

NORTHERN TERRITORY OF AUSTRALIA
WORK HEALTH AMENDMENT BILL (No. 2) 1991

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Work Health Act*

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 *Work Health Amendment Act (No. 2) 1991*.

2. COMMENCEMENT

This Act shall come into operation on a date to be 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 -

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

"'P.A.Y.E. taxpayer', in relation to a worker, means that his employer makes deductions from money paid to the worker for work performed or service provided to the employer in accordance with Division 2 of Part VI of the *Income Tax Assessment Act 1936* of the Commonwealth, and includes a worker in respect of whom such deductions are not made by his employer but only because -

- (a) of the shortness of time during which the worker has been in the employment of his employer; or

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- (b) having regard to the amount of money paid to the worker, his employer is not required to make such deductions under that Division;"
- (b) by omitting the definition of "worker" and substituting the following:

"'worker' means a natural person -

- (a) who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person and who is a P.A.Y.E taxpayer;
- (b) who is a person, or a member of a class of persons, prescribed for the purposes of this definition;
- (c) subject to subsections (7) and (8), who is employed in voluntary work and who receives in relation to that work, if anything, nothing more than his reasonable travelling, accommodation or other out-of-pocket expenses; or
- (d) who is a person referred to in subsection (2) or (3),

but does not include a person -

- (e) who is employed in the service of the Commonwealth;
 - (f) who is a person, or a member of a class of persons, prescribed for the purposes of this definition; and
 - (g) who is a person referred to in subsection (10);" and
- (c) by omitting subsections (4), (5), (6), (8A) and (9).

5. NEW DIVISION

The Principal Act is amended by inserting after section 44 the following:

"Division 4A - Health and Safety Committees

"44A. HEALTH AND SAFETY COMMITTEES

"(1) An employer who employs more than 20 workers at a workplace shall, if requested by a majority of those

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workers, establish a health and safety committee for that workplace.

"(2) An employer shall establish a health and safety committee not later than 3 months after being requested to do so under subsection (1).

"44B. COMPOSITION OF HEALTH AND SAFETY COMMITTEES

"(1) A health and safety committee for a workplace shall consist of -

- (a) workers working at the workplace elected by the workers working at the workplace; and
- (b) persons appointed by the employer of the workers.

"(2) Subject to this section, the number of workers to be elected or persons to be appointed for the purposes of this section shall be as agreed between the employer and the workers.

"(3) Not less than half of the members of a health and safety committee shall be workers elected by the workers at the workplace.

"44C. FUNCTIONS OF HEALTH AND SAFETY COMMITTEES

"The functions of a health and safety committee are -

- (a) to facilitate consultation and co-operation between the employer and workers working at the workplace in initiating, developing and implementing measures designed to ensure the health and safety of the workers at the workplace;
- (b) to keep itself informed about standards relating to health and safety generally recommended or prevailing in workplaces of a comparable nature, and to review and make recommendations to the employer on rules and procedures at the workplace relating to the health and safety of the workers;
- (c) to recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures at the workplace relating to the health and safety of the workers;
- (d) to keep, in an accessible place and form, such information as is provided under this Act and by the employer regarding the hazards to workers that arise or may arise at the workplace;

- (e) to consider and make recommendations relating to changes to be made at the workplace that may reasonably be expected to affect the health and safety of the workers;
- (f) to consider and make recommendations relating to training and education in, and promotion of, health and safety at the workplace;
- (g) to consider, and make recommendations relating to changes to be made at the workplace following an accident or dangerous occurrence; and
- (h) to perform such other functions as may be prescribed, or given to the committee, with its consent, by an employer.

"44D. INSPECTION OF WORKPLACE

"A person nominated by a health and safety committee may inspect the workplace or any part of the workplace for which the committee is established -

- (a) at such times as are agreed with the employer; or
- (b) where the workplace or any part of it has not been inspected in the preceding 30 days, at any time on giving reasonable notice to the employer.

"44E. MEETINGS

"(1) The members of a health and safety committee shall elect one of the members to be the Chairman.

