

THE NORTHERN TERRITORY OF AUSTRALIA

No. 53 of 1980

AN ACT

To amend the Workmen's Compensation Act

[Assented to 4 June 1980]

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 Workmen's Compensation Act 1980.

2. PRINCIPAL ACT

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

3. COMMENCEMENT

(1) Sections 6, 9, 10 and 13 of this Act shall be deemed to have come into operation on 30 June 1979 immediately after the commencement of the Workmen's Compensation Act (No. 4) 1979.

(2) Subject to this section, this Act shall come into operation on the date on which the Administrator's assent is declared.

4. COMPOSITION OF NOMINAL INSURER

Section 16E of the Principal Act is amended -

(a) by adding at the end of sub-section (4) "and may appoint a person with the same qualification to be an alternate member for the departmental member"; and

(b) by inserting after sub-section (4) the following sub-section:

"(4A) During the absence from the Territory of the departmental member or where for any other reason the departmental member is unable to perform his duties as a member, the alternate member appointed under sub-section (4) shall have all the powers and functions of the departmental member and shall be counted towards a quorum at a meeting of the Nominal Insurer."

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5. NEW SECTION

The Principal Act is amended by inserting after section 16Q the following section:

"16R. REFUND OF MONEYS RECOVERED, &c.

"(1) All moneys recovered by the Nominal Insurer in respect of a claim referred to in section 18F(1) -

- (a) by virtue of its exercising the rights of the approved insurer under that section;
- (b) by virtue of its exercising a right of subrogation referred to in section 18F(3)(a); or
- (c) under an agreement, contract, treaty or other document relating to reinsurance referred to in section 18F(3)(c),

and all moneys received as a result of the winding up of a company that was an approved insurer required under section 16Q(6) or (7) to pay an amount to the Nominal Insurer shall, at such times as the Minister determines, be paid to the approved insurers (other than the defaulting insurer) and exempt employers by whom contributions under section 16Q(3) were paid for the purpose of meeting the Nominal Insurer's liability under this Act arising out of the default of the defaulting insurer, in the same proportions as those contributions were made or, at the direction of the Minister, the amounts payable under this section to the approved insurers and exempt employers shall be credited against their respective obligations under section 16Q(5) to pay instalments referred to in that sub-section that are uncalled.

"(2) The Minister may, in writing, authorize the Nominal Insurer to repay to the approved insurers and exempt employers in the proportions in which they contributed to the Fund in or in relation to the relevant year, any surplus money of the Fund contributed in pursuance of section 16Q(6) of this Act or section 24 of the Workmen's Compensation Act 1979 but not required for the purposes for which it was contributed, and the Nominal Insurer shall repay those amounts accordingly."

6. EFFECTS OF PAYMENTS BY NOMINAL INSURER

Section 17E(b) of the Principal Act is amended by inserting after "the amount of the payment" the words "(other than an amount paid in pursuance of section 18F)".

7. APPLICATION FOR APPROVAL OF INSURER

Section 17J of the Principal Act is amended -

- (a) by omitting from sub-section (7)(a) "(5)" and substituting "(6)";

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(b) by omitting sub-section (7)(b) and substituting the following:

"(b) may grant a renewal of approval as if that renewal were an approval under sub-section (2).";

(c) by omitting from sub-section (8)(a) "17K, 17L or 18; or" and substituting "17K, 18 or 18B;"; and

(d) by inserting after sub-section (8)(b) the following word and paragraph:

"or

(c) is no longer able to satisfy the Commissioner as to the matters referred to in sub-section (2) or (3)."

8. ADDITIONAL INFORMATION TO BE SUPPLIED

Section 17K(1) of the Principal Act is amended by omitting "to provide him with such information" and substituting ", or an approved insurer, to provide him with such information, and at such times,".

9. REPEAL AND SUBSTITUTION OF SECTION 18F

Section 18F of the Principal Act is repealed and the following section substituted:

"18F. DEFAULT OF APPROVED INSURER

"(1) Where -

(a) a claim has been made against an employer that the employer is liable to pay compensation under this Act, or damages otherwise than under this Act, 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 compensation or damages, as the case may be, or the liability of the employer to pay compensation or damages has not been established or has been declined;

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

(d) in the case -

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- (i) of an amount of compensation or damages agreed to be paid or in respect of which the employer's liability to pay has been established - an amount payable under the policy of insurance or indemnity referred to in paragraph (c) is not paid and has remained unpaid for a period of one month;
- (ii) where the liability of an employer to pay compensation or damages claimed has not been established within one month after notice of a workman's claim has been lodged with the relative approved insurer; or
- (iii) where the liability of an employer to pay compensation or all or any damages claimed has been declined,

the Nominal Insurer shall, subject to sub-section (3), 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 make a payment required to be made under 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, including all agreements, contracts, treaties or other documents relating to reinsurance arrangements in effect at the time of the injury, incapacity or death giving rise to the claim.

