Workmen's Compensation (Amendment) Ordinance 1983

No. 69 of 1983

I, THE GOVERNOR-GENERAL of 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.*

Dated 21 December 1983.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

TOM UREN
Minister of State for Territories
and Local Government

An Ordinance to amend the *Workmen's Compensation Ordinance 1951*

Short title

1. This Ordinance may be cited as the *Workmen's Compensation (Amendment) Ordinance 1983.*[1]

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories and Local Government by notice in the *Gazette.*

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Workmen's Compensation Ordinance 1951.*[2]

Title

4. The title of the Principal Ordinance is amended by omitting "by Accident".

Interpretation

5. Section 6 of the Principal Ordinance is amended—

(a) by adding "or" at the end of paragraph (a) of the definition of "workman" in sub-section (1);

(b) by omitting paragraph (c) of the definition of "workman" in sub-section (1);

(c) by inserting in sub-section (3) ", or to perform any work as an outworker," before "is made";

(d) by inserting after sub-section (3B) the following sub-section:

"(3C) A person whose employment is of a casual nature and who is employed otherwise than for the purposes of his employer's trade or business shall, where the employment was found for him by a person who carries on the business of an employment agent, be deemed for the purposes of this Ordinance to be a workman employed by that employment agent.";

(e) by omitting sub-section (5); and

(f) by omitting sub-section (8) and substituting the following sub-section:

"(8) Where an employer has a place of employment in the Territory, or is for the time being present in the Territory, and there employs a workman whose employment under his contract of service or apprenticeship with that employer is not wholly carried out in the Territory and is in part carried out in any State or in any other Territory, then, if the workman, while in that State or other Territory, sustains personal injury under circumstances which, had the injury been sustained in the Territory, would entitle him to compensation in accordance with this Ordinance, his employer shall, subject to this Ordinance, be liable to pay compensation in accordance with this Ordinance as if the personal injury had arisen out of or in the course of his employment in the Territory.".

Compensation for personal injuries to workmen

6. Section 7 of the Principal Ordinance is amended—

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

"(1) Where in any employment a workman suffers personal injury arising out of or in the course of the employment, his employer shall, subject to this Ordinance, be liable to pay compensation in accordance with the First Schedule."; and

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

"(5) An amount of compensation payable under a provision of this Ordinance in respect of an injury is, unless the contrary intention

appears, in addition to any amounts of compensation paid or payable under any other provision of this Ordinance in respect of that injury.".

Injury while travelling to or from employment, &c.

7. Section 8 of the Principal Ordinance is amended—

(a) by omitting from sub-section (1) "by accident";

(b) by omitting from sub-section (1) "accident were an accident" and substituting "injury were an injury"; and

(c) by omitting from sub-section (2) "accident" and substituting "injury".

8. Section 9 of the Principal Ordinance is repealed and the following sections substituted:

Compensation in respect of death or incapacity through disease caused by employment

"9. (1) Where—

(a) a workman contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and

(b) any employment of the workman by his employer was a contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence, as the case may be, whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment,

the succeeding provisions of this section have effect.

"(2) If—

(a) the death of the workman; or

(b) the total or partial incapacity for work of the workman,

results from the disease, or the workman obtained medical treatment in relation to the disease, then, for the purposes of this Ordinance, unless the contrary intention appears—

(c) the contraction of the disease, or the aggravation, acceleration or recurrence, as the case may be, shall be deemed to be a personal injury to the workman arising out of the employment of the workman by his employer; and

(d) the date of the death, the date of the commencement of the incapacity or the date on which the medical treatment was first obtained, whichever is the earlier, shall be deemed to be the date of the injury.

"(3) Where a liability of an employer in respect of a disease of a workman arises by virtue of this section, any other employer who, prior to that liability so arising, employed the workman in any employment that caused or contributed to the disease shall, subject to sub-section (4), be liable to pay to the employer from whom compensation is recoverable such contribution as is, in default of agreement, settled by arbitration.

"(4) An employer shall not be liable under sub-section (2) or (3) in respect of a disease if the workman, at the time of entering the employment of that employer, made a wilful and false representation that he did not suffer, or had not previously suffered, from that disease.

"(5) A claimant for compensation under this section shall, if so required, furnish the employer who is liable to pay compensation to him with such information as to the names and addresses of his other employers as he possesses.

Certain diseases to be deemed to be contributed to by employment

"9A. Without limiting by implication the operation of section 9 where—

(a) a workman has suffered, or is suffering from a disease, or the death of a workman results from a disease;

(b) the disease is a disease of a kind specified in the regulations as a disease that is related to employment of a kind so specified; and

(c) the workman was, at any time before symptoms of the disease first became apparent, engaged in employment of that kind,

then, for the purposes of this Ordinance, unless the contrary is established, the employment in which the workman was so engaged shall be deemed to have been a contributing factor to the disease.

