

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AMENDMENT BILL 1997

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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:

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### 1. SHORT TITLE

This Act may be cited as the *Work Health Amendment Act 1997*.

### 2. COMMENCEMENT

(1) Section 37 is deemed to have come into operation on 15 October 1991.

(2) Section 40 comes into operation on the commencement of section 10 of the *Work Health Amendment Act 1995*.

(3) The remaining provisions of this Act come into operation on a day, or respective days, fixed by the Administrator by notice in the *Gazette*.

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3. PRINCIPAL ACT

The Work Health Act is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended --

- (a) by inserting after the definition of "approved" in subsection (1) the following:

" 'approved form' means a form approved by the Authority for the purposes of the provision in which the expression occurs;";

- (b) by omitting from the definition of "Registrar" in subsection (1) "the Judicial Registrar" and substituting "a Judicial Registrar";

- (c) by omitting the definition of "seaman" in subsection (1) and substituting the following:

" 'sailor' means a person employed or engaged in any capacity on board a ship;";

- (d) by omitting from paragraph (a) of the definition of "worker" in subsection (1) "sections 10(d), (g) and (r) and 187 and Part IV" and substituting "the provisions of this Act relating to occupational health and safety";

- (e) by omitting from paragraph (b) of the definition of "worker" in subsection (1) "all other purposes" and substituting "the purposes of the provisions of this Act relating to compensation and rehabilitation"; and

- (f) by omitting from subsections (7) and (8) "or training exercises" and substituting ", training exercises or other activities".

5. OUT OF OR IN COURSE OF EMPLOYMENT

Section 4 of the Principal Act is amended by omitting subsection (8) and substituting the following:

"(8) For the purposes of this section, the employment of a worker is not to be taken to have materially contributed to --

- (a) an injury or disease; or

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- (b) an aggravation, acceleration or exacerbation of a disease,

unless the employment was the real, proximate or effective cause of the injury, disease, aggravation, acceleration or exacerbation."

6. FUNCTIONS OF AUTHORITY

Section 10 of the Principal Act is amended by inserting after "are" (first occurring) "to administer and enforce this Act and, in particular".

7. OBTAINING OF INFORMATION BY AUTHORITY

Section 14 of the Principal Act is amended -

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

"(1) The Authority may, by notice in writing, require a person to provide information that the Authority requires for the performance of its functions under this Act.

"(1A) A notice under subsection (1) is to specify -

- (a) the information required;
- (b) the form in which the information is to be provided; and
- (c) the time within which the information is to be provided."; and
- (b) by omitting the penalty and default penalty provisions at the foot of subsection (2) and substituting the following:

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

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

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

In the case of a natural person - \$100."

8. REPEAL

Sections 16 and 17 of the Principal Act are repealed.

9. APPLICATION TO SAILORS

Section 51 of the Principal Act is amended -

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- (a) by inserting after subsection (1) the following:

"(1A) This Part applies in relation to an injury to a sailor on a Territory ship.";

- (b) by omitting from subsection (2) all the words from and including "This Part" to and including "in the Territory," (first occurring) and substituting "The application of this Part in relation to an injury to a sailor is";
- (c) by omitting from subsection (2)(a), (c), (d), (e) and (f) "seaman" and substituting "sailor"; and
- (d) by omitting from subsection (3)(b) "seamen" and substituting "sailors".

10. COMPENSATION IN RESPECT OF INJURIES

Section 53 of the Principal Act is amended -

- (a) by omitting "Subject" and substituting "(1) Subject"; and
- (b) by adding at the end the following:

"(2) Subject to this Part, where a worker has come or may have come into contact with bodily fluid from another person in the course of his or her employment, there is payable by the worker's employer to the worker the costs reasonably incurred by the worker as a result of that contact for medical tests."

11. REPEAL AND SUBSTITUTION

Section 54 of the Principal Act is repealed and the following substituted:

"54. ENTITLEMENT TO COMPENSATION UNDER OTHER LAWS

"(1) This section applies where, as a result of an injury caused to a worker, the worker or his or her dependants -

- (a) are entitled to -
- (i) compensation or damages under an applicable law; or
- (ii) a benefit from a superannuation scheme established under an applicable law, other than a benefit financed by an employer's contributions made under an industrial

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award or agreement or by the worker's contributions; and

- (b) would, but for this section, be entitled to compensation under this Part.

"(2) A person is not entitled to compensation under this Part if, in respect of the injury -

- (a) compensation or damages have been paid or recovered under the applicable law; or
- (b) an award of compensation or judgment for damages has been made, given or entered under the applicable law.

