



AUSTRALIAN CAPITAL TERRITORY

# Workers' Compensation (Amendment) Act (No. 2) 1997

No. 66 of 1997

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AUSTRALIAN CAPITAL TERRITORY

## **Workers' Compensation (Amendment) Act (No. 2) 1997**

**No. 66 of 1997**

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### **An Act to amend the *Workers' Compensation Act 1951* and for related purposes**

*[Notified in ACT Gazette S300: 9 October 1997]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

**1.** This Act may be cited as the *Workers' Compensation (Amendment) Act (No. 2) 1997*.

#### **Commencement**

**2. (1)** Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

**(2)** The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

**(3)** If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, "Principal Act" means the *Workers' Compensation Act 1951*.<sup>1</sup>

### **Interpretation**

4. Section 6 of the Principal Act is amended—

- (a) by inserting in the definition of "injury" in subsection (1) "(including stress)" after "mental injury";
- (b) by omitting from paragraph (f) of the definition of "medical treatment" in subsection (1) "medical gymnast" and substituting "kinesiologist"; and
- (c) by inserting after subsection (1) the following subsection:

“(1A) In the definition of ‘injury’ in subsection (1), a reference to mental injury or stress shall not be taken to include a mental injury or stress wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of an employer with respect to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.”.

### **Insertion**

5. Before section 8 of the Principal Act the following section is inserted:

#### **Deemed total incapacity**

“7C. (1) For the purposes of this Act, a worker shall be deemed to be totally incapacitated if—

- (a) a medical practitioner certifies that the worker is partially incapacitated;
- (b) the partial incapacity prevents the worker from performing the duties he or she performed before becoming incapacitated;
- (c) the employer cannot provide appropriate alternative employment; and
- (d) the worker cannot find appropriate alternative employment.

“(2) For the purposes of subsection (1), a worker shall be taken to be totally incapacitated from the time at which he or she became partially incapacitated until 1 of the following occurs:

- (a) the worker becomes totally incapacitated;

- (b) the employer provides the worker with appropriate alternative employment;
- (c) the worker finds appropriate alternative employment.”.

### **Compensation for medical treatment**

**6.** Section 11 of the Principal Act is amended—

(a) by omitting paragraphs (3A) (b) and (c) and substituting the following paragraphs:

“(b) the cost of conveyance of the worker (whether by himself or herself or by another person) to and from such a place as ascertained in accordance with the Regulations; and

(c) the cost of any accommodation (including the cost of meals) required by the worker by reason of the worker’s attendance at such a place as ascertained in accordance with the Regulations.”; and

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

“(3B) Where the Regulations prescribe a method for determining a cost under paragraph (3A) (b) or (c), the Regulations may also prescribe that any figure used to determine the cost be adjusted in accordance with the Index number as issued from time to time.”.

### **Substitution and transitional**

**7. (1)** Sections 12 and 12A of the Principal Act are repealed and the following section is substituted:

#### **CPI indexation**

“12A. (1) Where—

- (a) there is a variation in the Index number; and
- (b) a variation in accordance with this section would increase the amount of compensation payable under subsection 10 (1) or Schedule 1;

an amount of compensation payable under subsection 10 (1) or Schedule 1 shall be varied in accordance with this section.

“(2) An amount referred to in subsection (1) shall be varied in accordance with the formula  $\frac{L \times N \times F}{51.6}$ , where—

- L** is the base figure;
- N** is the most recently issued Index number; and
- F** is a factor advised by the Commonwealth Statistician to make the most recently issued Index number comparable to an Index number with a reference base of 1989-1990=100.”.

(2) A reference in paragraph 12A (1) (b) of the Principal Act as amended by this Act to the amount of compensation payable under subsection 10 (1) or Schedule 1 shall, until such time as those amounts are varied in accordance with section 12A of the Principal Act as amended by this Act, be read as a reference to those amounts as varied in accordance with section 12A of the Principal Act as in force immediately before the date on which this section commences.

### **Prescribed insurance policies**

**8.** Section 16 of the Principal Act is amended by adding at the end the following subsections:

“(4) A reference in a prescribed insurance policy to wages, salaries and other forms of remuneration shall be taken to include a reference to—

- (a) salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors, payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money’s worth given to the worker under a contract of service or apprenticeship; and
- (b) payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) to a person deemed to be a worker in accordance with subsection (2), (3), (3A), (3C), (4), (4AA), (4B), (4C) or (4D);

but not to include a reference to—

- (c) any sum that the employer has been accustomed to pay to the worker to cover any special expenses incurred by the worker because of the nature of the employment;

- (d) any allowance to reimburse costs arising out of an obligation incurred under a contract;
- (e) any amount expended on behalf of the worker;
- (f) directors' fees;
- (g) compensation under this Act; or
- (h) any payment for long service leave, a lump sum payment instead of long service leave or any payment under the *Long Service Leave (Building and Construction Industry) Act 1981*.

