

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AMENDMENT BILL 1998

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## NORTHERN TERRITORY OF AUSTRALIA

### A BILL for AN ACT

to amend the *Work Health Act*

**B**E 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 1998*.

#### 2. COMMENCEMENT

This Act comes into operation on the date 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 by omitting from subsection (1) the definition of "Judicial Registrar" and substituting the following:

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" 'Judicial Registrar' means a Judicial Registrar of the Court appointed under section 100(2);

'managing magistrate' means the managing magistrate for the Court appointed under section 99A;".

5. HEALTH AND SAFETY COMMITTEES

Section 44A of the Principal Act is amended —

(a) by omitting from subsection (2) "3 months" and substituting "3 weeks"; and

(b) by adding at the end the following:

"(3) For the purposes of this section, where a person (in this subsection called 'the principal contractor') contracts with another person (in this subsection called 'the subcontractor') for the execution by or under the subcontractor of work undertaken by the principal contractor in the course of the principal contractor's business or trade, the principal contractor is to be taken to be the employer of a worker employed by the subcontractor in the execution of the work.".

6. CANCELLATION OR REDUCTION OF COMPENSATION

Section 69 of the Principal Act is amended —

(a) by omitting subsection (1)(b) and substituting the following:

"(b) a statement in the approved form —

- (i) setting out the reasons for the proposed cancellation or reduction;
- (ii) to the effect that, if the worker wishes to dispute the decision to cancel or reduce compensation, the worker may apply to the Authority to have the dispute referred to mediation;
- (iii) to the effect that, if mediation is unsuccessful in resolving the dispute, the worker may appeal to the Court against the decision to cancel or reduce compensation;
- (iv) to the effect that, if the worker wishes to appeal, the worker must lodge the appeal with the Court within 28 days after receiving a certificate issued by the mediator under section 103J(2); and

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- (v) to the effect that the worker may only appeal against the decision if an attempt has been made to resolve the dispute by mediation and that attempt has been unsuccessful."; and

- (b) by omitting from subsection (2)(b) "prescribed" and substituting "medical".

7. ASSESSMENT OF PERMANENT IMPAIRMENT

Section 72 of the Principal Act is amended -

- (a) by omitting from subsection (2) "71(1)" and substituting "71";
- (b) by omitting subsection (3) and substituting the following:

"(3) Where a person is aggrieved by the assessment of the level of permanent impairment by a medical practitioner, the person may, within 28 days after being notified of the assessment, apply to the Authority for a reassessment of that level.

"(3A) Subject to subsection (3B), the Authority must, as soon as practicable after receiving an application, refer the application to a panel of 3 medical practitioners to reassess the level of permanent impairment.

"(3B) The Authority is not required to refer an application to a panel unless satisfied that the assessment was properly conducted and is in accordance with the guides prescribed for the purposes of the definition of 'permanent impairment' in section 70.

"(3C) The panel to whom an application is referred -

- (a) must include at least one medical practitioner appearing to the Authority to have specialist knowledge of the type of impairment in question; and
- (b) must not include the medical practitioner who originally assessed the level of impairment."; and
- (c) by omitting from subsection (4) "(3)" and "71(1)" and substituting "(3A)" and "71", respectively.

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8. EMPLOYER TO ASSIST WORKER TO FIND SUITABLE EMPLOYMENT

Section 75A of the Principal Act is amended by adding at the end of subsections (1) and (2) the following:

"Penalty: In the case of a body corporate — \$3,000.

In the case of a natural person — \$1000 or imprisonment for 3 months.

Default penalty: In the case of a body corporate — \$500.

In the case of a natural person — \$50."

9. EMPLOYER TO FORWARD INCIDENT REPORT AND CLAIM

Section 84 of the Principal Act is amended —

- (a) by renumbering the second subsection (4) as subsection (5); and
- (b) by omitting from the second subsection (4) "\$10,000", "\$2,000", "\$500" and "\$100" and substituting "\$15,000", "\$3,000", "\$750" and "\$150", respectively.

