

AUSTRALIAN CAPITAL TERRITORY

WORKMEN'S COMPENSATION (AMENDMENT) ORDINANCE 1983

No.69,1983

EXPLANATORY STATEMENT

The Workmen's Compensation (Amendment) Ordinance 1983 amends the Workmen's Compensation Ordinance 1951 to give effect to Convention No. 42 of the International Labour Organization and various other matters, and in particular: to provide compensation in respect of death or incapacity through disease caused by employment; to provide compensation benefits for facial disfigurement, loss of the sense of taste or smell, loss of genitals or breasts and loss of the capacity to engage in sexual intercourse; to remove the qualification that only injuries which occur by accident are compensable; and to increase the minimum liability cover required to \$200,000.

Section 1 of the Ordinance cites the title as the Workmen's Compensation (Amendment) Ordinance 1983.

Section 2 provides for it to come into operation on a date to be fixed by the Minister for Territories and Local Government by notice in the Gazette.

Section 3 cites the Workmen's Compensation Ordinance 1951 as the Principal Ordinance.

Section 4 omits the reference to accident in the title of the Principal Ordinance.

Section 5 amends section 6 of the Principal Ordinance to allow persons placed in casual employment by an employment agent to be deemed workmen employed by the agent.

Section 6 amends section 7 of the Principal Ordinance to remove the reference to accident, and to provide that unless otherwise specified, compensation payable under different sections of the Principal Ordinance is to be cumulative.

Section 7 amends section 8 of the Principal Ordinance by removing the reference to accident.

Section 8 repeals section 9 of the Principal Ordinance and substitutes three new sections. The new section 9 allows disease, and aggravation, acceleration and recurrence of disease to be deemed personal injury where it was contributed to by employment. It provides for an employer who is liable to pay compensation under the section to recover contributions from previous employers of the workman whose employment contributed to the injury. However, an employer is not to be liable if the workman at the time of entering his employment, made a wilful and false representation that he did not suffer from the disease.

The new section 9A permits certain diseases to be specified in the Regulations as diseases to which certain kinds of employment are deemed to contribute, unless the contrary is established. Regulations will be made specifying a number of diseases under this section. The new section 9B allows disease and aggravation, acceleration and recurrence of disease to be deemed contributed to by employment in which they were suffered if they more commonly occur in that kind of employment than in employment generally. A disease is deemed to contribute to a workman's death if the death would otherwise have occurred at a significantly later time. It is deemed to contribute to incapacity for work or to facial disfigurement if otherwise the incapacity or disfigurement would not have occurred, would have occurred significantly later, or would have been significantly less.

Section 9 amends section 10 of the Principal Ordinance by removing the reference to accident.

Section 10 inserts six new sections after section 10 of the Principal Ordinance. The new section 10A provides that where a workman sustains an injury (other than one specified in the Second Schedule) resulting in severe and permanent facial disfigurement, he is entitled to receive up to 50% of the amount payable under section 10(1). In default of agreement, the amount is to be determined by a medical referee, appointed by the Clerk of the Court of Petty Sessions, whose certificate is to be final and conclusive evidence in support of the conclusion reached by the referee. A workman's rights of compensation and to institute or continue proceedings are suspended until he submits to an examination by the referee, where one has been appointed. The new section 10B is analogous to 10A but relates to total or partial loss of the sense of smell or the sense of taste (for which up to 10% of the section 10(1) figure is payable), while the new section 10C is also analogous to 10A in relation to the total or partial loss of genitals, or, in the case of a woman, the total or partial loss of one or both breasts (up to 50% of the section 10(1) figure being payable in either case). The new section 10D provides for 50% of the section 10(1) figure to be payable to a workman sustaining an injury resulting in the permanent and total loss of his capacity to engage in sexual intercourse. The new section 10E stipulates that a person is not entitled to receive compensation under sections 10C and 10D in respect of the same injury. The new section 10F denies the application of sections 10A, 10B, 10C and 10D in cases where the injury leads to death within three months. On (but not before) payment under those sections, the workman is disentitled to weekly payments in respect of incapacity for work resulting from the relevant injury.

Section 11 amends section 12 of the Principal Ordinance to include reference to disease and to the new sections 10A, 10B, 10C and 10D.

Section 12 amends section 18(1) of the Principal Ordinance to raise the minimum required liability cover to \$200,000.

Section 13 amends section 18C(1) of the Principal Ordinance to remove the reference to accident.

Section 14 amends section 18D(2) of the Principal Ordinance to raise the amount payable by the Nominal Insurer to \$200,000.

Section 15 amends section 23(1) of the Principal Ordinance by removing the reference to accident.

Section 16 amends section 25(1) of the Principal Ordinance by removing all references to accident.

Section 17 revises the figures in clause 2(b)(iii) of the First Schedule to the Principal Ordinance to bring them into line with changes which have been made to figures in paragraphs 1(b) and 1(c) of that Schedule. It also omits the reference to accident in paragraph 5 of the Schedule.

Section 18 amends proviso (b) to paragraph 9 of the Fourth Schedule to the Ordinance by deleting the reference to accident.

Section 19 provides for existing insurance policies to have effect as if they applied to liability under the amended Ordinance, and for employers to be liable for the payment of additional premiums in consequence.

Ord No 31/83