"(2) Subject to subsection (3), a health and safety committee may determine its own procedures.

"(3) A health and safety committee shall meet at intervals, not longer than 3 months, or at more frequent intervals as approved by the employer.

"44F. DUTIES OF EMPLOYERS IN RELATION TO HEALTH AND SAFETY COMMITTEES

"Where there is a health and safety committee at a workplace, the employer shall -

- (a) make available to the committee such information as the employer has, or could reasonably be expected to have, relating to -
 - (i) hazards to persons that arise or may arise at the workplace;

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- (ii) so far as it is relevant to the hazards referred to in subparagraph (i), the plant and substances used, and the systems of work, at the workplace; and
- (iii) the health and safety of workers at the workplace;
- (b) consult with the health and safety committee on changes proposed to be made at the workplace which may reasonably be expected to affect the health or safety of workers at the workplace;
- (c) where an accident or dangerous occurrence occurs at the workplace, ensure that the committee is notified as soon as possible;
- (d) provide the committee with reasonable facilities and assistance for the purposes of the performance of its functions under this Act; and
- (e) permit members of the committee to carry out their functions under this Act and to participate in relevant courses of training relating to health and safety of workers.

"44G. EXEMPTION FROM APPLICATION OF DIVISION

"The Authority may, subject to such conditions as it thinks fit -

- (a) exempt an employer from compliance with this Division, in whole or in part; or
- (b) vary compliance with this Division, in whole or in part;

if it is satisfied that the employer has effected a health and safety management policy which, in the opinion of the Authority, satisfies the intent of this Division."

6. DISCRIMINATION AGAINST WORKERS, &c.

Section 45 of the Principal Act is amended -

- (a) by omitting from paragraph (c) "an officer; or" and substituting "an officer;"
- (b) by omitting from paragraph (d) "an officer." and substituting "an officer; or"; and
- (c) by adding at the end the following:
"(e) ceases work under section 32(1)."

7. REPEAL

Sections 47 and 48 of the Principal Act are repealed.

8. INTERPRETATION

Section 49 of the Principal Act is amended -

- (a) by inserting after the definition of "ordinary time rate of pay" the following:

"'Panel' means the Medical Review Panel established by section 91A;"; and

- (b) by omitting the definition of "rehabilitation counsellor".

9. REPEAL

Section 50 of the Principal Act is repealed.

10. ENTITLEMENT TO OTHER COMPENSATION

Section 54 of the Principal Act is amended -

- (a) by omitting from subsection (1) "means" and substituting "includes"; and

- (b) by inserting in subsection (2) after "under another law" the words "or an entitlement to a benefit from a superannuation scheme established under another law (not being a benefit financed by an employer's contributions made under an industrial award or agreement, or by the worker's contributions)".

11. COMPENSATION NOT PAYABLE IN CERTAIN CIRCUMSTANCES

Section 57 of the Principal Act is amended by adding at the end the following:

"(3) Where a worker is injured outside the Territory the worker shall, for the purposes of subsection (2)(a), be a resident of the Territory, if, at the time of the injury, the worker has retained in the Territory his primary dwelling-house."

12. REPEAL

Sections 58, 59, 61 and 67 of the Principal Act are repealed.

13. ASSESSMENT OF MOST PROFITABLE EMPLOYMENT

Section 68 of the Principal Act is amended by omitting "section 67(3)" and substituting "section 75B(3)".

14. REPEAL AND SUBSTITUTION

Section 69 of the Principal Act is repealed and the following substituted:

"69. CANCELLATION OR REDUCTION OF COMPENSATION

"(1) Subject to this Subdivision, an amount of compensation under this Subdivision shall not be cancelled or reduced unless the worker to whom it is payable has been given -

- (a) 14 days notice of the intention to cancel or reduce the compensation and, where the compensation is to be reduced, the amount to which it is to be reduced; and
- (b) a statement in the prescribed form setting out the reasons for the proposed cancellation or reduction and indicating that the worker has a right to appeal against the decision to cancel or reduce the compensation.