10. DECISION AS TO ELIGIBILITY FOR COMPENSATION

Section 85 of the Principal Act is amended —

- (a) by omitting subsection (8) and substituting the following:

"(8) At the same time as an employer notifies a claimant under this section that the employer disputes liability for compensation claimed, the employer must give the claimant a statement in the approved form —

- (a) setting out the reasons for the employer's decision to dispute liability;
- (b) to the effect that, if the claimant is aggrieved by the employer's decision to dispute liability, the claimant may apply to the Authority to have the dispute referred to mediation;
- (c) to the effect that, if mediation is unsuccessful in resolving the dispute, the claimant may commence a proceeding before the Court for the recovery of compensation to which the claimant believes he or she is entitled;

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- (d) to the effect that, if the claimant wishes to commence a proceeding, the claimant must lodge an application with the Court within 28 days after receiving a certificate issued by the mediator under section 103J(2); and
- (e) to the effect that the claimant may only commence the proceeding if an attempt has been made to resolve the dispute by mediation and that attempt has been unsuccessful."; and
- (b) by omitting from subsection (9) "worker" and substituting "claimant".

11. APPLICATION TO ALTER LEVEL OF WEEKLY PAYMENTS

Section 86 of the Principal Act is amended by adding at the end of subsection (2) the following:

"Penalty: In the case of a body corporate — \$3,000.

In the case of a natural person — \$1000 or imprisonment for 3 months.

Default penalty: In the case of a body corporate — \$500.

In the case of a natural person — \$50.".

12. REPEAL

Section 91B of the Principal Act is repealed.

13. WORK HEALTH COURT

Section 93 of the Principal Act is amended by omitting from subsection (3) "Judicial Registrar" and substituting "a Judicial Registrar".

14. POWERS OF COURT

Section 94 of the Principal Act is amended —

- (a) by omitting from subsection (1)(a) "claims;" and substituting "claims; and"; and
- (b) by omitting subsection (1)(aa).

15. NEW DIVISION HEADING

The heading to Division 3 of Part VI is omitted and the following substituted:

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"Division 3 — Managing Magistrate  
and Registrars".

16. REPEAL AND SUBSTITUTION

Section 100 of the Principal Act is repealed and the following substituted:

"99A. MANAGING MAGISTRATE

"The Chief Magistrate must appoint a magistrate to be the managing magistrate for the Court.

"100. REGISTRAR AND JUDICIAL REGISTRARS

"(1) The Chief Magistrate must appoint a person to be the Registrar of the Court.

"(2) The Chief Magistrate may appoint one or more persons to be Judicial Registrars of the Court."

17. NEW PART HEADING AND NEW DIVISION

Part VI of the Principal Act is amended by inserting after Division 3 the following:

"PART VIA — DISPUTE RESOLUTION

"Division 1 — Mediation

"103A. DEFINITIONS

"In this Division —

'claimant' means a person claiming or being paid compensation;

'conference' means a conference convened by a mediator under section 103C(3)(b);

'dispute' has the meaning given in section 103B;

'mediator' means a mediator appointed under section 103C(1);

'party' means a party to a mediation under section 103F(1);

'teleconferencing' means the use of telephone or television.



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### "103B. DISPUTES

"For the purposes of this Division, a dispute arises where a claimant is aggrieved by the decision of an employer —

- (a) to dispute liability for compensation claimed by the claimant;
- (b) to cancel or reduce compensation being paid to the claimant; or
- (c) relating to a matter or question incidental to or arising out of the claimant's claim for compensation.

### "103C. MEDIATORS

"(1) The Minister may appoint a person to be a mediator.

"(2) The function of a mediator is to promote the resolution of disputes between claimants, employers and employers' insurers.