Provisions relating to diseases

"9B. (1) Any employment in which a workman who has contracted a disease was engaged at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken for the purposes of this Ordinance to have been a contributing factor to his contracting the disease if the incidence of the disease among persons who have engaged in that kind of employment is significantly greater than the incidence of the disease among persons who have engaged in employment generally in the place where the workman was ordinarily employed.

"(2) Any employment in which a workman who has suffered an aggravation, acceleration or recurrence of a disease was engaged at any time before symptoms of the aggravation, acceleration or recurrence first became apparent shall, unless the contrary is established, be taken for the purposes of this Ordinance to have been a contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in that kind of employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in employment generally in the place where the workman was ordinarily employed.

"(3) The death of a workman shall be taken for the purposes of this Ordinance to have been contributed to by a disease if, but for that disease, the death of the workman would have occurred at a significantly later time.

"(4) An incapacity for work or facial disfigurement of a workman shall be taken for the purposes of this Ordinance to have been contributed to by a disease if, but for the disease—

(a) the incapacity or disfigurement would not have occurred;

(b) the incapacity would have commenced, or the disfigurement would have occurred, at a significantly later time; or

(c) the extent of the incapacity or disfigurement would have been significantly less.

"(5) This section shall not be construed as limiting the operation of section 9.".

Compensation for certain injuries

9. Section 10 of the Principal Ordinance is amended by omitting sub-sections (1) and (1A) and substituting the following sub-sections:

"(1) Subject to this Ordinance, where an injury specified in Part I of the Second Schedule, being an injury arising out of or in the course of a workman's employment by his employer, is caused to a workman, the compensation payable shall, where the injury results in an incapacity other than total and permanent incapacity for work, be $20,000.

"(1A) Subject to this Ordinance, where an injury specified in the first column of Part II of the Second Schedule, being an injury arising out of or in the course of a workman's employment by his employer, is caused to the workman, the compensation payable shall, where the injury results in incapacity other than total or permanent incapacity for work, be the amount equal to such percentage of the amount specified in sub-section (1) as is specified in the second column of that Part opposite the specification of the injury in the first column.".

10. After section 10 of the Principal Ordinance the following sections are inserted:

Compensation for facial disfigurement

"10A. (1) Where a workman sustains an injury—

(a) that is not, or is not wholly, an injury specified in the Second Schedule; and

(b) that results in severe and permanent facial disfigurement,

the workman is entitled to receive from his employer by way of compensation for that injury, such amount, not exceeding 50% of the amount payable under sub-section 10 (1), as may be agreed upon or, in default of agreement, as may be assessed as appropriate by a medical referee having regard to the severity of the disfigurement.

"(2) Where—

(a) a workman sustains an injury in respect of which compensation is payable under this section;

(b) the workman and his employer have not agreed on the amount of compensation payable under this section in respect of the injury; and

(c) the workman—

(i) makes application to the Clerk of the Court for the matter to be referred to a medical referee for assessment of the amount payable under this section in respect of the injury; and

(ii) pays the prescribed fee, if any,

the Clerk of the Court shall refer the matter to a medical referee for the assessment to be made.

"(3) If the workman refuses or fails to submit himself for examination by the medical referee or in any way obstructs the examination, his right to compensation under this section and his right to institute or continue any proceedings under this Ordinance in relation to compensation under this section are suspended until the examination takes place.

"(4) The medical referee to whom a matter is referred under this section shall give a certificate that—

(a) states whether he is of the opinion that the workman is suffering from severe and permanent facial disfigurement; and

(b) if he is of that opinion, specifies the amount of compensation that he considers the workman is entitled to receive from his employer under this section in respect of the injury.

"(5) A certificate given by a medical referee under sub-section (4) is final and—

(a) in the case of a certificate stating that, in the opinion of the medical referee, the injury did not result in severe and permanent facial disfigurement to the workman—the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury did not result in such disfigurement; or

(b) in the case of a certificate that states that in the opinion of the medical referee the injury resulted in severe and permanent facial disfigurement to the workman—

(i) the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury resulted in such a disfigurement; and

(ii) the amount of compensation payable in respect of that disfigurement is the amount specified in the certificate as the amount of compensation that the medical referee considers that the workman is entitled to receive from his employer under this section in respect of the injury.

"(6) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

"(7) For the purposes of this section—

(a) facial disfigurement shall not be taken to be severe where, if the workman underwent suitable medical treatment, the disfigurement would not be severe;

(b) facial disfigurement shall not be taken to be permanent where, if the workman underwent suitable medical treatment, the disfigurement would be removed; and

(c) a reference to a medical referee shall be read as a reference to a medical referee who is a specialist plastic surgeon.