"(2) Subsection (1) does not apply where -

- (a) the person receiving the compensation returns to work or dies;
- (b) the prescribed certificate referred to in section 82 specifies that the person receiving the compensation is fit for work on a particular date, being not longer than 4 weeks after the date of the injury in respect of which the claim was made, and the person fails to return to work on that date or to provide his employer on or before that date with another medical certificate as to his incapacity for work;
- (c) the payments of compensation were obtained by fraud of the person receiving them or by other unlawful means; or
- (d) the Court orders the cancellation or reduction of the compensation.

"(3) Where compensation is to be cancelled for the reason that the worker to whom it is paid has ceased to be incapacitated for work, the statement under subsection (1) shall be accompanied by the medical certificate of the medical practitioner certifying that the person has ceased to be incapacitated for work."

15. HEADING TO DIVISION 4 OF PART V

The heading to Division 4 of Part V of the Principal Act is amended by omitting "*Other Rehabilitation*" and substituting "*Rehabilitation and other Compensation*".

16. REPEAL AND SUBSTITUTION

Section 75 of the Principal Act is repealed and the following substituted:

"75. PURPOSE

"(1) The purpose of this Division is to ensure the rehabilitation of an injured worker following an injury.

"(2) For the purposes of subsection (1), 'rehabilitation' means the process necessary to ensure, as far as is practicable, having regard to community standards from time to time, that an injured worker is restored to the same physical, economic and social condition in which the worker was before suffering the relevant injury.

"75A. EMPLOYER TO ENDEAVOUR TO FIND OR ASSIST INJURED WORKER TO FIND SUITABLE EMPLOYMENT, &c.

"An employer liable under this Part to compensate an injured worker shall -

- (a) take all reasonable steps to provide the injured worker with suitable employment or, if unable to do so, to find suitable employment with another employer; and
- (b) so far as is practicable, participate in efforts to retrain the worker.

"75B. WORKER TO UNDERTAKE REASONABLE TREATMENT AND TRAINING, OR ASSESSMENT

"(1) Where compensation is payable under Subdivision B of Division 3 to a worker, the worker shall undertake, at the expense of the worker's employer, reasonable medical, surgical and rehabilitation treatment or participate in rehabilitation training or, as appropriate, in workplace based return to work programs, or as required by his employer, present himself at reasonable intervals to a person for assessment of his employment prospects.

"(2) Where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training or a workplace based return to work program which could enable him to undertake more profitable employment, he shall be deemed to be able to undertake such employment and his compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly.

"(3) Where a worker so required under subsection (1) unreasonably refuses to present himself for assessment of his employment prospects, he shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his

experience and skill and who has sustained a similar injury and is in similar circumstances, and his compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly."

17. REHABILITATION TRAINING AND WORKPLACE MODIFICATION

Section 76 of the Principal Act is amended by adding at the end the following:

"(3) For the purposes of this section, rehabilitation training includes a workplace based return to work program."

18. DECISION AS TO ELIGIBILITY FOR COMPENSATION

Section 85 of the Principal Act is amended -

(a) by omitting subsection (2) and substituting the following:

"(2) Where an employer accepts liability for compensation claimed, the employer shall immediately advise the claimant in writing of that fact and, in the case of a claim for weekly payments (whether or not other compensation is claimed), commence those payments within 10 working days after the receipt of the claim.";

(b) by omitting subsection (6) and substituting the following:

"(6) Where a claim for compensation is for a lump-sum payment of compensation or for a benefit other than a weekly payment, the employer shall, where liability for the claim is accepted, make the payment or provide the benefit as soon as practicable after the claim is accepted.";

(c) by inserting after subsection (7) the following:

"(7A) Where, under subsection (7), an employer advises a claimant of arrangements the employer has made for obtaining further medical information, the employer shall -

(a) obtain that further medical information not later than 28 days after advising the claimant of those arrangements; or

(b) if that medical information is not obtained within the period specified in paragraph (a), immediately apply, under section 91B, to the Authority for the medical information to be provided by the Panel.";

- (d) by omitting from subsection (8) "subsections (1) and (2)" and substituting "subsections (1) (other than paragraphs (b) and (c)) and (2)"; and
- (e) by omitting from subsection (10) "in this section the employer" and substituting "in this section (other than a fact referred to in subsection (2)) the employer".