"(3) For the purpose of promoting the resolution of a dispute, a mediator has power —

- (a) to conduct discussions with each party;
- (b) where it appears to the mediator likely to assist in the resolution of a dispute — to convene a conference and require the parties or any of them to attend;
- (c) to require a party to provide specified written information to the mediator or another party, being information on which the first-mentioned party relies (including a medical report or any other report);
- (d) to require that information to be provided within a specified time; and
- (e) to do any other things that are necessary or convenient to be done for the purpose of resolving the dispute.

"(4) In the performance of his or her function and in the exercise of his or her powers, a mediator must —

- (a) act promptly;
- (b) be impartial; and

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- (c) except to the extent necessary for the proper performance of that function or exercise of those powers, maintain confidentiality.

### "103D. CONDUCT OF MEDIATION

"(1) A claimant may apply to the Authority to have a dispute referred to mediation.

"(2) Within 7 days after receiving the application, the Authority must refer the dispute to a mediator.

"(3) Within 14 days after receiving a referral, a mediator must -

- (a) attempt to resolve the dispute;
- (b) advise the claimant and the employer's insurer of the outcome of the mediation; and
- (c) if the mediator has been unable to resolve the dispute - advise the parties of further proceedings that may be commenced and the time within which to commence them.

### "103E. RECOMMENDATIONS BY MEDIATOR

"The mediator may make recommendations to the parties in relation to the resolution of the dispute.

### "103F. PARTIES, REPRESENTATION AND ATTENDANCE

"(1) The parties to a mediation are -

- (a) the claimant;
- (b) the employer; and
- (c) the employer's insurer.

"(2) Subject to subsection (3), a party is not entitled to legal representation in the mediation.

"(3) The mediator may agree to a party being legally represented if satisfied that -

- (a) it is physically impracticable for the party to participate in the mediation in person; or
- (b) it would otherwise facilitate the conduct of the mediation.

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"(4) Where the mediator agrees to a party having legal representation, the mediator must notify the other parties of that agreement before taking a step or, if the mediation has commenced, a further step in the mediation.

"(5) A party who is not legally represented is entitled –

- (a) to be accompanied at a conference by another person who is not a lawyer; and
- (b) to consult with that person during the conference,

but is not entitled to be represented at the conference by that person.

"(6) With the agreement of the mediator, a party or his or her legal representative may attend a conference by teleconferencing if physical attendance is impracticable.

"103G. PARTIES TO PAY OWN COSTS

"Unless the Court orders otherwise, the parties must bear their own costs of the mediation.

"103H. OFFENCE

"A party must, in the absence of reasonable excuse, comply with a requirement of a mediator that the party –

- (a) attend a conference;
- (b) provide specified written information to the mediator or another party; or
- (c) provide that information within a specified time.

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,000.

"103J. PRE-CONDITION TO COURT PROCEEDINGS

"(1) A claimant is not entitled to commence proceedings under Division 2 in respect of a dispute unless there has been an attempt to resolve the dispute by mediation under this Division and that attempt has been unsuccessful.

"(2) At the conclusion of a mediation, the mediator must issue to each of the parties a certificate in the approved form –

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- (a) stating that mediation has taken place;
- (b) listing the written information provided to the mediator by the parties during the mediation;
- (c) setting out the recommendations (if any) of the mediator; and
- (d) stating what the outcome of the mediation was.

"103K. MEDIATION PROCEEDINGS PRIVILEGED

"Except as expressly provided otherwise by or under this Act, anything said, written or done in the course of mediation under this Division (including a certificate issued under section 103J(2)) is not admissible in any other proceedings under this Act.".

18. HEADING TO DIVISION 4 OF PART VI

The heading to Division 4 of Part VI of the Principal Act is amended by omitting "Division 4" and substituting "Division 2".

19. APPLICATIONS

Section 104 of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) Proceedings to which section 103J applies are to be commenced within 28 days after the claimant receives a certificate issued under section 103J(2).".

20. COURT LIST

Section 105 of the Principal Act is amended –

- (a) by omitting from subsection (1) "(1) Each Assistant Registrar" and substituting "The managing magistrate"; and
- (b) by omitting subsection (2).