"(3) Where, in respect of the injury -

- (a) a person receives compensation under this Part; and
- (b) the person -
  - (i) is paid or recovers compensation or damages under the applicable law;
  - (ii) obtains an award of compensation or judgment for damages under the applicable law;
  - (iii) accepts a payment into court, or settles or compromises a claim, under the applicable law; or
  - (iv) is paid or is entitled to receive a benefit from a superannuation scheme established under the applicable law (other than a benefit financed by an employer's contributions made under an industrial award or agreement or by the worker's contributions) because of incapacity resulting from the injury,

the worker's employer is entitled to recover from that person the amount determined in pursuance of subsection (4).

"(4) The amount entitled to be recovered under subsection (3) is the amount determined by a Fellow of the Institute of Actuaries of Australia to be -

- (a) the discounted present value of compensation paid or payable to the person under this Part; or

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- (b) equal to the amount of the compensation, damages, payment, settlement, compromise or benefit paid or payable to the person under the applicable law,

whichever is the lesser.

"(5) Where —

- (a) compensation or damages are received or are to be received by a person under an applicable law in respect of an injury to a worker; and
- (b) a claim for compensation under this Part is made by a person in respect of an injury to the same worker,

unless the contrary is proved, it is to be presumed that the claim for compensation under this Part is in respect of the same injury as the compensation or damages received or to be received under the applicable law.

"(6) In this section, 'applicable law' means —

- (a) a law of the Territory other than this Act;
- (b) a law of the Commonwealth; or
- (c) a law in force in a place outside the Territory."

12. NEW SECTION

The Principal Act is amended by inserting after section 60 in Division 2 of Part V the following:

"61. SETTLING OF JOURNEY CLAIMS

"(1) For the purposes of determining whether an injury to a worker sustained in an accident arose out of or in the course of the worker's employment, regard is to be had to the document called 'Guidelines for the Settling of Journey Claims' published by or on behalf of the Authority.

"(2) Where —

- (a) despite having regard to the document referred to in subsection (1), it remains in dispute as to whether compensation is payable under this Act or the MAC Act; and
- (b) but for this Act, compensation would be payable under the MAC Act,



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compensation is payable under the MAC Act until it is determined that compensation is payable under this Act.

"(3) Where -

- (a) compensation has been paid under the MAC Act in pursuance of subsection (2); and
- (b) it is determined that compensation should have been paid under this Act,

the Territory Insurance Office -

- (c) is entitled to recover the amount paid under the MAC Act from the worker's employer; and
- (d) may claim compensation under this Act on behalf of the person to whom compensation should have been paid under this Act.

"(4) For the purposes of subsection (3)(d), anything required or permitted to be done under this Act by a worker in respect of a claim for compensation is to be taken to be required or permitted to be done by the Territory Insurance Office.

"(5) In this section -

'accident' has the same meaning as in the MAC Act;

'MAC Act' means the *Motor Accidents (Compensation) Act*;

'Territory Insurance Office' means the Territory Insurance Office established by the *Territory Insurance Office Act*."

13. COMPENSATION DURING FIRST 26 WEEKS OF INCAPACITY

Section 64 of the Principal Act is amended -

- (a) by omitting from subsection (1) "section 66" and substituting "sections 65A and 66"; and
- (b) by inserting in subsection (1) "immediately before the date on which he or she first became entitled to compensation" after "earnings".

14. NEW SECTION

The Principal Act is amended by inserting after section 65 the following:

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"65A. COMPENSATION NOT PAYABLE WHILE WORKER IN PRISON

"A worker is not entitled to be paid compensation under section 64 or 65 during any period the worker is serving a term of actual imprisonment."

15. CANCELLATION OR REDUCTION OF COMPENSATION

Section 69 of the Principal Act is amended by omitting from subsection (1)(b) "prescribed" and substituting "approved".

16. FORM OF CLAIM

Section 82 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "prescribed" and substituting "approved";
- (b) by omitting from subsection (1)(b) "prescribed certificate" and substituting "certificate in a form approved by the Authority";
- (c) by omitting from subsection (2) "a claim for compensation and a medical certificate under subsection (1)(b)" and substituting "the claim and certificate";
- (d) by omitting from subsection (3) "for compensation or a medical certificate under section (1)(b)" and substituting "or certificate"; and
- (e) by omitting from subsection (4) "required to do so in the prescribed form referred to in subsection (1)(a)" and substituting "the claim form specifies that the worker is required to authorise the release of that information".

17. EMPLOYER TO FORWARD INCIDENT REPORT AND CLAIM

Section 84 of the Principal Act is amended by omitting from subsection (1) "prescribed form of claim" and substituting "claim form".