19. FAILURE TO DECIDE WITHIN SPECIFIED PERIOD

Section 87 of the Principal Act is amended by adding at the end the following "in so far as the claim is in respect of compensation payable under Subdivisions B and D of Division 3".

20. MEDICAL EXAMINATIONS

Section 91 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following:

"(2) Subject to section 69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1), an employer may cancel or reduce the compensation payable to the worker under Subdivision B of Division 3 until the examination takes place."

21. NEW SECTIONS

The Principal Act is amended by inserting after section 91 the following:

"91A. MEDICAL REVIEW PANEL

"(1) There is established by this section a panel to be known as the Medical Review Panel.

"(2) Subject to this section, the Panel shall consist of 3 medical practitioners appointed by the Authority from the register of medical practitioners established under subsection (4).

"(3) The Authority shall appoint one of the medical practitioners appointed under subsection (2) to be the Chairman of the Panel.

"(4) For the purposes of this section, the Authority shall establish and maintain a register of medical practitioners prepared to act as members of the Panel.

"(5) The Regulations may make provision for and in relation to the appointment of the medical practitioners to the Panel and the procedures of the Panel in carrying out its functions under this Act.

"91B. APPLICATION TO PANEL

"(1) An employer to whom section 85(7A)(b) applies shall apply to the Authority for the Panel to provide the further medical information required under that section.

"(2) Where there are conflicting medical reports as to a worker's incapacity for work, the employer or worker may apply to the Authority for the Panel to determine whether the worker is incapacitated for work.

"(3) The Authority, on receiving an application under this section, shall appoint the members of the Panel for the purposes of that application.

"91C. DETERMINATION OF PANEL

"(1) The Panel shall, as soon as possible, after being appointed consider the application and in respect of an application -

- (a) under section 91B(1), provide the employer with a report containing the information sought by the employer; or
- (b) under section 91B(2), determine whether the worker is incapacitated for work and notify the employer and the worker of that determination.

"(2) The Panel may, for the purpose of carrying out its functions under this section -

- (a) require an employer or a worker to provide it with a copy of all medical reports that the employer or worker has relating to the worker; or
- (b) require the worker to submit to a medical examination.

"91D. PROTECTION OF MEMBERS OF PANEL

"No action or proceeding, civil or criminal, shall lie against a member of the Panel for or in respect of an act or thing done or omitted to be done in good faith by the member in the member's capacity as a member of the Panel in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

"91E. COSTS OF PANEL

"The costs incurred by the Panel and the reasonable fees of the members of the Panel shall be paid by the employer.

"91F. DETERMINATION OF PANEL TO BE FINAL

"A determination of the Panel in respect of an application under section 91B(2) shall be final and conclusive in resolving the conflict referred to in that subsection while the medical condition of the worker remains materially unchanged, but nothing in this section shall be construed as prohibiting a person commencing proceedings under Part VI."

22. INCIDENTAL POWERS AND ENFORCEMENT OF ORDERS

Section 97 of the Principal Act is amended by adding at the end the following:

"(2) Where -

(a) the Court makes a determination under this Act awarding an amount of money (including costs) to a person; and

(b) the amount awarded is not satisfied,

the Registrar shall, on application by or on behalf of the person and on payment of the prescribed fee (if any), issue to or for that person a certificate in the prescribed form of the award and shall make a minute or memorandum of the issue.

"(3) A certificate issued under subsection (2) may be filed in the Local Court and, on the filing of the certificate and payment of the appropriate filing fee (if any) prescribed by the Local Court Rules, the Clerk of the Local Court shall enter judgment for the person as if the award was a judgment of the Local Court for -

(a) the amount awarded or so much as remains unsatisfied;

(b) the fees (if any) paid to the Registrar for the certificate; and

(c) the fees (if any) paid to the Clerk of the Local Court for the filing of the certificate and entering of judgment."

