

WESTERN AUSTRALIA

**WORKERS' COMPENSATION AND
ASSISTANCE AMENDMENT ACT
(No. 2)**

No. 85 of 1986

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

[Assented to 5 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Workers' Compensation and Assistance Amendment Act (No. 2) 1986*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 7 and 11 shall come into operation on such day as is fixed by proclamation.

Principal Act

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

[*Act No. 86 of 1981 as amended by Acts Nos. 16 and 79 of 1983, 28 and 104 of 1984, 44 and 98 of 1985 and 33 of 1986.]

Section 5 amended

4. Section 5 of the principal Act is amended in subsection (1) in the definition of "company" by inserting after "recognized company" the following—

“ , a registered foreign company ”.

Section 10A amended

5. Section 10A of the principal Act is amended—

(a) by inserting after the section designation "10A." the subsection designation "(1)"; and

(b) by inserting the following subsection—

“ (2) Subsection (1) does not affect the employer's obligation to comply with the requirements of section 160 with respect to a person referred to in that subsection. ”.

Section 19 amended

6. Section 19 of the principal Act is amended—

(a) in subsection (1) by deleting "but subject to subsections (2), (3) and (4)"; and

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

Section 109 amended

7. Section 109 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsection—

“ (1) Each insurer shall contribute annually to the General Fund a sum equal to—

(a) the amount prescribed for the purposes of this subsection; or

(b) a sum amounting to a percentage to be fixed by the Commission of the total amount of the premium income (whether received by or owing to the insurer) of the insurer in respect of the year ended 30 June then last past in respect of insurance of employers against their liability to pay compensation under this Act, and their liability under any other law in respect of persons employed by them, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act, which percentage shall be uniform for all insurers,

whichever is the greater. ”; and

- (b) by repealing subsection (4) and substituting the following subsection—

“ (4) A self-insurer shall, in respect of any period for which contributions to the General Fund are payable by insurers, contribute to the General Fund a sum equal to—

(a) the amount prescribed for the purposes of this subsection; or

(b) such contribution as the Commission considers reasonable, assessed upon the wages, salaries, or other remuneration, including amounts paid to workers employed under an agreement to perform—

(i) a specified quantity of work for a specified sum;

(ii) work on piece rates;

- (iii) work on a bonus or commission system; or
- (iv) work on any other system for payment by results,

paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling, or industry,

whichever is the greater, and the self-insurer shall upon demand and within such time as the Commission may specify supply the Commission with such particulars of the wages, salaries, or other remuneration paid by him during that period as are required by the Commission. ”.

**Section 122 repealed and a section substituted;
and transitional provision**

8. (1) Section 122 of the principal Act is repealed and the following section is substituted—

Order as to total liability

“ 122. (1) Where the Board considers that a disability to a worker that is compensable under this Act has resulted in his permanent total incapacity for work, it may, subject to this section, make such order as to the total liability of the employer for the incapacity as the Board thinks proper in the circumstances if—

- (a) an order for redemption of the liability for the incapacity has not already been made under this Act; and
- (b) the total weekly payments by way of compensation payable under clause 7 for that disability have reached the prescribed amount.

(2) The Board shall not make an order in the exercise of its discretion under subsection (1) unless it considers an order ought to be made, having regard to the social and financial circumstances of the worker, his reasonable financial needs, and his capacity to meet those needs from any source available to him.

(3) The total liability of the employer ordered under this section shall not exceed the lesser of—

- (a) the sum of \$50 000; or
- (b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for his disability reached the prescribed amount—
 - (i) for the period of the expectation of life of the worker; or
 - (ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

(4) In making an order under this section, the Board—

- (a) shall order weekly payments at such rate as it thinks proper in the circumstances having regard to the matters referred to in subsection (2), but not at a rate that exceeds the rate to which the worker was entitled at the time when the total weekly payments for his disability reached the prescribed amount; and
- (b) may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's disability reached the prescribed amount to the date of the order. ”.

(2) The application of section 122 of the principal Act as amended by subsection (1) extends to any case where an application under that section was made, but an order thereon had not been made by the Board, before the commencement of this section.

Section 158 amended

9. Section 158 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (b) by deleting “training.” and substituting the following—

“ training; ”; and

- (ii) by inserting after paragraph (b) the following paragraph—

“ (c) obtain estimates of the likely cost of and authorize expenditure not exceeding \$2 000 for aids, appliances, services or other items of expenditure to assist the rehabilitation of the worker. ”; and

- (b) in subsection (2)—

- (i) in paragraph (b) by deleting “so.” and substituting the following—

“ so; ”; and

- (ii) by inserting after paragraph (b) the following paragraph—

“ (c) authorize expenditure exceeding \$2 000 for aids, appliances, services or other items of expenditure to assist the rehabilitation of the worker. ”.

Section 160 amended

- 10.** Section 160 of the principal Act is amended—

- (a) by inserting after subsection (2) the following subsection—

“ (2a) Where an employer applying to an incorporated insurance office under subsection (2) is a company, that employer shall, in relation to each of its workers who is—

(a) a director of the company; and

(b) engaged or employed by or working for the company,

furnish to that office, in addition to the information required to be furnished by that employer to that office under subsection (2)—

(c) the name of the worker; and

(d) in relation to that worker in particular, the information, verified as required under subsection (2), that the employer is required under that subsection to furnish in relation to the employer's workers. ”; and

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

“ (4) Where a policy of insurance obtained by an employer from an approved insurance office under this section has lapsed, and—

- (a) the employer is not insured against his liability to pay compensation under this Act;
- (b) the employer has incurred liability to pay compensation under this Act after the lapsing of the policy of insurance; and
- (c) not more than 7 days have elapsed from the time when the Commission received from that approved insurance office a statement in respect of the lapsed policy under section 171 (1) (b),

the approved insurance office shall, notwithstanding the lapse of the policy of insurance, be liable to indemnify the employer in respect of that liability as if the liability were incurred during the term of the policy of insurance. ”.

Section 174 amended

11. Section 174 of the principal Act is amended by inserting after “from the employer” the following—

“ and, until it so recovers that amount, may exercise any rights of the employer under this Act in relation to the payment of that award ”.

Schedule 1 amended; and transitional provision

12. (1) Schedule 1 to the principal Act is amended—

- (a) in clause 7 (3) by deleting “has made or”;
- (b) in clause 17 (1) by deleting “the Board finds, that in the particular circumstances of the case, the amount for such expenses is inadequate” and substituting the following—

“ clause 18A applies ”; and

(c) by inserting after clause 18 the following clause—

“ 18A. (1) Where the worker has incurred reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, the Board may, subject to subclause (2), if it considers that the maximum amount is inadequate, allow such additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.

(2) The Board shall not allow an additional sum in the exercise of its discretion under subclause (1) unless it considers that such a sum ought to be allowed, having regard to the social and financial circumstances of the worker, his reasonable financial needs, and his capacity to meet his reasonable expenses referred to in subclause (1) from any source available to him including weekly payments payable under clause 7 or section 122. ”.

(2) The application of clause 17 (1) of Schedule 1 of the principal Act as amended by subsection (1) and of clause 18A inserted in that Schedule by that subsection extends to any case where an application for expenses referred to in clause 17 (1) was made, but an order thereon had not been made by the Board, before the commencement of this section.
