

AUSTRALIAN CAPITAL TERRITORY

WORKMEN'S COMPENSATION ORDINANCE 1959.

EXPLANATORY MEMORANDUM

No. 12 of 1959

Under the Workmen's Compensation Ordinance 1951-1956 every employer in the Australian Capital Territory must obtain and maintain in force an insurance policy for the full amount of his liability under the Ordinance to all workmen employed by him.

The Ordinance, however, makes no provision to afford relief to an injured workman whose employer has not taken out a workmen's compensation policy and is unable to satisfy a claim for compensation.

This amendment to the Ordinance provides for such an uninsured liability scheme, the main provisions of which are as follows :-

- (a) A "nominal insurer" is appointed by the Minister.
- (b) When a workman is entitled to compensation, but the employer is not insured and defaults in payment of the compensation, the workman may claim against the nominal insurer.
- (c) The nominal insurer is given all the rights of the employer in connection with the claim, the right to have agreements or awards re-opened if there is reason to believe that the employer has not bona fide endeavoured to protect his own interests and the right to obtain information, assistance etc., from the employer.
- (d) The nominal insurer may recover from the employer any amounts he pays out.

- (e) Amounts paid out by the nominal insurer and not recovered, including costs and expenses incurred in investigating or opposing a claim, are provided by approved insurers and self-insurers; by approved insurers in proportion to the premiums received by them during the financial year preceding the date of the claim and by self insurers in proportion to the premiums they would have paid during that year had they taken out an insurance policy.

In addition to providing for the uninsured liability scheme, this

Ordinance –

- (i) repeals section 17 of the 1951-1956 Ordinance, which requires employers to furnish each year to the Secretary, Department of the Interior, information concerning injuries and compensation and inserts a new provision (section 18A) under which the Minister may require approved insurers or self-insurers to furnish information;
- (ii) inserts a new evidentiary provision (proposed sub-section (6) of section 18) which makes an averment in an information that there was not in force a policy as required by the Ordinance prima facie evidence of the matter averred; proof on this matter is cumbersome and expensive for the prosecution, but easy for the defendant; and
- (iii) amends the First Schedule to conform with amendments made to the Ordinance by Ordinance No.4 of 1952.