23. APPLICATION

Section 104 of the Principal Act is amended -

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

"(1) For the purposes of the Court exercising its powers under section 94(1)(a), a person may, subject to this Act, commence proceedings before the Court for the recovery of compensation under Part V or for an order or

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ruling in respect of a matter or question incidental to or arising out of a claim for compensation under that Part.";

(b) by omitting from subsection (2) "for the recovery of compensation" and substituting "under this Division"; and

(c) by adding at the end the following:

"(3) Proceedings in respect of a decision of an employer under section 85, shall be commenced not later than 28 days after notice under that section in respect of the decision is received by the claimant."

24. PRELIMINARY CONFERENCE

Section 106(3) of the Principal Act is amended -

(a) by omitting from paragraph (a) "of the claim" and substituting "of the claim or the order or ruling being sought"; and

(b) by omitting from paragraph (b) "employer" and "which it is denied" and substituting "respondent" and "which it is denied or the grounds for not making the order or ruling sought, as the case may be" respectively.

25. APPLICATION TO COURT

Section 111(1) of the Principal Act is amended by omitting "under this Act, or a right of review under this Act" and substituting ", or a right of review, under this Act (other than Part V)".

26. SUBCONTRACTING

Section 127 of the Principal Act is amended -

(a) by omitting from subsection (1) "a worker employed" and substituting "a worker employed by the contractor"; and

(b) by adding at the end the following:

"(5) Nothing in subsection (3) shall be construed as requiring the Nominal Insurer established by section 150 to indemnify a principal contractor under this Act."

27. REPEAL AND SUBSTITUTION

Sections 167 to 174 (inclusive) of the Principal Act are repealed and the following substituted:

"167. CLAIMS FOR PAYMENT AGAINST NOMINAL INSURER WHERE EMPLOYER DEFAULTS OR DEAD, &c.

"(1) Subject to this Part, where -

- (a) a claim has been made against an employer that the employer is liable to pay compensation;
- (b) in relation to the claim -
 - (i) the employer has accepted liability for the compensation under section 85(1)(a);
 - (ii) the employer is, by virtue of section 87, deemed to have accepted liability for the compensation;
 - (iii) the Court has ordered or determined that the employer pay compensation; or
 - (iv) a memorandum of an agreement to pay compensation has been recorded under section 108;
- (c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance or indemnity obtained in accordance with this Act;
- (d) the employer defaults in payment of any amount of compensation referred to in paragraph (b); and
- (e) a principal contractor, within the meaning of section 127, is not liable under that section to pay the compensation,

the person entitled to the compensation may make a claim for compensation against the Nominal Insurer.

"(2) Where -

- (a) the employer -
 - (i) who employed a worker at the time the worker sustained a compensable injury; or
 - (ii) where the compensable injury is a disease, who last employed the worker in the employment which caused the disease,

is dead, cannot be located or, in the case of a company, has been wound up; and
- (b) the approved insurer of that employer cannot be identified,

a person claiming to be entitled to compensation may make a claim for compensation against the Nominal Insurer.

"168. FORM OF CLAIM

"(1) A claim for compensation under section 167 shall -

- (a) be in the prescribed form;
- (b) unless it is a claim for compensation under section 62, 63 or 73, be accompanied by a prescribed certificate from a medical practitioner or other prescribed person; and
- (c) be served on the Nominal Insurer.

"(2) If a claim for compensation and a prescribed certificate under subsection (1)(b) are not served at the same time, the claim for compensation shall be deemed not to have been made until the day on which the remaining document is served on the Nominal Insurer.

"(3) A defect, omission or irregularity in a claim for compensation or a prescribed certificate under subsection (1)(b) shall not affect the validity of the claim and, notwithstanding the defect, omission or irregularity, the claim shall be dealt with in accordance with this Division unless the defect, omission or irregularity is such that the Nominal Insurer is unable to make a proper decision to admit, deny or defer the claim in accordance with section 85, as applied by section 170.