18. DECISION AS TO ELIGIBILITY FOR COMPENSATION

Section 85 of the Principal Act is amended -

- (a) by omitting from subsection (4)(a) "28 days" and substituting "56 days";
- (b) by omitting from subsection (6)(b) and (c) "prescribed" and substituting "claim"; and

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- (c) by omitting from subsection (8) "prescribed" and substituting "approved".

19. NEW SECTION

The Principal Act is amended by inserting after section 85 the following:

"85A. WORKER MAY REQUEST INFORMATION ABOUT WEEKLY EARNINGS

"(1) A worker may, for the purposes of determining his or her entitlement to compensation from an employer, request the employer to provide him or her with information about the worker's weekly earnings.

"(2) An employer must not, without reasonable excuse, fail to comply with a request under subsection (1).

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

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

20. REPEAL AND SUBSTITUTION

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

"87. FAILURE TO DECIDE WITHIN SPECIFIED TIME

"If an employer fails to notify a person of his or her decision within the time specified in section 85(1), the employer is deemed to have accepted liability for compensation payable under Subdivisions B and D of Division 3 until the expiry of 14 days after the day on which the employer notifies the person of his or her decision in pursuance of that section."

21. WEEKLY PAYMENTS

Section 88 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following:

"(3) Where a weekly payment is made by cheque or other monetary instrument (whether in accordance with subsection (2) or otherwise), the person liable to make the payment is not to be taken to have complied with subsection (1) unless the cheque or other instrument is received by the worker in sufficient time for the worker to be able to deposit and draw on the cheque or other instrument within the relevant period specified in subsection (1)."

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22. NEW SECTION

The Principal Act is amended by inserting after section 90 the following:

"90A. EMPLOYER MAY REQUEST INFORMATION ABOUT EARNINGS

"(1) Where a worker who has been receiving weekly payments for total incapacity returns to work with an employer other than the employer in whose employment the injury occurred, the employer in whose employment the injury occurred may request the worker to provide him or her with information about the worker's earnings from the employer with whom the worker returned to work.

"(2) A worker must not, without reasonable excuse, fail to comply with a request under subsection (1).

Penalty: \$2,000."

23. REGISTRAR AND JUDICIAL REGISTRARS

Section 100 of the Principal Act is amended by omitting "a person to be the Judicial Registrar" and substituting "one or more persons to be Judicial Registrars".

24. REPEAL AND SUBSTITUTION

Section 118 of the Principal Act is repealed and the following substituted:

"118. APPLICATION OF PART

"This Part does not apply in relation to the Territory."

25. PERIOD AND RENEWAL OF APPROVAL

Section 121 of the Principal Act is amended by omitting from subsection (1) ", not exceeding 12 months,".

26. LIABILITY AS BETWEEN INSURERS

Section 126A of the Principal Act is amended by adding at the end the following:

"(4) In this section, 'approved insurer' includes -

(a) a self-insurer; and

(b) the Territory."

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27. REPEAL AND SUBSTITUTION

Section 127 of the Principal Act is repealed and the following substituted:

"127. SUBCONTRACTING

"(1) Where a person (in this section called a 'principal contractor') contracts with another person (in this section called a '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 liable to pay compensation under this Act to a worker employed by the subcontractor in the execution of that work as if the worker has been employed by the principal contractor.

"(2) Where a claim for compensation from a principal contractor is made under this Act by a worker employed by a subcontractor -

- (a) a reference in this Act to the worker's employer is to be read as including a reference to the principal contractor; and
- (b) a reference in this Act to the worker's earnings is to be read as a reference to the worker's earnings from the subcontractor.

"(3) A principal contractor who is liable to pay compensation under this section is entitled to be indemnified by any person who is liable to pay compensation to the worker other than by virtue of this section.

"(4) Nothing in subsection (3) is to be construed as requiring the Nominal Insurer to indemnify a principal contractor.

"(5) Nothing in this section is to be construed as preventing a worker from recovering compensation from the subcontractor instead of the principal contractor."

28. STATEMENT OF PAYMENTS TO WORKERS TO BE SUPPLIED TO INSURER

Section 130 of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) Where -

- (a) the Authority approves a form in or to the effect of which a statement referred to in subsection (1) is to be supplied; or

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- (b) the Regulations prescribe the manner in which the statement is to be verified,

a statement is not sufficient for the purposes of subsection (1) unless it is supplied in that form or verified in that manner."

29. HEADING TO DIVISION 4 OF PART VII

The heading to Division 4 of Part VII of the Principal Act is amended by omitting "Premiums" and substituting "Scheme".

30. DEFINITIONS

Section 140 of the Principal Act is amended by omitting "Premiums" from the definition of "Committee" and substituting "Scheme".