“(5) Nothing in this section shall be taken as preventing a cover note from being a prescribed insurance policy.”.

**Compulsory insurance—employers**

**9.** Section 17B of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) A cover note shall be taken to be a prescribed insurance policy only if it is in force for a period of no more than 30 days and—

- (a) the employer maintained a prescribed insurance policy (other than a cover note) immediately before maintaining the cover note; or
- (b) the person by whom the cover note is maintained was not an employer immediately before commencing to maintain the cover note.”;

and

(b) by inserting in subsection (5) “an amount equal to double” after “from the employer”.

**Insertion**

**10.** After section 17D of the Principal Act the following section is inserted:

**Cover notes**

“17E. (1) An insurer shall not issue a cover note for a period for which an employer is without a prescribed insurance policy unless that period is 30 days or less.

Penalty:

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

“(2) In subsection (1), the reference to a prescribed insurance policy shall be taken to be a reference to a prescribed insurance policy that is not a cover note.

“(3) An insurer may recover a premium from an employer for a period for which a cover note from the insurer was in force in relation to the employer if, at the expiration of the cover note, the employer does not obtain a policy of insurance from the insurer.”.

**Funds for payments by nominal insurer**

**11.** Section 18H of the Principal Act is amended—

- (a) by omitting from subsection (2) “(including the amount of any costs or expenses incurred)”; and
- (b) by inserting after subsection (2) the following subsection:
  - “(2A) For the purposes of subsection (2), amounts payable under this Act include the following:
    - (a) the amount of any costs and expenses incurred;
    - (b) administrative costs of the nominal insurer.”.

**Provision of information to inspectors**

**12.** Section 23F of the Principal Act is amended by adding at the end the following subsection:

“(5) A reference in this section to an employer shall be taken to include a reference to a person whom an inspector believes, on reasonable grounds, is an employer.”.



### **Entry and inspection of premises**

**13.** Section 23G of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “and”;
- (b) by adding at the end of paragraph (3) (c) “and”; and
- (c) by adding at the end of subsection (3) the following paragraph:

“(d) require—

- (i) the occupier;
- (ii) an employer who is on the premises; or
- (iii) a person whom the inspector believes on reasonable grounds is an employer and who is on the premises;

to supply—

- (iv) his or her address; and
- (v) the name under which the business carried on on the premises operates.”.

### **Insertion**

**14.** After section 26B of the Principal Act the following section is inserted:

#### **Notice by worker**

“26BA. (1) A worker who is receiving weekly compensation payments shall give written notice to the employer as soon as practicable after the worker becomes aware of any change of circumstance that may affect the worker’s entitlement to compensation.

Penalty: 10 penalty units.

“(2) Nothing in subsection (1) requires a worker to notify the employer of a change in circumstances—

- (a) caused by or originating from the employer;
- (b) which the worker believes on reasonable grounds that the employer is aware of; or
- (c) which the worker could not reasonably be expected to know might affect his or her entitlement to compensation.”.

**Insertion**

15. After Part VIA of the Principal Act the following Part is inserted:

**‘PART VIB—ON-THE-SPOT FINES**

**Interpretation**

‘26G. In this Part—

‘final infringement notice’ means a notice under section 26J;

‘infringement notice’ means a notice under section 26H;

‘on-the-spot fine’, in relation to a prescribed offence, means—

- (a) in the case of a natural person—the fine prescribed for that offence; or
- (b) in the case of a body corporate—5 times the amount of that fine;

‘Registrar’ means the Occupational Health and Safety Registrar;

‘relevant amount’ means—

- (a) in relation to an infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates; or
- (b) in relation to a final infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates, in addition to the determined fee;

‘relevant period for payment’ means—

- (a) in relation to an infringement notice—28 days after the date of the notice;
- (b) in relation to a final infringement notice—14 days after the date of the notice; or
- (c) such extended period as the Registrar allows under paragraph 26M (4) (b).

**Infringement notices**

‘26H. (1) An inspector may serve an infringement notice on a person if the inspector believes on reasonable grounds that the person has committed a prescribed offence.