Compensation for loss of sense of smell or sense of taste

"10B. (1) Where a workman sustains an injury that results in total or partial loss of the sense of smell or of the sense of taste, the workman is entitled to receive from his employer, by way of compensation for that injury, such amount not exceeding 10% of the amount payable under sub-section 10 (1) as may be agreed upon or, in default of agreement, as may be assessed as appropriate by a medical referee, having regard to the degree of loss of the sense.

"(2) Where—

(a) a workman sustains an injury in respect of which compensation is payable under this section;

(b) the workman and his employer have not agreed on the amount of compensation payable under this section in respect of the injury; and

(c) the workman—

(i) makes application to the Clerk of the Court for the matter to be referred to a medical referee for assessment of the amount payable under this section in respect of the injury; and

(ii) pays the prescribed fee, if any,

the Clerk of the Court shall refer the matter to a medical referee for the assessment to be made.

"(3) If the workman refuses or fails to submit himself for examination by the medical referee or in any way obstructs the examination, his right to compensation under this section and his right to institute or continue any proceedings under this Ordinance in relation to compensation under this section are suspended until the examination takes place.

"(4) The medical referee to whom a matter is referred under this section shall give a certificate that—

(a) states whether he is of the opinion that the workman is suffering from a total or partial loss of the sense of smell or of the sense of taste; and

(b) if he is of that opinion, specifies the amount of compensation that he considers the workman is entitled to receive from his employer under this section in respect of the injury.

"(5) A certificate given by a medical referee under sub-section (4) is final and—

(a) in the case of a certificate stating that, in the opinion of the medical referee, the injury did not result in a total or partial loss of the sense of smell or of the sense of taste—the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury did not result in any such loss; or

(b) in the case of a certificate that states that in the opinion of the medical referee the injury resulted in a total or partial loss of the sense of smell or of the sense of taste to the workman—

(i) the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury resulted in such a loss; and

(ii) the amount of compensation payable in respect of that loss is the amount specified in the certificate as the amount of compensation that the medical referee considers that the workman is entitled to receive from his employer under this section in respect of the injury.

"(6) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

"(7) In this section—

'loss' means a permanent loss;

'medical referee' means a medical referee who is an ear, nose and throat specialist.

Compensation for injuries relating to sexual organs and breasts

"10C. (1) Subject to section 10E, where a workman sustains an injury that results in—

(a) the total or partial loss of genitals; or

(b) in the case of a woman—the total or partial loss of one or both breasts,

the workman is entitled to receive from his employer, by way of compensation for that injury, such amount not exceeding 50% of the amount payable under sub-section 10 (1) as may be agreed upon or, in default of agreement, as may be assessed as appropriate by a medical referee having regard to the severity of the injury and the degree of the loss.

"(2) Where—

(a) a workman sustains an injury in respect of which compensation is payable under this section;

(b) the workman and his employer have not agreed on the amount of compensation payable under this section in respect of the injury; and

(c) the workman—

(i) makes application to the Clerk of the Court for the matter to be referred to a medical referee for assessment of the amount payable under this section in respect of the injury; and

(ii) pays the prescribed fee, if any,

the Clerk of the Court shall refer the matter to a medical referee for the assessment to be made.

"(3) If the workman refuses or fails to submit himself for examination by the medical referee or in any way obstructs the examination, his right to compensation under this section and his right to institute or continue any proceedings under this Ordinance in relation to compensation under this section are suspended until the examination takes place.

"(4) The medical referee to whom a matter is referred under this section shall give a certificate that—

(a) states whether he is of the opinion that the workman is suffering from—

(i) the total or partial loss of genitals; or

(ii) in the case of a woman, the total or partial loss of one or both breasts; and

(b) if he is of that opinion, specifies the amount of compensation that he considers the workman is entitled to receive from his employer under this section in respect of the injury.

"(5) A certificate given by a medical referee under sub-section (4) is final and—

(a) in the case of a certificate stating that, in the opinion of the medical referee, the injury did not result in the total or partial loss of genitals, or, in the case of a woman, the total or partial loss of one or both breasts—the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury did not result in any such loss; or

(b) in the case of a certificate that states that in the opinion of the medical referee the injury resulted in the total or partial loss of genitals or, in the case of a woman, the total or partial loss of one or both breasts—

(i) the certificate is, for the purposes of this Ordinance, conclusive evidence that the injury resulted in such a loss; and

(ii) the amount of compensation payable in respect of that loss is the amount specified in the certificate as the amount of compensation that the medical referee considers that the workman is entitled to receive from his employer under this section in respect of the loss.

"(6) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Compensation for loss of capacity to engage in sexual intercourse

"10D. Subject to section 10E, where a workman sustains an injury that results in the permanent and total loss of his capacity to engage in sexual intercourse he shall be entitled to receive from his employer, by way of

compensation for that injury, 50% of the amount payable under sub-section 10 (1).

