



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 53 of 1979

**An Act to amend the Workmen's Compensation Act,
1971-1974.**

[Assented to 22nd March, 1979]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Workmen's Compensation Act Amendment Act, 1979".

(2) The Workmen's Compensation Act, 1971-1974, is hereinafter referred to as "the principal Act."

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Repeal of
s. 1 of
principal Act
and enactment
of section in
its place.

3. Section 1 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Short title.

1. This Act may be cited as the "Workers Compensation Act, 1971-1979".

Amendment of
principal Act.

4. The principal Act is amended—

(a) by striking out the word "workman" wherever it occurs and inserting in lieu thereof, in each case, the word "worker";

(b) by striking out the word "workman's" wherever it occurs and inserting in lieu thereof, in each case, the word "worker's";

and

(c) by striking out the word "workmen" wherever it occurs and inserting in lieu thereof, in each case, the word "workers".

5. Section 9 of the principal Act is amended—

Amendment of principal Act, s. 9—
Liability of employers to compensate workmen for injuries.

- (a) by inserting in paragraph (b) of subsection (2) immediately after the word lastly occurring the passage “whether such journey is to or from the institution”;

and

- (b) by striking out paragraph (e) of subsection (2) and inserting in lieu thereof the following paragraph:—

(e) while the worker is in the course of a journey between his place of abode and his place of employment or between his place of abode or place of employment and any other place for the purposes of—

(i) obtaining, in connection with any injury for which he has received or is entitled to receive compensation, or for which a claim for compensation has been admitted, a medical certificate;

(ii) receiving in connection with any such injury medical, surgical or hospital advice, attention or treatment;

or

(iii) seeking or receiving payment of compensation in connection with any such injury,

whether such journey is to or from his place of employment or to or from such other place, or while the worker is in attendance at his place of employment or such other place for any such purpose;

6. Section 22 of the principal Act is repealed.

Repeal of s. 22 of principal Act.

7. The following section is enacted and inserted in the principal Act immediately after section 32 thereof:—

Enactment of s. 32a. of principal Act—

32a. In any proceedings under this Act, evidence shall not be adduced from a medical practitioner concerning the medical condition of a worker, unless at least seven days before the day on which it is proposed to adduce that evidence (or on the Court being satisfied that reasonable cause exists within such lesser period as is fixed by the Court) the party proposing to adduce that evidence furnishes to each other party to the proceedings a copy of every medical report given by that medical practitioner to the first-mentioned party relevant to the medical condition to which the evidence relates.

Copies of medical reports to be furnished to other party.

8. Section 52 of the principal Act is amended—

Amendment of principal Act, s. 52—
Unlawful discontinuance of weekly payments.

- (a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Except as is expressly provided by this Act, any weekly payments payable as compensation pursuant to this Act shall not be discontinued or diminished without the consent of the worker except—

(a) where—

(i) a legally qualified medical practitioner has certified that the worker has wholly or partially recovered or that the incapacity is no longer a result of the injury;

and

(ii) the employer has given to the worker at least twenty-one days prior notice in writing of his intention to discontinue the weekly payments or diminish them by an amount stated in the notice (which notice must be accompanied by a copy of the medical certificate stating the grounds of the opinion of the medical practitioner);

(b) where the worker has failed to provide his employer with evidence in the form of a certificate from a legally qualified medical practitioner that his incapacity continues and the employer has given to the worker at least twenty-one days prior notice in writing of his intention to discontinue the weekly payments, unless the worker within that period provides his employer with such evidence;

or

(c) where the worker has returned to work.;

(b) by striking out from subsection (2) the passage “referred to in that subsection” and inserting in lieu thereof the passage “after the notice of intention to discontinue or diminish is given or, where no such notice, is given, after the weekly payments are discontinued or diminished”;

and

(c) by inserting after subsection (2) the following subsection:—

(2a) Where a worker has been given a notice under subsection (1) of this section and has taken out an application referred to in subsection (2) of this section, the weekly payments shall not be discontinued or diminished pending determination of the proceeding upon the application.

Amendment of
principal Act,
s. 53—
Weekly
payments.

9. Section 53 of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of subsection (3) and inserting in lieu thereof the following paragraphs:—

(a) dismiss or, upon such terms as it thinks fit, adjourn, the application;

or

(b) if it considers that a genuine dispute exists concerning the liability of the employer to pay any compensation, order that this section shall not apply in relation to so much of the compensation as is the subject of the genuine dispute.

(b) by inserting after subsection (3) the following subsection:—

(3aa) Upon the hearing of an application referred to in subsection (2) of this section, the Court may order that this section shall apply with such modifications as the Court thinks fit and specifies by order in relation to so much of the compensation as is not the subject of a genuine dispute, but no modification of the application of this section shall render a penalty amount payable under this section in respect of any period during which the operation of subsection (1) of this section was, pursuant to subsection (2) of this section, suspended.

and

(c) by inserting after subsection (6) the following subsection:—

(7) Where the period of fourteen days referred to in this section includes in a particular case a public holiday (not being a Sunday), that period shall be extended by a number of days equal to the number of public holidays (not being Sundays) included in that period.

10. Section 54 of the principal Act is amended by striking out the word "holidays,".

Amendment of principal Act, s. 54—
Annual and long service leave.

11. Section 55 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 55—
Making of weekly payments not admission of liability.

