwise;

(b) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a term, condition or warranty of that policy; or

(c) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a provision of this Act or a law of the Territory relating to the employment of workmen.

Recovery by approved insurer from employer

"18E.(1) Subject to sub-section (2), the approved insurer may, in addition to any other right or remedy he may have, recover from an employer of a description referred to in section 18A(1) so much of -

(a) a sum which the approved insurer has paid pursuant to section 18B; and

(b) the cost of any expenses reasonably incurred by the approved insurer,

as the approved insurer has paid under or in consequence of a policy of insurance or indemnity where there has been -

(c) a false statement or misrepresentation or non-disclosure in obtaining the policy; or

(d) a breach by that employer of a term, condition or warranty of the policy, a provision of this Act, or a law of the Territory relating to the employment of workmen or a failure by that employer to comply with such a term, condition, warranty or provision.

"(2) The approved insurer shall not be entitled to recover moneys under sub-section (1) unless the court in which the proceedings for recovery of moneys are taken is satisfied -

(a) where there has been a false statement or misrepresentation or non-disclosure in obtaining the policy - that the false statement or misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some fact or thing of such a nature as would have justified the approved insurer charging a higher premium in respect of the policy than the premium paid or payable by the employer; or

(b) where there has been a breach of or failure to comply with a term, condition, warranty or provision referred to in sub-section (1)(d) - that the breach or failure was such that it contributed in a material degree to the circumstances in which the approved insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

"18F.(1) Where - Default of approved insurer

(a) a claim has been made against an employer that the employer is liable to pay compensation in respect of an injury, incapacity or death in the circumstances referred to in section 17A(1)(a);

(b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established in accordance with this Act;

(c) the employer is entitled to be indemnified against his liability to pay the compensation referred to in paragraph (b) under a policy of insurance or indemnity obtained in accordance with this Act; and

(d) the indemnity required to be provided under the policy of insurance or indemnity is not provided in respect of the employer's liability to pay the compensation,

the Nominal Insurer shall have the same rights, powers, duties and liabilities in respect of the claim as the approved insurer would have had if the approved insurer had provided the indemnity referred to in paragraph (c).

"(2) Where an approved insurer is unable to provide any indemnity required to be provided by a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which sub-section (1) applies, the approved insurer or any person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager shall -

(a) forthwith notify the Nominal Insurer of any such claim; and

(b) make available to the Nominal Insurer any books or papers relevant to such a claim.".

20. After section 27 of the Principal Act the following section is inserted:

Fines, &c., to be paid into Fund

"27A. All fines or other pecuniary penalties recovered under this Act or the regulations shall be paid into the Fund.".

Second Schedule

21. The Second Schedule to the Principal Act is amended -

(a) by omitting paragraph (1) (c) and substituting the following sub-paragraph:

"(c) such amount, not exceeding $1,500, as is reasonable on account of the expenses of the workman's funeral and the expenses incurred in settling the affairs of the deceased workman."; and

(b) by omitting paragraphs (1A) to (1E) inclusive and substituting the following paragraphs:

"(1A) Where the workman is totally incapacitated for work by the injury, the amount of compensation is -

(a) in respect of a week, being one of the first 26 weeks of the period of incapacity, or of the aggregate of the periods of incapacity - the workman's normal weekly earnings; and

(b) in respect of a period, being a period after the expiration of the 26 weeks referred to in sub-pararaph (a) -

(i) the sum of -

A $80 per week during his incapacity;

B if at the date of the injury the workman has a spouse who is wholly or mainly dependent on the workman's earnings during the period of incapacity - $21 per week;

C if at any time during his incapacity he has no wife, but there is a woman or girl who has attained the age of 16 years and was at the date of the injury a member of his family or caring for a prescribed child - $21 per week while she is wholly or mainly dependent on his earnings during his incapacity;

D where the workman is an Aboriginal native of Australia, then -

(I) if no compensation is payable under sub-paragraph (b)(i)B, but compensation is payable under sub-paragraph (b)(i)C in respect of a woman or girl who is his tribal wife, and there is at least one additional woman or girl who has attained the age of 16 years and was at the date of the injury his tribal wife - $10 per week for each such additional tribal wife while she is wholly or mainly dependent on his earnings during his incapacity; or

(II) if compensation is payable under sub-paragraph (b)(i)B, and there is at least one woman or girl who has attained the age of 16 years and was at the date of the injury his tribal wife - $10 per week for each such tribal wife while she is wholly or mainly dependent on his earnings during his incapacity;

E $10 per week in respect of each prescribed child born before the date of the injury while the child is wholly or mainly dependent upon his earnings during his incapacity but not while an amount in respect of that child is payable by virtue of sub-paragraph (b)(i)C; and

F $10 per week, payable from the date of birth, in respect of each prescribed child born after the date of the injury, not being a child of a marriage contracted, or an ex-nuptial relationship formed, after the date of the injury, who is wholly or mainly dependent upon the earnings of the workman, while the child is so dependent during his incapacity; or

(ii) the workman's normal weekly earnings per week,

whichever is the lesser.