“(2) An infringement notice shall be in a form approved by the Registrar, and shall—

- (a) identify the inspector who issues the notice;
- (b) state the full name, or surname and initials, and address of the person on whom it is served;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;
- (d) specify the day, time and place of the alleged commission of the offence;
- (e) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine to the Registrar within—
  - (i) 28 days after the date of the notice;
  - (ii) if the determined fee is paid in addition—14 days after the date of a final infringement notice; or
  - (iii) such extended period as is allowed under this Part;
- (f) specify the place at which, and the manner in which, the fine may be paid;
- (g) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (h) include a statement about the procedures for obtaining an extension of time under this Part;
- (j) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (k) be dated and signed by the inspector who serves the notice.

### **Final infringement notices**

“26J. (1) An inspector may serve a final infringement notice on a person where, after the service on the person of an infringement notice—

- (a) within 28 days after the date of the infringement notice—
  - (i) the person fails to pay the on-the-spot fine; and
  - (ii) the person fails to apply for the withdrawal of the infringement notice under section 26L; or

- (b) if the person applies for the withdrawal of the infringement notice under section 26L—
  - (i) the application is rejected; and
  - (ii) the person fails to pay the on-the-spot fine within the extended period allowed under paragraph 26M (4) (b).

“(2) A final infringement notice shall be in a form approved by the Registrar, and shall—

- (a) identify the inspector who serves the notice;
- (b) state the full name, or surname and initials, and address of the person on whom it is served;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;
- (d) specify the day, time and place of the alleged commission of the offence;
- (e) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates;
- (f) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine, in addition to the determined fee, to the Registrar within—
  - (i) 14 days after the date of the notice; or
  - (ii) such extended period as is allowed under this Part;
- (g) specify the place at which, and the manner in which, the fine and fee may be paid;
- (h) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (j) include a statement about the procedures for obtaining an extension of time under this Part;
- (k) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (m) be dated and signed by the inspector who serves the notice.

### **Discharge of liability for prescribed offences**

“26K. (1) This section applies where an infringement notice or a final infringement notice has been served on a person in respect of a prescribed offence and, before the expiration of the relevant period for payment—

- (a) the relevant amount is paid in accordance with the notice; or
- (b) the relevant notice is withdrawn.

“(2) Where this section applies—

- (a) any liability of the person in respect of the offence is discharged;
- (b) no further proceedings shall be taken in respect of the offence; and
- (c) the person shall not be regarded as having been convicted of the offence.

“(3) For the purposes of this section, where a cheque is tendered in payment of the relevant amount, such payment shall not be taken to have been made unless and until the cheque is honoured on presentation.

### **Application for withdrawal of infringement notices**

“26L. (1) A person on whom an infringement notice or a final infringement notice is served in relation to the alleged commission of a prescribed offence may, by notice in writing to the Registrar within the relevant period, apply for the withdrawal of the notice.

“(2) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a prescribed offence.

### **Withdrawal of infringement notices**

“26M. (1) On receipt of an application under section 26L, the Registrar may withdraw the relevant infringement notice or final infringement notice if satisfied on reasonable grounds that any of the following grounds is made out:

- (a) the applicant did not commit the offence;
- (b) the applicant had a reasonable excuse for committing the act constituting the offence;
- (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

“(2) If the Registrar withdraws an infringement notice or final infringement notice, he or she shall give the person on whom the notice was served written notice of the decision.

“(3) A notice under subsection (2) shall—

- (a) specify the infringement notice or final infringement notice that is withdrawn; and
- (b) include a statement of the effect of subsections 26K (1) and (2).

“(4) If the Registrar does not withdraw an infringement notice or final infringement notice under subsection (1), the Registrar shall—

- (a) give the person written notice of the decision; and
- (b) extend the period within which the relevant amount is to be paid, by a period of—
  - (i) in the case of a decision not to withdraw an infringement notice—28 days commencing on the date of the notice under paragraph (a); or
  - (ii) in the case of a decision not to withdraw a final infringement notice—14 days commencing on the date of the notice under paragraph (a).

“(5) If the Registrar does not give notice to a person under subsection (2) or (4) within 60 days after the receipt of an application for withdrawal of an infringement notice or a final infringement notice under section 26L, the notice is to be taken to have been withdrawn.

“(6) Where an infringement notice or final infringement notice served on a person is withdrawn under this section, the Registrar shall refund any amount paid under section 26H or 26J in payment of the relevant on-the-spot fine.

