

WESTERN AUSTRALIA

WORKERS' COMPENSATION AND ASSISTANCE AMENDMENT ACT

No. 36 of 1988

AN ACT to amend the *Workers' Compensation and Assistance Act 1981* and the *Workers' Compensation and Assistance Amendment Act 1985*.

[Assented to 24 November 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Workers' Compensation and Assistance Amendment Act 1988*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

PART 2—WORKERS' COMPENSATION AND ASSISTANCE ACT 1981

Principal Act

3. In this Part the *Workers' Compensation and Assistance Act 1981** is referred to as the principal Act.

[*Reprinted as approved 6 February 1987 and amended by Acts Nos. 21 and 65 of 1987.]

Section 5 amended

4. Section 5 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting in the appropriate alphabetical position the following definition—

“ “noise induced hearing loss” means a noise induced loss or diminution of a worker's hearing that is permanent and is due to the nature of any employment in which the worker was employed, other than a personal injury by accident; ”;

and

(ii) by deleting the definitions of “paragraph”, “Part”, “Schedule”, “section”, “subclause”, “subparagraph” and “subsection”; and

(b) by repealing subsection (2).

Section 24 amended

5. Section 24 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the designation (1); and

(ii) by deleting "subsection (2)" and substituting the following—

“ section 24B ”; and

(b) by repealing subsections (2), (3), (4) and (5).

Sections 24A and 24B inserted

6. After section 24 of the principal Act the following sections are inserted—

Lump sum compensation for
noise induced hearing loss

“ 24A. (1) Subject to Schedule 7 and this section, a worker suffering from noise induced hearing loss shall be entitled to compensation for that loss under item 6 of the table set out in Schedule 2 if the worker so elects as provided by section 24B, but the compensation payable for that hearing loss shall, subject to the provisions of this Act relating to Schedule 2, be in accordance with the percentage ratio of the prescribed amount indicated in column 2 of the table set out in Schedule 2 in respect of item 6 at the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred, irrespective of when the worker so elects.

(2) A worker is entitled to compensation under this section only in respect of noise induced hearing loss incurred after the date on which this section comes into operation and—

(a) in respect of the worker's first election under this section, where that noise induced hearing loss is at least a 10% loss of hearing; and

(b) in respect of a subsequent election by the worker under this section after a successful first election under paragraph (a)—

(i) where that noise induced hearing loss is at least a further 5% loss of hearing; or

(ii) where the worker has reached the age of 65 years or on the worker's retirement from work before that age, where that noise induced hearing loss is any further percentage of loss of hearing.

(3) Nothing in subsection (2) operates to stop a worker who—

- (a) has retired from work before attaining the age of 65 years;
- (b) has made a successful election under subparagraph (ii) of subsection (2) (b); and
- (c) subsequently returns to work,

from making an election under paragraph (b) of subsection (2) in respect of further loss of hearing.

(4) A worker is not entitled to compensation under this section in respect of noise induced hearing loss incurred after the worker has attained the age of 65 years.

(5) In subsection (2), loss of hearing means percentage loss of hearing calculated in accordance with the National Acoustic Laboratory Tables prescribed.

(6) Schedule 7 applies and noise induced hearing loss shall be ascertained and measured for the purposes of this section in accordance with that Schedule.

Election under section 24 or 24A

24B. (1) A worker elects for the purposes of section 24 or 24A (1) where—

- (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant injury or hearing loss; and
- (b) that form of election is filed with the Board, and a copy of it is served by or on behalf of the worker on the employer who, in the case of an election for the purposes of section 24A, shall be the employer who last employed the worker in employment to the nature of which noise induced hearing loss is due.

(2) A form of election referred to in subsection (1) is not binding upon a worker unless the Registrar is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's future entitlements to compensation under this Act.

(3) If not satisfied in accordance with subsection (2), the Registrar shall within 7 days notify the employer and the worker accordingly.

(4) Subject to this Act, a worker who elects as provided by subsection (1) is entitled to continue to receive any weekly payments of compensation to which he or she is entitled until—

- (a) an agreement with respect to the election is registered under section 76; or
- (b) an order of the Board is made with respect to the amount of compensation payable pursuant to the election,

whichever is sooner.