31. SCHEME MONITORING COMMITTEE

Section 141 of the Principal Act is amended by omitting from subsection (1) "Premiums" and substituting "Scheme".

32. FUNCTIONS AND POWERS OF COMMITTEE

Section 145 of the Principal Act is amended by omitting subsection (1)(a) and substituting the following:

- "(a) monitor the viability and performance of the workers compensation scheme;
- (aa) monitor premium rates offered for workers compensation in the Territory;"

33. ESTABLISHMENT AND PURPOSE OF NOMINAL INSURER

Section 150 of the Principal Act is amended by inserting after subsection (1) the following:

- "(1A) The purposes of the Nominal Insurer are to -
- (a) to protect injured workers whose employers do not have workers compensation insurance; and
- (b) to protect employers and injured workers where insurers default in the payment of compensation under workers compensation insurance."

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34. COMPOSITION OF NOMINAL INSURER

Section 151 of the Principal Act is amended by omitting from paragraph (b) "Public Service Act" and substituting "Public Sector Employment and Management Act".

35. ALTERNATE MEMBER

Section 152 of the Principal Act is amended by omitting from subsection (1) "Public Service Act" and substituting "Public Sector Employment and Management Act".

36. FORM OF CLAIM AGAINST NOMINAL INSURER

Section 168 of the Principal Act is amended -

- (a) by omitting from subsection (1)(a) "prescribed" and substituting "approved";
- (b) by omitting from subsection (1)(b) "prescribed certificate" and substituting "certificate in a form approved by the Authority";
- (c) by omitting from subsection (2) "a claim for compensation and a prescribed certificate under subsection (1)(b)" and substituting "the claim and certificate"; and
- (d) by omitting from subsection (3) "for compensation or a prescribed certificate under subsection (1)(b)" and substituting "or certificate".

37. CLAIM, &c., BEFORE OR AFTER COMMENCEMENT OF ACT

Section 189 of the Principal Act is amended by adding at the end the following:

"(4) Where, but for subsection (2), a person would have been entitled to weekly incapacity benefits under this Act in respect of an injury that occurred before 1 January 1987 -

- (a) the person is entitled to weekly incapacity benefits payable at the rate determined under section 65(7) of this Act as in force immediately before 15 October 1991 multiplied by the average weekly earnings at the date of payment and divided by the average weekly earnings at 15 October 1991; and
- (b) subsection (1) has no effect."

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38. FORMAL AMENDMENTS RELATING TO GENDER

- (1) The Principal Act is amended by —
  - (a) by inserting "or she" after "he" (wherever occurring);
  - (b) by inserting "or her" after "his" (wherever occurring, other than where it occurs in section 65(4)(a)(ii));
  - (c) by inserting "or her" after "him" (wherever occurring); and
  - (d) by inserting "or herself" after "himself" (wherever occurring).

(2) Subsection (1) does not apply to a provision in which —

- (a) "he" is followed by "or she";
- (b) "his" is followed by "or her";
- (c) "him" is followed by "or her"; or
- (d) "himself" is followed by "or herself".

(3) Section 65 of the Principal Act is amended by inserting in subsection (4)(a)(ii) "or hers" after "his".

(4) The Principal Act is amended by omitting "Chairman" (wherever occurring) and substituting "Chairperson".

39. APPLICATION: EXTENSION OF PERIOD OF DEFERRAL

Section 85(4) of the Principal Act as amended by this Act applies in relation to a deferral notified by an employer to a person on or after the day on which section 18 of this Act comes into operation.

40. CONSEQUENTIAL AMENDMENTS

(1) Section 53 of the Principal Act as amended by this Act is amended by inserting in subsection (2) "of the Territory" after "a worker".

(2) Section 10 of the *Work Health Amendment Act 1995* is amended —

- (a) by inserting in paragraph (a) "from subsection (1)" after "omitting";



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- (b) by omitting from paragraph (b) "(2) A" and substituting "(3) A";
  - (c) by omitting from paragraph (b) "(3) If" and substituting "(4) If";
  - (d) by inserting in paragraph (b) "or her" after "his";
  - (e) by omitting from paragraph (b) "subsection (4)" and substituting "subsection (5)";
  - (f) by omitting from paragraph (b) "(4) For" and substituting "(5) For";
  - (g) by omitting from paragraph (b) "subsection (3)" and substituting "subsection (4)";
  - (h) by omitting from paragraph (b) "(5) A" and substituting "(6) A";
  - (j) by inserting in paragraph (b) "or she" after "he"; and
  - (k) by omitting from paragraph (b) "(6) An" and substituting "(7) An".
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