21. REPEAL AND SUBSTITUTION

Sections 106 and 107 of the Principal Act are repealed and the following substituted:

"106. DIRECTIONS CONFERENCE

"Before proceeding to hear a matter in the Court list, the Court must hold a directions conference.

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### "107. INTERIM DETERMINATION

"(1) Subject to this section, the Court may make, vary or revoke an interim determination of a party's entitlement to compensation.

"(2) The making or refusal to make an interim determination is not to be taken to be a finding in respect of a party's entitlement to or liability for compensation.

"(3) A party is entitled to compensation for the period specified in the interim determination, being a period —

(a) commencing within 10 weeks before the determination is made; and

(b) ending within 12 weeks after the order is made.

"(4) The Court may only revoke an interim determination —

(a) on the making by the Court of a formal finding in respect of liability; or

(b) with the consent of the parties.

"(5) The Court may make more than one interim determination of a party's entitlement to compensation.

"(6) The Court may only make a further determination under subsection (5) if satisfied that —

(a) the party would suffer undue hardship if the further determination were not made; or

(b) the circumstances are otherwise exceptional.

"(7) Nothing in this section is to be taken to affect the power of the Court under this Part to order, at the time it finally determines a party's entitlement to compensation, the repayment of all or part of the amount paid under an interim determination."

### 22. COSTS

Section 110 of the Principal Act is amended by omitting all the words after "those efforts" and substituting ", including in particular the efforts made at the directions hearing and any conciliation conference".

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23. HEADING TO DIVISION 5 OF PART VI

The heading to Division 5 of Part VI of the Principal Act is amended by omitting "Division 5" and substituting "Division 3".

24. NEW DIVISION

Part VI of the Principal Act is amended by inserting after Division 5 the following:

*"Division 4 - Appeals from Registrar and Judicial Registrars*

"114A. APPEAL TO MAGISTRATE

"(1) Subject to subsection (2), a person affected by an order made or a thing done by the Registrar or a Judicial Registrar under this Act may appeal against the order or thing to a magistrate of the Court.

"(2) No appeal lies to a magistrate of the Court from the making, variation or revocation by the Registrar or a Judicial Registrar of an interim determination under section 107.

"(3) An appeal under subsection (1) is to be by way of a hearing *de novo*."

25. HEADING TO DIVISION 6 OF PART VI

The heading to Division 6 of Part VI of the Principal Act is amended by omitting "Division 6" and substituting "Division 5".

26. APPEALS

Section 116 of the Principal Act is amended -

(a) by omitting from subsection (1) all the words from and including "A party" to and including "the Court" (second occurring) and substituting "Subject to subsection (3), a party to a proceeding before a magistrate of the Court who is aggrieved by a decision or determination of the magistrate"; and

(b) by adding at the end the following:

"(3) A party may not appeal under subsection (1) until the proceeding in which the decision or determination was made has been finally determined by the Court."

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27. NEW SECTION

The Principal Act is amended by inserting after section 121 the following:

"121A. CONTRIBUTION TOWARDS ADMINISTRATION COSTS

"In addition to any other condition, an approval granted under section 119 or 120 or renewed under section 121 is subject to the condition that the approved insurer or self-insurer pay to the Territory, within the time determined by the Authority, the amount determined by the Authority as the insurer's or self-insurer's contribution towards -

- (a) the administration costs of the Court;
- (b) that part of the administration costs of the Supreme Court associated with proceedings under this Act; and
- (c) the costs incurred by the Authority in providing a mediation service."

28. REVOCATION OR SUSPENSION OF APPROVAL

Section 124 of the Principal Act is amended -

- (a) by inserting in subsection (1) "or suspend for the period specified in the notice" after "revoke";
- (b) by inserting in subsection (2) "or suspending" after "revoking";
- (c) by inserting in subsection (3) "or suspends" after "revokes"; and
- (d) by adding at the end the following:

"(5) For the purposes of this Act, an insurer or self-insurer whose approval is suspended under this section is not to be taken to be an approved insurer or self-insurer during the period of the suspension."

