

Serial 248
Work Health Amendment Bill 2004
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Work Health Act*

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NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Work Health Act*

[Assented to 2004]

[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Work Health Amendment Act 2004*.

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 paragraph (b) of the definition of "self-insurer" in subsection (1) and substituting the following:

"(b) except in Part VII, subject to section 118(2) – the Territory;"

5. Interpretation for Part V

Section 49 of the Principal Act is amended –

- (a) by omitting paragraph (a) of the definition of "medical, surgical and rehabilitation treatment" in subsection (1) and substituting the following:

"(a) an attendance, examination or treatment on or of the worker by –

- (i) a person registered under the *Health Practitioners Act* in the category of health care practice of medicine, dentistry, Aboriginal health work, chiropractic, occupational therapy, osteopathy, physiotherapy or psychology;
- (ii) a person registered under a corresponding law of a State or another Territory of the Commonwealth in one of those categories of health care practice; or
- (iii) if there is no such corresponding law – a person providing an attendance, examination or treatment which, if provided or carried out at the place where the person normally provides services, would be recognised for compensation purposes under a law providing for compensation to injured workers in that place;"

- (b) by omitting from paragraph (f) of the definition of "medical, surgical and rehabilitation treatment" in subsection (1) all the words after "person" and substituting the following:

"registered under the *Health Practitioners Act* in the category of health care practice of pharmacy or under a corresponding law of a State or another Territory of the Commonwealth in that category of health care practice"; and

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

"(1A) For the purposes of the definition of 'normal weekly earnings' in subsection (1), a worker's remuneration does not include the following:

- (a) superannuation contributions made by the employer;
- (b) non-monetary benefits provided by the employer, such as accommodation, food, electricity and motor vehicle.

"(1B) Subsection (1A) is taken to have come into operation on 1 January 1987.

Note: Section 195 contains transitional matters specifying when subsection (1A) does not affect the calculation of compensation by reference to remuneration otherwise excluded by that subsection.

6. Cancellation or reduction of compensation

Section 69 of the Principal Act is amended by omitting from subsection (1)(b)(ii) "may apply" and substituting "may, within 90 days after receiving the statement, apply".

7. New section 75AA

The Principal Act is amended by inserting after section 75A the following:

"75AA. Worker to seek suitable employment

"(1) This section applies to an injured worker –

- (a) to whom section 75A relates; and
- (b) whose employer is unable to provide the worker with suitable employment.

"(2) In addition to complying with other obligations imposed on the worker under this Division, the worker must take reasonable steps to undertake suitable employment (either with an alternative employer or, if practicable, by self-employment).

"(3) This section does not relieve the employer of the obligation imposed by section 75A(2)."

8. Form of claim

Section 82 of the Principal Act is amended –

- (a) by inserting in subsection (4) "and the employer's insurer" after "employer"; and
- (b) by inserting after subsection (5) the following:

"(6) A certificate referred to in subsection (1)(b) has effect only for the prescribed period."

9. Decision as to eligibility for compensation

Section 85 of the Principal Act is amended by omitting from subsection (8)(b) "may apply" and substituting "may, within 90 days after receiving the statement, apply".

10. New section 90B

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

"90B. Initial medical opinion

"(1) This section applies in relation to an employer after a claim for compensation is made under section 82, whether the employer decides under section 85 to accept, defer accepting, or dispute liability for the claim.

"(2) If the employer requires a medical opinion about the injury to which the claim relates, the employer must initially request the opinion of a medical practitioner who is treating or has treated the worker for the injury.

"(3) The request must be in writing and must include the following information:

- (a) the medical opinion is required by the employer within 14 days after the treating medical practitioner receives the request;
- (b) if the opinion is not provided to the employer within that time, the employer may seek the opinion of another medical practitioner.

"(4) If the treating medical practitioner does not provide the medical opinion to the employer within the period specified in the request, the employer may seek the medical opinion of another medical practitioner.

"(5) This section does not prevent the employer from obtaining a medical opinion from any medical practitioner after the treating medical practitioner has provided the opinion as requested."

11. Medical examinations

Section 91 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) Before each appointment for an examination under subsection (1), the employer must notify the medical practitioner who is treating the worker for the injury to which the claim relates of the name and contact details of the medical practitioner who will be examining the worker.

"(1B) The employer must give the worker's treating medical practitioner a copy of the report of the medical practitioner who examined the worker."

12. Application for and conduct of mediation

Section 103D of the Principal Act is amended –

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

"(1A) If the dispute relates to a decision specified in section 103B(a) or (b), the claimant must apply under subsection (1) within 90 days of receiving the statement referred to in section 85(8) or 69(1)(b) respectively."; and

(b) by inserting after subsection (3) the following:

"(4) A claimant who fails to apply for mediation within the period referred to in subsection (1A) may apply to the Court under section 104(1) for an extension of the period.

"(5) The Court may extend the period if it is satisfied the failure to apply within the period was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause."

13. Heading to Part IX

The heading to Part IX of the Principal Act is amended by omitting ", SAVINGS AND TRANSITIONAL" and substituting "AND TRANSITIONAL MATTERS FOR *WORK HEALTH ACT 1986*".

14. New Part X

The Principal Act is amended by inserting after Part IX the following:

"PART X – TRANSITIONAL MATTERS FOR *WORK HEALTH AMENDMENT ACT 2004*

"194. Definition

"In this Schedule –

'commencement date' means the commencement date of the *Work Health Amendment Act 2004*.

"195. Calculation of normal weekly earnings

"(1) Section 49(1A) does not affect the following compensation, the calculation of which involved the calculation of normal weekly earnings by reference to remuneration that included a contribution or benefit referred to in section 49(1A):

(a) compensation paid under section 64 or 65 before the commencement date;

- (b) compensation payable under section 64 or 65 in respect of a period before the commencement date in accordance with an order of the Court or Supreme Court made before the commencement date.

"(2) To avoid doubt, section 49(1A) applies in relation to compensation under section 64 or 65 that is, on the commencement date, the subject of any of the following:

- (a) a dispute to which Part VIA, Division 1 applies;
- (b) proceedings under Part VIA, Division 2;
- (c) an appeal, review or special case being considered under Part VIA, Division 3, 4 or 5;
- (d) a commutation under section 74 not yet authorised by the Court.

"196. Worker to seek suitable employment

"Section 75AA applies in relation to an injured worker even though the worker's employer first became liable to pay compensation to the worker before the commencement date.

"197. Limitation of time for application for mediation

"Section 103D(1A) applies only in relation to a claimant who, after the commencement date, receives a statement containing the information referred to in section 69(1)(b)(ii) or 85(8)(b) as amended by the *Work Health Amendment Act 2004*."