"169. TIME LIMIT FOR MAKING CLAIM

"(1) A claim for compensation under section 167(1) shall be served on the Nominal Insurer within -

- (a) 60 days after the right to make the claim arose;
or
- (b) such further period as the Court, on application to it, may allow if, in all the circumstances of the case, it is just to grant the extension of time.

"(2) An application under subsection (1)(b) may be made to the Court at any time, and notice of the application shall be served on the Nominal Insurer not less than 28 days before the date of the hearing of the application.

"(3) At the hearing of an application under subsection (1)(b), the Nominal Insurer shall be entitled to be heard in respect of the application.

"170. EFFECT OF SERVICE OF CLAIM ON NOMINAL INSURER

"(1) Where a claim for compensation under section 167(1) is made against the Nominal Insurer -

- (a) the liability of the employer to pay compensation under the claim referred to in that section shall be discharged, save to the extent of any compensation previously paid; and
- (b) any agreement, order, demand or determination, admission or deemed admission referred to in section 167(1)(b) shall be of no force or effect in respect of the liability of the Nominal Insurer to make payments of compensation to the person making the claim.

"(2) Where a claim for compensation under section 167 (1) or (2) is made against the Nominal Insurer, the claim shall be dealt with and determined as if the Nominal Insurer were the employer of the worker making the claim or in respect of whom it relates, and for that purpose -

- (a) the claim shall be deemed to have been made under Part V;
- (b) a reference to an employer in Part V (other than in sections 75A and 84) and Part VI shall be read and construed (with necessary changes) as a reference to the Nominal Insurer; and
- (c) the Nominal Insurer shall have the same rights, powers, duties and liabilities in respect of the claim (other than under sections 75A and 84) as the employer.

"171. NOTICE OF CLAIM TO BE GIVEN TO EMPLOYER

"(1) Where a claim for compensation under section 167(1) is made against the Nominal Insurer, the Nominal Insurer shall, on being served with the claim, notify the employer, in writing, of the claim having been made.

"(2) A notice under subsection (1) may be served by posting or delivering it to the employer at the employer's last known residence or place of business.

"(3) Subsection (2) is in addition to and not in derogation of sections 220 and 363 of the Corporations Law.

"(4) An employer given notice of a claim under subsection (1) shall forthwith provide to the Nominal Insurer all information relating to the claim which is in the possession of the employer or of which the employer has knowledge.

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"(5) Notwithstanding that the Nominal Insurer fails to notify an employer of a claim, section 172(2) shall apply to and in relation to the claim and the Nominal Insurer shall be entitled to recover from the employer under that subsection any amount paid under the claim by the Nominal Insurer.

"172. CONDUCT OF CLAIM BY NOMINAL INSURER

"(1) The conduct by the Nominal Insurer of a claim for compensation under section 167 shall be within the absolute and unfettered discretion of the Nominal Insurer, and no action, decision or omission of the Nominal Insurer in the conduct of the claim shall prejudice the Nominal Insurer's right of recovery of any money paid in respect of the claim.

"(2) Where the Nominal Insurer pays an amount under this Act in respect of its liability (including costs incurred or monies expended in the conduct of the claim) -

- (a) the amount is a debt due and payable by the employer to the Nominal Insurer; and
- (b) the Nominal Insurer has the right to subrogation in respect of all rights that the employer has against any person in relation to the incident which gave rise to the claim for compensation.

"(3) Where the Nominal Insurer pays an amount under this Part in respect of the liability of an employer and the payment arises out of the employer's failure to insure under this Act or the repealed Act against his liability or any other default of the employer in obtaining adequate insurance cover in respect of the liability, the employer shall, in addition to any other amount he is required under this Act to pay, pay to the Nominal Insurer an amount equal to the highest premium payment (calculated at rates payable at the time of the relevant compensable incident) for insurance to indemnify the employer for his liability to the worker or other workers employed by him for the period and to the extent that he did not have the required insurance cover.