(5) Where a worker makes an election under subsection (1) for the purposes of section 24A, this Division shall apply as if the noise induced hearing loss in respect of which the election was made was a compensable personal injury by accident arising out of or in the course of the worker's employment and for that purpose a reference in this Division to the time or date of the personal injury by accident shall, in respect of compensable noise induced hearing loss, be construed as a reference to the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred. ”.

Section 28 amended

7. Section 28 of the principal Act is amended by deleting “as provided by section 24” and substituting the following—

“ under section 24B ”.

Section 29 amended

8. Section 29 of the principal Act is amended—

(a) by deleting “Section 24 does” and substituting the following—

“ Sections 24 and 24A do ”; and

(b) by deleting “section 24 unless he elects under that section” and substituting the following—

“ those sections unless the worker elects under section 24B ”.

Section 30 amended

9. Section 30 of the principal Act is amended—

(a) by deleting “24” in the first place where it occurs and substituting the following—

“ 24B ”; and

(b) by inserting after “24” in the second place where it occurs the following—

“ or 24A ”.

Section 50 repealed

10. Section 50 of the principal Act is repealed.

Section 73 amended

11. Section 73 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) If the dispute between employers is in respect of liability to pay compensation for noise induced hearing loss under section 24A, the Commission shall provide the Board with copies of the results of any relevant audiometric tests stored by the Commission under clause 5 (2) of Schedule 7. ”.

Schedule 7 inserted

12. The principal Act is amended by inserting after Schedule 6 the following Schedule—

“ SCHEDULE 7 (Section 24A)

NOISE INDUCED HEARING LOSS

Interpretation

1. In this Schedule—

“audiometric test” means an audiometric test carried out in accordance with clause 4 (1);

“prescribed workplace” means a workplace prescribed under clause 10;

“proclaimed date” means the date on which the *Workers' Compensation and Assistance Amendment Act 1988* comes into operation.

Audiometric tests

2. (1) A worker employed in a prescribed workplace shall undergo an initial audiometric test as soon as practicable but no later than—

- (a) where the worker is employed in a prescribed workplace at the proclaimed date, 12 months after that date; or
- (b) if the worker was not employed in a prescribed workplace at the proclaimed date, 12 months after the worker commences employment in a prescribed workplace.

(2) A worker employed in a prescribed workplace, or who has retired from work in a prescribed workplace within the last 3 months, who has not undergone an audiometric test for 12 months and who wishes to do so may request the employer, or in the case of a retired worker the worker's last employer, in writing to arrange for such a test and the employer shall, as soon as practicable, but not later than one month after the day that the request was received, arrange for the test to be held at the earliest date practicable.

(3) A worker who has retired from work and is subsequently employed in a prescribed workplace shall undergo an audiometric test within 3 months of commencing that employment.

(4) Any worker may undergo an audiometric test at any other time not referred to in this clause but clause 3 does not apply to that test.

Employer to arrange and pay for audiometric test

3. (1) The employer of a worker who is required, or who makes a request, to undergo an audiometric test under clause 2 shall—

- (a) arrange for the test;
- (b) bear the cost of the test and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings; and
- (c) give written notice to the worker in the prescribed form of the time and place of the test, where relevant, the requirement to undergo the test and any other particulars prescribed regarding the test.

(2) An employer who contravenes subclause (1) commits an offence.

Carrying out of audiometric tests

4. (1) An audiometric test shall be carried out in the prescribed manner by a person meeting the prescribed requirements and approved by the Executive Director.

(2) A person who carries out an audiometric test shall ensure that the results of the test prepared, or summarized, as prescribed are delivered to the Commission and to the worker tested within one month after the day of the test.

(3) Subject to subclause (2), a person who carries out an audiometric test shall ensure that the results of the test, and any information derived from those results, are not communicated to any person other than at the written request of the worker tested or to—

(a) the Executive Director; or

(b) any other person prescribed in circumstances, if any, prescribed.

(4) A person who contravenes subclauses (2) or (3) commits an offence.

