

AUSTRALIAN CAPITAL TERRITORY.

No. 12 of 1959.

AN ORDINANCE

To amend the *Workmen's Compensation Ordinance 1951-1956*.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this fourth day of September, 1959.

W. J. SLIM
Governor-General.

By His Excellency's Command,

GORDON FREETH
Minister of State for the Interior.

WORKMEN'S COMPENSATION ORDINANCE 1959.

1.—(1.) This Ordinance may be cited as the *Workmen's Compensation Ordinance 1959*.^{*} Short title and citation.

(2.) The *Workmen's Compensation Ordinance 1951-1956*† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Workmen's Compensation Ordinance 1951-1959*.

2. Section six of the Principal Ordinance is amended by inserting in sub-section (1.), before the definition of "dependant", the following definition:— Interpretation.

" 'approved insurer' means an insurer approved by the Minister for the purposes of this Ordinance;".

3. Section seventeen of the Principal Ordinance is repealed. Returns as to compensation.

4. Section eighteen of the Principal Ordinance is amended— Compulsory insurance.
(a) by omitting from paragraph (a) of sub-section (12.) the word "or";

^{*} Notified in the *Commonwealth Gazette* on 17th September, 1959.

† Ordinance No. 2, 1951, as amended by No. 4, 1952; No. 12, 1954; and No. 1, 1956. 1705/59.—PRICE 5d.

(b) by inserting at the end of that sub-section the following word and paragraph:—

“or (c) diminish or otherwise affect the liability of the insurer under section eighteen H of this Ordinance.”; and

(c) by adding at the end thereof the following sub-section:—

“(16.) In a prosecution for a failure to comply with the provisions of sub-section (1.) of this section, an averment in the information that there was not in force, on a specified date, a policy of insurance or indemnity in respect of the liability of the defendant under this Ordinance issued by an approved insurer is evidence of the matter averred.”.

Minister may require approved insurers to furnish information.

5. After section eighteen of the Principal Ordinance the following sections are inserted:—

“18A.—(1.) The Minister may, by notice in writing, require an approved insurer, or an employer in respect of whom an exemption under sub-section (2.) of the last preceding section is or has been in force, to furnish to the Minister, within such time as is specified in the notice—

(a) particulars of the number of injuries in respect of which compensation has been paid during a period specified in the notice and the total amount of compensation paid during that period; and

(b) such other particulars relating to the operation of this Ordinance as are specified in the notice.

“(2.) An approved insurer or an employer shall not—

(a) refuse or fail to comply with a notice under the last preceding sub-section; or

(b) furnish any particulars which are false or misleading.

Penalty: Ten pounds.

Appointment of nominal insurer.

“18B.—(1.) The Minister may appoint a person to be the nominal insurer for the purposes of this Ordinance.

“(2.) The appointment shall be made on the nomination of the approved insurers or a majority of them or, in default of such a nomination, directly by the Minister.

“(3.) Notice of an appointment under this section shall be published in the *Gazette*.

“ 18c.—(1.) Where—

(a) a claim has been made against an employer that the employer is liable to pay compensation in accordance with this Ordinance in respect of—

(i) an injury caused to, or sustained by, a workman, after the commencement of this section, by accident arising out of or in the course of his employment with the employer or by accident for which the employer is liable as if the accident were an accident arising out of or in the course of his employment; or

(ii) the incapacity, if arising after the commencement of this section, of a workman who is suffering from a disease, or the death occurring after the commencement of this section of a workman caused by a disease, being a disease for which the employer is liable to pay compensation as if the disease were a personal injury by accident arising out of or in the course of the employment of the workman;

(b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established in accordance with this Ordinance;

(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 Ordinance; and

(d) the employer defaults in payment of any amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the nominal insurer for payment of the amounts of compensation payable and to become payable.

“ (2.) A claim under the last preceding sub-section shall be made within a period of one month after the right to make the claim arose or within such further time as the Minister, on an application made before or after the expiration of that period of one month, allows.

“ (3.) The nominal insurer shall give notice in writing of the making of a claim under the last preceding sub-section to the employer.

Claims for payment against nominal insurer where employer defaults.

"(4.) For the purposes of this section, 'compensation' includes—

- (a) an amount in settlement of a claim for compensation;
- (b) an amount payable under section eleven of this Ordinance; and
- (c) any costs payable to a workman by an employer in relation to a claim for compensation.

Payments by nominal insurer.

"18D. Subject to the next succeeding section, where a person makes a claim against the nominal insurer in accordance with the last preceding section, the nominal insurer shall pay that person the compensation payable at the date of the claim or becoming payable thereafter.

Re-opening of agreements and awards.

"18E.—(1.) Where a claim is made against the nominal insurer, he may apply to the Court for an order directing that the agreement or award under which the compensation is payable be re-opened on the ground that there is reason to believe that, in relation to the agreement, the appointment of an arbitrator or the arbitration, the employer has not in good faith endeavoured to protect his own interests and taken all reasonable steps to that end, and the Court may, if it thinks fit, make an order accordingly.

"(2.) Where the Court makes an order under the last preceding sub-section, it shall appoint an arbitrator to determine, or re-determine, the claim for compensation by arbitration in accordance with the provisions of the Fourth Schedule to this Ordinance (so far as applicable), and the nominal insurer shall be a party to the arbitration.

"(3.) In an award made by an arbitrator appointed in pursuance of this section, the arbitrator may set aside any previous agreement or award.

"(4.) Where an award of compensation is made against the employer by an arbitrator appointed under this section, the nominal insurer shall pay to the person entitled the amounts payable from time to time under the award.

"(5.) Any agreement by a person to accept, in settlement of a claim against the nominal insurer, an amount less than the amount payable according to the relevant agreement or award has no force or effect unless approved by the Court.