"(3) Where an approved insurer is unable to make any or complete payment required to be made under a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which sub-section (1) applies, and the Nominal Insurer has made a payment in respect of that claim -

- (a) the Nominal Insurer has the right to subrogation in respect of all rights that the employer may have against any person in relation to the occurrence that gave rise to the claim for compensation or damages, as the case may be;
- (b) the right of subrogation shall vest in the Nominal Insurer to the exclusion of all other rights of subrogation that would otherwise exist in favour of the approved insurer or the person, if any, holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, whether arising under a law in force in the Territory or the policy of insurance or indemnity under this Act; and

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- (c) all rights which the approved insurer might have to receive any payments under an agreement, contract, treaty or other document relating to reinsurance in respect of a claim referred to in sub-section (1) shall be deemed to be assigned to the Nominal Insurer from the date that the Nominal Insurer first makes a payment in respect of that claim, to the exclusion of any person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, notwithstanding any rule of law or statutory provision to the contrary."

10. NEW SECTION

The Principal Act is amended by inserting after section 18F the following new section:

"18G. POLICIES DEEMED TO BE CANCELLED IN CERTAIN CASES

"Where an employer had a policy of insurance or indemnity under this Act with an approved insurer immediately before -

- (a) the insurer was prevented from issuing or renewing policies, or undertaking liabilities under contracts of insurance, of that kind by virtue of a direction under section 62 of the Insurance Act 1973 of the Commonwealth;
- (b) the insurer's approval as an approved insurer was revoked under section 17J; or
- (c) a liquidator, receiver, receiver and manager, or official manager was appointed for the insurer under a law relating to the registration of corporations in the Territory or any State or other Territory in which the insurer was incorporated,

and the employer subsequently took out a policy of insurance or indemnity under this Act with another approved insurer, the first-mentioned policy of insurance or indemnity shall be deemed to have been duly cancelled at the time that the new policy became effective."

11. NEW SECTION

The Principal Act is amended by inserting after section 27A the following new section:

"27B. VARIATION OF RATES OF COMPENSATION

"(1) Where by this Act provision is made for the payment of -

- (a) an amount of compensation; or
- (b) an amount of compensation by reference to an amount,

fixed by or under this Act, that amount or referred-to amount may be amended by regulation made under this Act as though the amending regulation were an Act.

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"(2) An amending regulation may be expressed to apply from a date specified in the regulation being a date before or after the regulation was made and the amending regulation shall be deemed to have come into operation or shall come into operation, as the case may be, on the date so specified.

"(3) Where, immediately before the operative date, a person was receiving or was entitled to receive, weekly payments in accordance with section 12(1) or the Second Schedule as then in force, he is, from and including the operative date, entitled to receive weekly payments in accordance with this Act as in force on the operative date.

"(4) Where, before the operative date -

(a) a workman sustained an injury or contracted a disease in respect of which weekly payments in accordance with section 12(1) or the Second Schedule would have been payable immediately before that date but for the fact that he did not require the constant help or attention of another person or that he was not then incapacitated for work; and

(b) on or after the operative date, he required the constant help or attention of another person, or became incapacitated for work, as a result of the injury or disease,

weekly payments in respect of that requirement or incapacity shall be in accordance with this Act as in force on the operative date.

"(5) Where on or after the operative date, death results from an injury or a disease that was sustained or contracted before that date and in respect of which compensation was payable under this Act as in force before the operative date, compensation shall be paid in respect of that death in accordance with the Act as in force on the operative date.

"(6) A policy of indemnity or insurance against liability under this Act in force immediately before the operative date has effect during the unexpired balance of the currency of the policy as if it applies to liability under this Act as in force on the operative date.

"(7) An employer to whom a policy referred to in sub-section (6) has been issued is liable to pay to the insurer on the operative date, in respect of the additional liability that he may incur by reason of the application of this section, additional premium for the period during which the additional liability is incurred under the policy, being additional premium equal to the difference between the premium for that period at the rate of premium payable under the policy and the premium for that period at the rate that would have been payable if the policy had been issued for the purposes of this Act as in force on the operative date.

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"(8) Where an insurer under a policy of indemnity or insurance effected before the operative date would have been liable, if the amending regulation had not been made, to indemnify a person against his liability under this Act as then in force arising out of an injury sustained or a disease contracted before the operative date, the insurer is liable to indemnify the person against liability under this Act as in force on the operative date arising out of an injury or the contracting of the disease.

"(9) The amendments made by an amending regulation apply in relation to an injury sustained on or after the operative date, notwithstanding that the accident or disease that caused the injury occurred before that date.

"(10) In this section -

'amending regulation' means a regulation referred to in sub-section (1) amending an amount of compensation or an amount by reference to which payment of compensation is calculated; and

'operative date', in relation to an amending regulation, means the date on which the regulation came into operation or shall be deemed to have come into operation."

12. REGULATIONS

Section 28 of the Principal Act is amended by inserting after paragraph (da) the following paragraph:

"(db) the amount of compensation payable or by reference to which compensation is to be calculated;".

13. SCHEDULES

Clause (1B)(b) of the Second Schedule is amended by omitting "whichever is the greater" and substituting "whichever is the greater, but so that the amount payable does not exceed the proportion of the amount that would have been payable to the workman under paragraph (1A)(b)(i) had he been totally incapacitated for work that his loss of capacity to work bears to what would have been his full capacity to work had he not been injured."