### **Prosecution of prescribed offences**

“26N. (1) The Registrar shall not institute a prosecution for an offence in respect of which an infringement notice has been served on a person—

- (a) until the expiration of the period of 14 days after the date of service of a final infringement notice in relation to that offence; or
- (b) if the person applies for the withdrawal of the final infringement notice under section 26L—unless and until the application is rejected and the extended period granted under paragraph 26M (4) (b) has expired.

“(2) Nothing in section 26H or 26J shall be construed as—

- (a) affecting the liability of a person to be prosecuted for a prescribed offence in relation to which an infringement notice has not been served;

- (b) subject to subsection (1), prejudicing or affecting the institution or prosecution of proceedings for a prescribed offence; or
- (c) limiting the amount of the fine that may be imposed by the Court in respect of a prescribed offence.

“(3) Where a prosecution is instituted for an offence in respect of which an infringement notice has been served, the Registrar shall refund any amount paid under section 26H or 26J in payment of the on-the-spot fine.

### **Non-antecedent value of infringement notice offences**

“26P. (1) For the purposes of section 429A of the *Crimes Act 1900*, in sentencing an accused for any offence, a court shall not have regard to—

- (a) the alleged commission of any infringement notice offence;
- (b) the circumstances surrounding any infringement notice offence; or
- (c) the investigation of any infringement notice offence, or any related action under this Part.

“(2) In subsection (1)—

‘infringement notice offence’, in relation to an accused, means an alleged offence—

- (a) in relation to which an infringement notice has been served on the accused; and
- (b) which has not been found proved by a court.

### **Service of notices**

“26Q. (1) For the purposes of this Part, a notice may be served on the person to whom it is directed—

- (a) by delivering the notice personally;
- (b) by sending the notice by post addressed to the person at the person’s last-known place of residence or business; or
- (c) by leaving the notice at the person’s last-known place of residence or business with some other person who is apparently—
  - (i) over the age of 16 years; and
  - (ii) an occupant of the place, or employed at that place.

“(2) Nothing in this section prevents the service on a person of more than 1 infringement notice or final infringement notice in respect of the same alleged offence, but it is sufficient for the application of section 26K to such a person for the person to pay the relevant amount in accordance with any of the notices so served.

“(3) Where an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is residing with a person who stands *in loco parentis* to that child, the person serving the notice shall serve a copy of the notice on that person.

### **Evidence**

“26R. (1) For the purposes of this Part, a document that purports to have been signed by the Registrar shall be taken to have been so signed unless the contrary is proved.

“(2) In a prosecution for a prescribed offence, a certificate signed by the Registrar stating any of the following matters is evidence of the matters so stated:

- (a) that a notice was served under this Part on a specified person on a specified date;
- (b) where an infringement notice or a final infringement notice has been served on a person under this Part, that—
  - (i) further time for payment was, or was not, allowed under paragraph 26M (4) (b);
  - (ii) the notice was not withdrawn; or
  - (iii) the relevant amount was not paid in accordance with the notice within the relevant period for payment.”.

### **Insertion**

**16.** Before section 27 of the Principal Act the following section is inserted in Part VII:

#### **Time for commencement of prosecutions**

“26S. A prosecution in respect of an offence against this Act may be commenced at any time within 2 years after the commission of the offence.”.



### **Schedule 1**

**17.** Schedule 1 to the Principal Act is amended—

- (a) by omitting subparagraph 1B (c) (ii) and substituting the following subparagraph:
  - “(ii) does not include a reference to—
    - (A) a payment in respect of overtime;
    - (B) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the worker in respect of his or her employment; or
    - (C) income received in respect of engaging in a professional sporting activity.”;
- (b) by omitting from subclause 11 (2) “with the consent of the other”; and
- (c) by adding at the end of subclause 11 (3) “until such time as the worker’s claim is the subject of arbitration in accordance with Schedule 4”.

### **Schedule 2**

**18.** Part I of Schedule 2 to the Principal Act is amended—

- (a) by inserting “Loss of sight in both eyes” directly below “Loss of both eyes”; and
- (b) by inserting “Loss of sight in only useful eye, the other being blind or absent” directly below “Loss of an only useful eye, the other being blind or absent”.

### **Schedule 3**

**19.** Schedule 3 to the Principal Act is amended—

- (a) by omitting from condition 11 “1 month” and substituting “30 days”; and
- (b) by omitting from condition 13 all the words after “Condition 11 of this Policy”.

**NOTE**

**Principal Act**

1. Reprinted as at 31 March 1997. See also Act No. 27, 1997.

*[Presentation speech made in Assembly on 4 September 1997]*

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