Intervention by nominal insurer.

"18F.—(1.) Where a claim for compensation is made against an employer (not being an employer in respect of whom an exemption under sub-section (2.) of section eighteen of this Ordinance was in force at the relevant time), and there is not

in force a policy or policies of insurance or indemnity in accordance with the requirements of section eighteen of this Ordinance and applicable to the claim, the employer—

- (a) shall forthwith furnish to the nominal insurer full particulars of the claim; and
- (b) shall not make any agreement or admission in relation to the claim, or in relation to arbitration in respect of the claim, except with the consent of the nominal insurer.

Penalty: One hundred pounds.

“(2.) In relation to a claim referred to in the last preceding sub-section—

- (a) the nominal insurer is entitled to intervene in any arbitration proceedings as a party; and
- (b) the nominal insurer has the same right of objection to arbitration by a committee as has the employer under the rules in the Fourth Schedule to this Ordinance.

“18G. Where the nominal insurer pays an amount under this Ordinance in respect of a liability of an employer—

Effects of
payment by
nominal insurer

- (a) the payment operates, to the extent of the payment, to discharge the liability of the employer;
- (b) the amount of the payment is a debt payable by the employer to the nominal insurer, and may be sued for and recovered in a court of competent jurisdiction; and
- (c) the nominal insurer has the right of 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.

“18H.—(1.) An amount payable to a person by the nominal insurer may be sued for and recovered by that person by action in a court of competent jurisdiction, but the nominal insurer is not liable to satisfy a judgment in such an action except out of moneys referred to in the next succeeding sub-section.

Amounts to be
provided by
approved
insurers and
certain
employers.

“(2.) The nominal insurer shall pay amounts payable by him under this Ordinance (including the amount of any costs or expenses incurred by him) out of moneys provided in accordance with this section by approved insurers and employers who have been granted exemptions under sub-section (2.) of section eighteen of this Ordinance (in this section referred to as ‘exempt employers’) and any other moneys received by him under this Ordinance.

“ (3.) Liability to provide an amount referred to in the last preceding sub-section shall be apportioned by the nominal insurer amongst those who were approved insurers or exempt employers at the time of the occurrence that gave rise to the right to compensation in respect of which the amount is payable.

“ (4.) In making an apportionment under the last preceding sub-section, the nominal insurer shall have regard so far as practicable to—

(a) the premium incomes received by each approved insurer in respect of policies of insurance or indemnity effected with that approved insurer by employers for the purpose of complying with sub-section (1.) of section eighteen of this Ordinance in the period of twelve months ending on the thirtieth day of June last preceding the occurrence; and

(b) the premium that would have been payable by each exempt employer if he had obtained, in respect of that year (or the part of that year during which he was an exempt employer), a policy in accordance with sub-section (1.) of section eighteen of this Ordinance.

“ (5.) When the nominal insurer makes an apportionment under this section, he shall, by writing under his hand, notify to each approved insurer and exempt employer concerned particulars of the apportionment and require him to pay to the nominal insurer the amount apportioned to him, within such time as is specified in the notice.

“ (6.) An amount specified in a notice to a person under the last preceding sub-section and unpaid at the expiration of the time specified in the notice is a debt due and owing to the nominal insurer by the approved insurer or exempt employer and may be sued for and recovered by the nominal insurer in a court of competent jurisdiction.

“ (7.) Where an amount has been provided by approved insurers and exempt employers under this section in relation to a payment by the nominal insurer, the nominal insurer shall apply any amounts received by him in relation to the payment from the defaulting employer in reimbursing proportionately the approved insurers and exempt employers.

Employer to give information and assistance, &c., to nominal insurer.

“ 18J.—(1.) For the purpose of the exercise of his powers and functions under this Ordinance, the nominal insurer may, by notice in writing, require an employer—

(a) to give such information and assistance as the nominal insurer considers necessary;

- (b) to furnish such documents in the employer's possession as the nominal insurer considers necessary;
- (c) to execute such documents as it is necessary for the employer to execute to enable the nominal insurer to exercise those powers and functions; and
- (d) to allow the nominal insurer at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.

"(2.) An employer shall comply with a requirement of the nominal insurer under the last preceding sub-section.

Penalty: One hundred pounds.

"18k. For the purposes of this Ordinance—

(a) any proceedings by or against the nominal insurer may be taken in the name of "The Nominal Insurer"; and

Proceedings to be in the name of "The Nominal Insurer".

(b) the death or resignation of, or the revocation of the appointment of, the person holding office as the nominal insurer at the time any proceedings were commenced and the appointment of another person in his place does not abate the proceedings and the proceedings may be continued and concluded as if the person had not died or resigned or as if his appointment had not been revoked, as the case may be."

6. Section twenty-two of the Principal Ordinance is amended by adding at the end thereof the following sub-section:—

Remedies both against the employer and a stranger.

"(3.) Where the nominal insurer makes a payment to a workman under this Ordinance, the provisions of this section apply as if references to the employer included references to the nominal insurer, but so that—

(a) the nominal insurer is not entitled to receive, under paragraph (b) of sub-section (1.) of this section, more than the amounts paid by him under this Ordinance; and

(b) the rights of the nominal insurer under this section shall have priority over any rights of the employer under this section arising out of any payment of compensation by the employer."

Appeals.

7. Section twenty-six of the Principal Ordinance is amended by omitting from sub-section (1.) the words "either party" and inserting in their stead the words "any party".

First Schedule.

8. The First Schedule to the Principal Ordinance is amended by omitting from the proviso to paragraph 6 the words "ambulance service and burial" and inserting in their stead the words "the funeral".

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.