Communication and storage of audiometric test results

5. (1) The Commission shall communicate—

(a) the results of an audiometric test delivered to it under clause 4 (2)—

(i) to the worker tested and to that worker's employer if the test results indicate that the worker may be entitled to compensation for noise induced hearing loss under section 24A; and

(ii) to the Board, where required to do so under section 73 (6); and

(b) the results referred to in paragraph (a), or prescribed information from those results, to any other person prescribed in circumstances, if any, prescribed.

(2) The Commission shall store the results of audiometric tests delivered to it under clause 4 (2) for the period prescribed and, subject to subclause (1), shall ensure that those results, and any information derived from them, remain confidential.

Reference to medical panel

6. (1) Any question that arises under section 24A or this Schedule regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, may be referred by the Executive Director to a medical panel constituted as provided under section 145 if—

(a) the Board so requests; or

(b) the worker claiming compensation or that worker's employer so requests in the manner prescribed and on payment of the prescribed fee.

(2) Where a question has been referred to a medical panel under subclause (1)—

(a) the Executive Director shall make such arrangements as are necessary to enable any medical practitioner who has examined or treated the worker, on the worker's own behalf or on behalf of the employer, and who makes a request to do so, to attend before the medical panel and make oral submissions, and the medical practitioner shall be paid from the General Fund such witness fees as he or she would have been entitled to receive if he or she had attended to give evidence in a hearing before the Board; and

- (b) if the worker, on being required to do so, refuses without reasonable excuse, proof of which is on the worker, to submit to an examination by that panel, or obstructs the examination, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the examination takes place,

and a certificate given by the medical panel, or a majority of members of the panel, regarding the question referred to it under subclause (1) shall be conclusive evidence regarding the question.

Re-test of person's hearing

7. (1) Where an audiometric test has been carried out on a worker and the worker or the employer, within 3 months after the day on which the results of the audiometric test are communicated to him or her, gives notice in the prescribed form to the Commission to the effect that the test results are disputed the Commission shall arrange for a re-test of the worker to be carried out in the prescribed manner.

(2) If a worker refuses without reasonable excuse, proof of which is on the worker, to submit to a re-test under subclause (1) or obstructs that re-test, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the re-test takes place.

(3) The costs of a re-test under this clause and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings shall be paid from the General Fund.

Determination of hearing loss

8. (1) The results of an audiometric test carried out on a worker and stored by the Commission under clause 5 are *prima facie* evidence of the level of hearing of the person at the date of the test.

(2) Where a comparison of the results of 2 audiometric tests stored by the Commission under clause 5 shows that a loss or diminution of the hearing of a worker has occurred, those results shall be *prima facie* evidence of the measure of loss or diminution of hearing of that worker between the dates of the tests.

(3) Where an audiometric test shows that a loss or diminution of hearing has been incurred by a worker but the worker has not undergone an earlier audiometric test then whether, and to what extent, that loss or diminution of hearing is compensable noise induced hearing loss shall, in default of agreement between the worker and employer, be determined by the Board.

(4) If a worker—

- (a) undergoes an audiometric test within 3 months of the worker's employment being terminated, or in the case of a worker who has retired, the worker makes a request under clause 2 (2) within 3 months of retirement, then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the person had undergone the test before the termination of that employment, or on retirement; or

- (b) undergoes an audiometric test within 3 months before commencing employment then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the worker had undergone the test at the commencement of that employment.

Audiometric test not conclusive proof that hearing loss is noise induced

9. The fact that the worker was under a duty or chose to undergo an audiometric test or other hearing test, shall not be conclusive proof that any loss or diminution of the worker's hearing is due to the nature of the employment in which the worker was employed.

Prescribed workplaces

10. Workplaces shall be prescribed for the purposes of this Schedule. ”.

PART 3—WORKERS' COMPENSATION AND ASSISTANCE

AMENDMENT ACT 1985

Sections 10, 11, 12, 19, 44 and 45 repealed

- 13.** Sections 10, 11, 12, 19, 44 and 45 of the *Workers' Compensation and Assistance Amendment Act 1985** are repealed.

[*Act No. 44 of 1985.]