Persons not entitled to compensation under section 10C and section 10D

"10E. A person is not entitled to receive compensation under section 10C and section 10D in respect of the same injury.

Limitations on entitlement to compensation

"10F. (1) The provisions of sections 10A, 10B, 10C and 10D do not apply in relation to an injury where that injury, or another injury sustained at the same time, results in the death of the workman within 3 months after the date of that injury or those injuries.

"(2) On payment of an amount under section 10A, 10B, 10C or 10D the workman shall not be entitled to any payment in accordance with sub-paragraph 1 (b) or (c) of the First Schedule in respect of a period of incapacity for work resulting from the injury subsequent to the date of the payment, but the amount payable under the relevant section shall not be subject to any deduction in respect of any amount previously paid to the workman in accordance with either of those sub-paragraphs.".

Maximum compensation

11. Section 12 of the Principal Ordinance is amended—

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

"(1) Notwithstanding anything contained in this Ordinance, the amount of compensation payable in respect of—

(a) an injury or injuries sustained on one occasion; or

(b) a disease,

shall not, except as provided by this section, exceed $20,000."; and

(b) by omitting sub-section (3) and substituting the following sub-section:

"(3) In the application of sub-section (1) in relation to the total amount of compensation payable to a workman under section 10, 10A, 10B, 10C or 10D the total amount of any compensation paid to the workman in accordance with the First Schedule before the payment to him of the amount payable in accordance with whichever of those sections is applicable to the injury shall be disregarded.".

Compulsory insurance

12. Section 18 of the Principal Ordinance is amended by omitting from sub-section (1) "Fifty thousand dollars" and substituting "$200,000".

Claims for payment by nominal insurer where employer defaults

13. Section 18C of the Principal Ordinance is amended by omitting paragraph (1) (a) and substituting the following paragraph:

"(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 an injury caused to, or sustained by, a workman, being an injury arising out of or in the course of the workman's employment by the employer or for which the employer is liable as if the injury arose out of or in the course of his employment;".

Payments by nominal insurer

14. Section 18D of the Principal Ordinance is amended by omitting from sub-section (2) "Fifty thousand dollars" and substituting "$200,000".

Liability of the employer independently of this Ordinance

15. Section 23 of the Principal Ordinance is amended by omitting from sub-section (1) "by accident".

Time for taking proceedings

16. Section 25 of the Principal Ordinance is amended by omitting from sub-section (1) "accident" (wherever occurring) and substituting "injury".

First Schedule

17. The First Schedule to the Principal Ordinance is amended—

(a) by omitting from clause 2 (b) (iii) "Twenty-three dollars eighty-five cents" and "Thirty-one dollars eighty cents" and substituting "Forty-two dollars seventy-five cents" and "Fifty-seven dollars" respectively; and

(b) by omitting from paragraph 5 "accident" and substituting "injury".

Fourth Schedule

18. The Fourth Schedule to the Principal Ordinance is amended by omitting from proviso (b) to paragraph 9 "accident" and substituting "injury".

Existing policies of insurance

19. (1) A policy of insurance against liability under the Principal Ordinance as in force immediately before the commencement of this Ordinance has effect during the unexpired balance of the currency of the policy as if it applied to liability under the Principal Ordinance as amended by this Ordinance.

(2) An employer to whom a policy referred to in sub-section (1) has been issued is liable to pay to the insurer, in respect of the additional liability which he may incur as a result of the amendments to the Principal Ordinance effected by this Ordinance, additional premium for the period of the unexpired balance of the currency of the policy, being additional premium equal to the difference between the premium for that period at the rate of the premium payable under the policy and the premium for that period at the rate that would have been payable if the policy had been issued, for the purposes of the Principal Ordinance as amended by this Ordinance, upon the date of commencement of this Ordinance.

(3) Where an insurer under a policy of insurance effected before the commencement of this Ordinance would have been liable, if this Ordinance had not been made, to indemnify a person against his liability under the Principal Ordinance arising out of an injury sustained or a disease contracted before the

commencement of this Ordinance, the insurer is liable to indemnify the person against liability under the Principal Ordinance as amended by this Ordinance arising out of the injury or the disease.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 30 December 1983.

2. No. 2, 1951 as amended by No. 4, 1952; No. 12, 1954; No. 1, 1956; Nos. 12, 20 and 21, 1959; No. 8, 1961; No. 10, 1962; No. 6, 1965; No. 44, 1967; No. 19, 1968; Nos. 7, 13 and 18, 1969; No. 26, 1970; No. 15, 1971; Nos. 35 and 38, 1972; No. 11, 1973; No. 34, 1974; No. 11, 1975; Nos. 15, 46 and 47, 1978; No. 15, 1979; No. 29, 1980; No. 4, 1981; Nos. 103 and 104, 1982.