"(1B) Where the workman is partially incapacitated for work by the injury, the amount of compensation is -

(a) in respect of a week, being one of the first 26 weeks of the period of incapacity, or of the aggregate of the periods of incapacity - the amount, if any, by which the amount that he is earning, or is able to earn in some suitable employment or business, is less than the workman's normal weekly earnings; and

(b) in respect of a period, being a period after the expiration of the 26 weeks referred to in sub-paragraph (a) -

(i) the amount, if any, per week by which the weekly amount that he is earning, or is able to earn in some suitable employment or business is less than the amount per week that would be payable to him under paragraph (1A)(b)(i) if he had been totally incapacitated; or

(ii) the amount, if any, per week by which the weekly amount that he is earning, or is able to earn in some suitable employment or business, is less than the workman's normal weekly earnings,

whichever is the lesser.";

(c) by omitting paragraph (4) and substituting the following paragraphs:

"(4) Subject to paragraph (4A), for the purposes of this Schedule -

'normal weekly earnings' means -

(a) subject to sub-paragraphs (b), (c) and (d), remuneration for the workman's normal weekly number of hours of work calculated at his ordinary time rate of pay;

(b) in the case of a workman who had entered into concurrent contracts of service with 2 or more employers under which he worked full-time at one time for one employer and part-time at another time for one or more other employers - remuneration for the workman's normal weekly number of hours of work calculated at his ordinary time rate of pay in respect of his full-time employment;

(c) in the case of a workman who had entered into concurrent contracts of service with 2 or more employers under which he worked part-time at one time for one employer and part-time at another time for one or more other employers -

(i) remuneration for the workman's normal weekly number of hours of work calculated at his ordinary time rate of pay in respect of both or all of his part-time employments; or

(ii) the remuneration that would have been payable to the workman if he had been engaged full-time in the part-time employment that he usually was engaged with for the more or most number of hours of employment per week at the date of the injury,

whichever is the lesser; or

(d) where, by reason of the shortness of time during which the workman has been in the employment of his employer, or the terms of the employment, it is impracticable at the date of the injury to calculate the rate of remuneration in accordance with sub-paragraph (a), (b) or (c) - the average weekly remuneration which, during the 12 months previous to the injury, was earned by the workman during the weeks that he was engaged in paid employment;

'normal weekly number of hours of work' means -

(a) in the case of a workman who is required by the terms of his employment to work a fixed number of hours, not being hours of overtime, in each week - the number of hours so fixed; or

(b) in the case of a workman who is not required by the terms of his employment to work a fixed number of hours in each week - the average weekly number of hours, not being hours of overtime, worked by him during the period actually worked by him in the service of his employer during the 12 months immediately preceding the date of the injury;

'ordinary time rate of pay' means -

(a) in the case of a workman who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment - the time rate of pay so fixed; or

(b) in the case of a workman -

(i) who is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner; or

(ii) where no ordinary time rate of pay is so fixed for a workman's work under the terms of his employment,

the average time rate of pay earned by

him during the period actually worked by him in the service of his employer during the period of 12 months immediately preceding the date of the injury.

"(4A) A reference in this Schedule to a workman's pay or remuneration includes any over-award payment, industry allowance, climatic allowance, district allowance, leading hand allowance, qualification allowance or service grant but does not include any other allowance or any payment in respect of overtime and -

(a) means remuneration at the date of the injury;

(b) where the rate of remuneration of workmen of the same class is subsequently varied by competent authority or following upon a variation in the cost of living - the rate of remuneration as so varied; or

(c) where no such competent authority exists - the rate of remuneration of a workman of the same class who works for the same employer or in the same district;

(d) by omitting from paragraph (6) "the person to whom the expenses of medical, surgical and hospital treatment and the funeral are due" and substituting "the person to whom the expenses of medical, surgical and hospital treatment, the funeral and settling the affairs of the deceased workman are due"; and

(e) by omitting paragraph (12) and substituting the following paragraphs:

"(12) Subject to paragraph (12A), where, in a case of total and permanent incapacity or partial and permanent incapacity, a workman or former workman, as the case may be, is receiving or entitled to receive a weekly payment, application may be made to the Tribunal by or on behalf of -

(a) the workman or former workman, as the case may be; or

(b) the employer or former employer, as the case may be, and with the consent of the workman or former workman, as the case may be,

to redeem the liability for that weekly payment by the payment of a lump sum.

"(12A) Where an application is made under paragraph (12), the Tribunal may order such amount, as may be determined by the Tribunal, to be paid or invested or otherwise applied for the benefit of the workman or former workman, as the case may be, and the dependents, if any, of the workman or former workman, as the case may be.

"(12B) Nothing in paragraph (12) or (12A) prevents an agreement, subject to section 6N, being made for the redemption of a weekly payment by a lump sum.".