"173. PERSONS EXCLUDED FROM MAKING CLAIM

"Notwithstanding anything to the contrary in this Act, a claim for compensation shall not be made under section 167(1) against the Nominal Insurer by or in respect of a person who is -

- (a) a director (by whatever named called), or a member of the governing body, of a body corporate in respect of an injury arising out of or in the course of his employment with that body corporate; or

- (b) a member of the immediate family of an employer in respect of an injury arising out of or in the course of his employment with that employer."

28. REGULATIONS

Section 187(1) of the Principal Act is amended by inserting after paragraph (qg) the following:

- "(qh) relating to the rehabilitation of injured workers;
- (qj) providing for the exemption of persons, places or activities from the application of all or part of the Regulations;"

29. NEW SECTIONS

The Principal Act is amended by inserting after section 187 the following:

"187A. CODES OF PRACTICE

"(1) For the purpose of providing practical guidance on any matter relating to this Act, the Minister may, on the recommendation of the Authority, by notice in the *Gazette*, approve a code of practice.

"(2) A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or adopted by the Authority and may apply, incorporate or refer to a document formulated or published by a body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

"(3) A notice under subsection (1) shall indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected, and the Minister shall make the code and those documents available for that purpose accordingly.

"(4) Subject to subsection (5), the Authority may, in writing, approve a code of practice in relation to a particular workplace presented to it by employers under whose care and management the workplace is and, on its so doing, that code of practice shall be the approved code of practice applicable to and in relation to that workplace.

"(5) The Authority shall not approve under subsection (4) a code of practice which, in its opinion, adopts standards less stringent than the minimum relevant standards for the time being in a code of practice approved under subsection (1) and where at any time there is a relevant standard in a code of practice approved under subsection (1) that is more stringent than a

standard in a code of practice approved under subsection (4), or a relevant standard in a code of practice approved under subsection (1) in relation to a matter that is not provided for in a code of practice approved under subsection (4), that standard in the code of practice approved under subsection (1) shall prevail or apply, as the case may be, and shall be deemed to be incorporated in the code of practice approved under subsection (4).

"(6) A code of practice approved under subsection (4) shall be made available by the employer at the workplace to which it relates for inspection at all reasonable times by any person.

"(7) An employer who contravenes or fails to comply with subsection (6) is guilty of a regulatory offence.

Penalty: \$500.

"(8) A person shall not be liable to a civil or criminal action by reason only that he has failed to observe a provision of an approved code of practice.

"187B. USE OF CODES OF PRACTICE IN PROCEEDINGS

"Where in proceedings under or for an offence against this Act it is alleged that a person contravened or failed to comply with a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention or failure -

- (a) the approved code of practice shall be admissible in evidence in those proceedings; and
- (b) if the court is satisfied in relation to a matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that -
 - (i) a provision of the approved code of practice is relevant to that matter; and
 - (ii) the person failed at a material time to observe that provision of the approved code of practice,

that matter shall be taken as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice."

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

Section 189 of the Principal Act is amended -

(a) by omitting from subsection (2) "Notwithstanding subsection (1)" and substituting "Notwithstanding subsection (1) but subject to subsection (3)"; and

(b) by adding at the end the following:

"(3) Nothing in subsection (2) shall be construed as permitting a claim for compensation to be made under this Act in respect of an injury to or the death of a person arising out of or in the course of the person's employment before the commencement of this Act where, in respect of that injury or death, compensation has been paid -

(a) under the repealed Act;

(b) under any other law in force in the Territory relating to the payment of compensation in respect of the injury or death of the person arising out of or in the course of the person's employment; or

(c) at common law."

31. SCHEDULE 2

Schedule 2 to the Principal Act is amended by omitting "is carrying on the business of" and no other for the purpose of this Indemnity at" and substituting "is carrying on business for the purpose of this Indemnity".

32. SAVING AND TRANSITIONAL

Where, before the commencement of this Act, a code of practice was approved under section 47 of the Principal Act, as in force immediately before that commencement, and that approval had not been revoked before that commencement, the code of practice shall, on that commencement, be deemed to be a code of practice approved under section 187A of the Principal Act as inserted by this Act.