29. NEW SECTION

The Principal Act is amended by inserting after section 124 the following:

"124A. CIVIL PENALTIES

"(1) Where an approved insurer or self-insurer —

(a) contravenes or fails to comply with the approval; or

(b) contravenes or fails to comply with this Act,

in addition to or instead of revoking or suspending the approval, the Authority may, by notice in writing to the insurer or self-insurer, require the insurer or self-insurer to pay to the Territory the amount prescribed by the Regulations for the contravention or failure or that class of contravention or failure.

"(2) A notice under subsection (1) is to specify —

(a) the nature of the contravention or failure;

(b) the circumstances in which the contravention or failure occurred;

(c) the amount required to be paid; and

(d) the time for payment.

"(3) An amount payable under subsection (1) is a debt due to the Territory by the insurer or self-insurer.

"(4) This section applies despite any other penalty that may be or has been imposed under this Act on the insurer or self-insurer in respect of the contravention or failure."

30. COMPULSORY INSURANCE

Section 126 of the Principal Act is amended —

(a) by adding at the end of subsections (1) and (3) the following:

"Penalty: \$30,000.

Default penalty: \$2,000.";

(b) by adding at the end of subsection (4) the following:

"Penalty: \$15,000.";

(c) by omitting subsection (7) and substituting the following:



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"(7) An offence against subsection (1), (3) or (4) is a regulatory offence."; and

- (d) by omitting from subsection (8) "subsection (7) for failing to comply with subsection (1), the court may, in addition to a penalty imposed under subsection (7)" and substituting "subsection (1), the court may, in addition to a penalty imposed under subsection (1)".

31. EFFECT OF SERVICE OF CLAIM ON NOMINAL INSURER

Section 170 of the Principal Act is amended by omitting from subsection (2)(b) "and Part VI" and substituting "or Part VI or VIA".

32. CONTRACTING OUT

Section 186A of the Principal Act is amended —

- (a) by omitting from subsection (3) "\$5,000" and substituting "\$100,000"; and
- (b) by adding at the end the following:

"(4) A reference in this section to a contract or agreement is not to be taken to include a reference to —

- (a) a proposed commutation under section 74; or
- (b) an agreement under section 108."

33. REGULATIONS

Section 187 of the Principal Act is amended —

- (a) by omitting subsection (1)(ha) and substituting the following:

"(ha) relating to the procedure for the mediation of disputes;"; and
- (b) by omitting subsection (1)(k).

34. REVISION OF PENALTIES

The Principal Act is amended as set out in the Schedule.

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35. SAVING: MEDIATION OFFICERS

A person who immediately before the day on which this Act comes into operation was a mediation officer under section 91B(1) of the Principal Act is, on and after that day, to be taken to be a mediator appointed under section 103C(1) of the Principal Act as amended by this Act.

SCHEDULE

Section 34

Provision	Amendment	
	omit	substitute
Section 88(1)	"\$10,000"	"\$15,000"
	"\$2,000"	"\$3,000"
	"\$500"	"\$750"
	"\$100"	"\$150"
Section 90	"\$1,000"	"\$3,000"
Section 125(1)	"Penalty: \$25,000."	"Penalty: \$50,000. Default penalty: \$2,000."
Section 130 (2)	"\$2,000"	"\$3,000"
Section 130 (5)	"\$5,000"	"\$10,000"
Section 130 (7)	"\$200"	"\$2,000"
Section 164 (7)	"\$1,000"	"\$10,000"
Section 171 (4)	"\$5,000"	"\$10,000"
Section 175 (2)	"\$1,000"	"\$1,500"

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Section 178

"\$2,000"

"\$3,000"

"\$500,"

"\$1,000"

"\$200"

"\$500"