22. The Fifth Schedule to the Principal Act is amended -  Fifth Schedule

(a) by omitting from the first paragraph of the Employer's Indemnity Policy "40,000 dollars in respect of his liability independently of the Ordinance" and substituting "$200,000 in respect of his liability independently of the Act"; and

(b) by omitting from Condition 13 of the Employer's Indemnity Policy "of the Northern Territory of Australia".

23. The provisions of the Principal Act specified in the Schedule are amended as provided by that Schedule.  Miscellaneous amendments

24.(1) On and after the appointed day, the Nominal Insurer may exercise the powers and functions and discharge the duties that the former nominal insurer may have exercised and discharged under the Principal Act as it was in force on the day immediately preceding the appointed day in respect of matters pending on the day immediately preceding the appointed day.  Transitional and savings

(2) On the appointed day -

(a) all rights, obligations and liabilities of the former nominal insurer existing on the day immediately preceding the appointed day or which would have arisen out of events preceding the appointed day if sections 9, 12, 15, 17 and 19 had not come into operation on the appointed day are by force of this sub-section vested in or imposed on the Nominal Insurer;

(b) in any agreement, whether in writing or not, and in every contract or other instrument to which the former nominal insurer was a party or by which it was affected, a reference to the former nominal insurer shall take effect as a reference to the Nominal Insurer;

(c) any proceedings pending on the day immediately preceding the appointed day to which the former nominal insurer was a party shall be continued as if the Nominal Insurer were a party to those proceedings in lieu of the former nominal insurer; and

(d) all records of the former nominal insurer shall be transferred to the Nominal Insurer.

(3) As soon as is practicable after the appointed day, the Nominal Insurer shall make an estimate of the total amount to be paid from the Fund with respect to -

(a) the liability, under section 9B of the Principal Act, of approved insurers; and

(b) the liability, under section 17F of the Principal Act, of approved insurers and exempt employers,

existing immediately before the appointed day or which would have arisen out of events preceding the appointed day if sections 9, 12, 15, 17 and 19 of this Act had not come into operation on the appointed day.

(4) The estimate referred to in sub-section (3) shall not have any force or effect until it is approved by the Minister.

(5) The Nominal Insurer shall apportion liability to contribute to the moneys of the Office the amount of the estimate referred to in sub-section (3) amongst those who were approved insurers or exempt employers on the day immediately before the appointed day.

(6) In making an apportionment under sub-section (5), the Nominal Insurer shall have regard so far as practicable to -

(a) the premium income (whether received by or owing to an insurer) of each approved insurer in respect of policies of insurance or indemnity effected with each approved insurer by employers for the purpose of complying with section 18 of the Principal Act, in the period of 12 months ending on the day immediately before the appointed day; and

(b) the premium that would have been payable by each exempt employer if he had obtained in respect of that period of 12 months (or the part of the period during which he was an exempt employer), a policy of insurance or indemnity in accordance with section 18 of the Principal Act.

(7) When the Nominal Insurer makes an apportionment under sub-section (5) it shall, by notice in writing, notify each approved insurer and exempt employer of particulars of the apportionment and require him to pay to the Nominal Insurer the amount apportioned to him, within such time as is specified in the notice and the approved insurer or exempt employer, as the case may be, shall pay that amount accordingly.

(8) The Nominal Insurer shall pay an amount received under sub-section (7) to the credit of the Fund.

(9) In this section -

"appointed day" means the date of the day fixed by the Administrator under section 3(2);

"approved insurer" has the same meaning as it has in the Principal Act as amended by this Act;

"exempt employer" has the same meaning as it has in the Principal Act as amended by this Act;

"former nominal insurer" means the person for the time being holding or occupying or performing the duties of the office of nominal insurer within the meaning of the Principal Act as it was in force on the day immediately preceding the appointed day;

"Principal Act" means the Principal Act as in force immediately before the appointed day.

## SCHEDULE

Section 23

### MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

The provisions of the Principal Act listed in column 1 of the following table are amended as set out in that table:

| Column 1 Provision of Principal Act | Column 2 Omit | Column 3 Insert |
|---|---|---|
| section 16 | Administrator (twice occurring) | Minister |
| sections 17A(1), (3), 17B, 17C(4), (6),(7), 17D, 17E, 17G(1),(2), 22(3) | nominal insurer (wherever occurring) | Nominal Insurer |
| section 18(1) | 40,000 dollars | $200,000 |
| section 18(6) | 200 dollars | $1,000 |
| section 18(6) | 40 dollars | $100 |
| paragraph (2) and (2A) of the Second Schedule | (1A), (1B) or (1C) (wherever occurring) | (1A) or (1B) |
| paragraph (8A) of the Second Schedule | (1A)(d) or (1A) (e) | (1A)(b)(i)E or F |
| paragraph (13) of the Second Schedule | the Territory (twice occurring) | Australia |