(1) For the purposes of this Act—

- (a) the making of a weekly payment referred to in this Part;
- (b) the payment by an employer of any fees for medical services, hospital services, nursing services, constant attendance services, rehabilitation services or ambulance services as defined in section 59 of this Act;

or

- (c) the payment by an employer of the cost of repairing or replacing damaged clothing, personal effects or tools of trade,

does not constitute an admission of liability to pay compensation under this Act.

12. Section 65 of the principal Act is amended by striking out the word "temporarily".

Amendment of principal Act, s. 65—
Absences from employment not to affect certain leave.

13. Section 66 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 66 of principal Act and enactment of section in its place.

66. (1) Where—

- (a) the entitlement of a worker to annual leave, or payment in lieu of annual leave, is governed by an industrial award made under the law of the Commonwealth or of a State or Territory of the Commonwealth (not being this State);

Additional compensation payable to certain workers in respect of annual leave.

(b) the worker is absent from his employment due to an injury in respect of which compensation has been paid, or is payable under this Act;

and

(c) the period of the absence is not taken into account as service for the purpose of calculating the worker's entitlement to annual leave, or payment in lieu of annual leave,

the worker is entitled, by way of compensation under this Act (in addition to any other compensation to which he may be entitled) to the monetary value of the annual leave that would have accrued to the worker if he had not been absent from his employment.

(2) Any compensation payable under this section shall be paid when the annual leave, or the payment in lieu thereof, would (assuming that the worker had not been absent from his employment) have been granted or made.

Repeal of
s. 73 of
principal Act.

14. Section 73 of the principal Act is repealed.

Enactment of
s. 74a of
principal Act.

15. The following section is enacted and inserted in the principal Act after section 74:—

Limitation of
liability by
examining
employers.

74a. (1) Notwithstanding any other provision of this Act, where an employer—

(a) employs a worker in employment that commences after the commencement of the Workmen's Compensation Act Amendment Act, 1979;

(b) causes the extent of the noise induced hearing loss of the worker to be determined by an examination conducted in the prescribed manner by a person holding prescribed qualifications not more than two months (or such other period, not exceeding four months, as the Court may, on the application of the employer, allow) before or after the commencement of the employment (and, in the case of an examination conducted after the commencement of the employment, while the worker is still in that employment);

and

(c) causes a copy of the report made upon the examination together with a notice in the prescribed form to be supplied to the worker personally as soon as practicable after his receipt of the report (and in no case more than six months after the commencement of the employment)

the employer shall be liable to pay compensation only on the following basis:

(d) as if the noise induced hearing loss arising out of, or in the course of, his employment of the worker were the only hearing loss of the worker;

and

(e) as if the hearing loss arising out of, or in the course of, his employment of the worker had been caused by an injury occurring on the last day on which the employer employed the worker, prior to the commencement of the proceedings, in employment to the nature of which the injury is due.

(2) Where—

(a) the noise induced hearing loss of a worker is attributable to injury arising out of, or in the course of, his employment by two or more employers (of whom at least one is a non-examining employer);

and

(b) the last responsible employer of the worker is an examining employer;

the worker may claim compensation in respect of the whole of his noise induced hearing loss from that examining employer and proceedings in respect of the claim may, on the application of the worker, be brought before the Court for hearing and determination notwithstanding that there is no dispute between the worker and that employer in relation to liability to pay, or the amount of, compensation under this Act.

(3) Where proceedings are brought before the Court in pursuance of subsection (2) of this section, the last responsible non-examining employer and any subsequent responsible examining employer who employed the worker before the commencement of his employment by the employer against whom the proceedings are brought shall be joined as parties to the proceedings.

(4) In any proceedings under subsection (2) of this section—

(a) compensation shall first be assessed as if all the employers who are parties to the proceedings were a single non-examining employer;

(b) compensation shall then be assessed against each examining employer on the basis referred to in subsection (1) of this section;

and

(c) compensation shall then be assessed against the non-examining employer by subtracting the amounts assessed under paragraph (b) of this subsection from the amount assessed under paragraph (a) of this subsection.

(5) In this section—

“examining employer” means an employer who is entitled to the benefit of subsection (1) of this section:

“hearing loss” includes deficiency of hearing:

“non-examining employer” means an employer who is not entitled to the benefit of subsection (1) of this section:

“responsible employer” means an employer who employed the worker in employment to the nature of which the injury is due.

(6) This section does not—

(a) affect a liability to make weekly payments;

or

(b) confer any right to recover compensation for a prior injury as defined in subsection (9) of section 69 of this Act or an injury in respect of which compensation has been recovered under a law not being a law of this State.

(7) Nothing in this section—

(a) affects the operation of any other provision of this Act that is relevant to onus of proof in proceedings under this Act;

or

(b) affects the operation of any other provision of this Act except in so far as the operation of that provision must necessarily be affected in order to give effect to the express provisions of this section.

Amendment of
principal Act,
s. 84—
Remedies
against
employer and
stranger.

16. Section 84 of the principal Act is amended—

(a) by inserting in paragraph (d) before the word “entitled” the passage
“or was”;

and

(b) by striking out from paragraph (d) the passage “for which the third party is still liable” and inserting in lieu thereof the passage
“to which the worker is or was entitled but has not received”.

Amendment of
principal Act,
s. 88—
Act to apply
to injuries
to persons
employed on
“South
Australian
ships”.

17. Section 88 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) This Act applies in respect of an injury arising out of or in the course of the employment of a worker on a South Australian ship where that injury occurs within the State or within the jurisdiction of the State.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor