

LEGISLATIVE ASSEMBLY

Read 1° 28 October 1981

(Brought in by Mr Ramsay and Mr Thompson)

A BILL

To amend the *Workers Compensation Act* 1958, to amend the *Workers Compensation (Amendment) Act* 1978 and for other purposes.

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 Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Workers Compensation (Amendment) Act* 1981. Short title.

(2) In this Act the *Workers Compensation Act* 1958 is called the Principal Act. Principal Act No. 6419. Reprinted to No. 9372. Subsequently amended by No. 9549. Commencement.

10 (3) The several provisions of this Act shall come into operation on the day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

(4) This Act is divided into Parts as follows:

15 Part I.—Industrial Deafness ss. 2–3.

Part II.—General Amendments ss. 4–22.

PART I.—INDUSTRIAL DEAFNESS

Amendment of No. 6419. Insertion new Division 3A.

2. (1) After section 25 of the Principal Act there shall be inserted the following heading and Division:

‘DIVISION 3A.—INDUSTRIAL DEAFNESS

Interpretation.

25A. In this Division—

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“Industrial deafness.”

“Industrial deafness” means any condition of deafness caused by exposure continued exposure or periods of continued exposure to industrial noise.

“Incapacity.”

“Incapacity” in relation to industrial deafness includes inability to engage in the worker’s own or other suitable employment because of an immediate and substantial risk of increasing the industrial deafness to a level of material disability.

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Compensation for industrial deafness due to employment.

25B. Where any worker is suffering from industrial deafness which is due to the nature of any employment in which the worker was employed at any time prior to the date of giving a notice of the injury then subject to the provisions hereinafter contained the worker or his dependants shall be entitled to compensation under this Act as if the deafness were a personal injury arising out of or in the course of the employment.

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Compensation only payable under Divisions 3A and 4.

25C. (1) Compensation shall not be payable for industrial deafness otherwise than pursuant to this Division and Division 4 of this Part.

(2) Industrial deafness shall for the purposes of section 13 be deemed to be a disease and that section shall apply accordingly.

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(3) In applying the provisions of Division 4 of this Part to industrial deafness “incapacity” shall have the same meaning as in this Division and “incapacitated” shall have a corresponding meaning.

Compensation from whom recoverable.

25D. The compensation under this Division shall be recoverable from the employer who last employed the worker prior to the date on which the claim is made in the employment to the nature of which the industrial deafness is claimed by the worker to be due in whole or in part and notice of the injury shall be given to that employer notwithstanding that the worker has left his employment:

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Provided that—

Worker to furnish information.

(a) the worker or his dependants if so required shall by statutory declaration furnish that employer with such information as to the names and addresses of all the other employers who employed him in such employment prior to the said date as he or they may possess;

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Where deafness caused in employment of another.

(b) if that employer alleges that the industrial deafness was caused, aggravated, accelerated or exacerbated in some other employment undertaken by the worker

within

5 within a period of ten years prior to the date of the claim,
 he may join such other employer or employers as
 party or parties to the proceedings before the Board and,
 if the employer on whom the claim was made proves
 that the industrial deafness was not caused, aggravated,
 accelerated or exacerbated in his employment he shall
 not be liable to pay compensation and the compensation
 shall be paid by the party so joined who, in the opinion
 of the Board, last employed the worker in employment
 10 which caused, aggravated, accelerated or exacerbated the
 industrial deafness;

- (c) if other employers have been joined in the proceedings,
 then upon proof that the worker had been employed
 by them or any of them within a period of ten years
 prior to the date of the claim in a process or occupation
 or in conditions which the Board finds were of such a
 nature as to cause, aggravate, accelerate or exacerbate
 industrial deafness, then each of those other employers
 shall be liable to make to the employer from whom
 compensation is recoverable such contributions as in
 20 default of agreement may be determined by the Board
 in proceedings for settling the amount of the
 compensation.

25E. (1) Where the employer of a worker—

- (a) cannot be identified; or
 (b) is dead or cannot be found or in the case of a company
 has been wound up—

Where last
 employer dead
 nominal
 defendant to
 be named.

the notice of the injury shall be given to a nominal defendant to
 be named by the Board.

30 (2) Without affecting the generality of sub-section (1), where
 the employer cannot be found at the last-known place of abode
 or the registered office of the employer or the last place of business
 at which the worker was employed by the employer, the employer
 shall be deemed to be unable to be found and the said sub-section
 35 shall apply to and in relation to the worker accordingly.

(3) The nominal defendant shall not be liable to pay any
 compensation but the same shall be paid by the insurer with whom
 the employer was insured at the relevant time in respect of liability
 to pay compensation under this Act or, if such insurer cannot
 40 be determined to the satisfaction of the Board, then out of the
 Workers Compensation Board Fund.

How
 compensation
 payable.

(4) A nominal defendant named by the Board for the purposes
 of this section shall be entitled to such amount as the Board thinks
 proper for his costs and expenses in that behalf.

Nominal
 defendant
 entitled to
 costs and
 expenses.

(5) Such

Amount to be paid from the Workers Compensation Board Fund.

(5) Such amount shall be deemed to be an expense of the administration by the Board of a provision of this Act the Board is required to administer.

Where Insurance Commissioner is named as nominal defendant.

(6) Where the Insurance Commissioner is named by the Board as nominal defendant as aforesaid any such costs and expenses received by him shall be paid into the State Insurance Fund. 5

Deafness deemed to have occurred at a constant rate.

25F. (1) Unless the Board determines otherwise industrial deafness shall be deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment with the employers who are required to pay compensation or make contribution under section 25D. 10

(2) Where the industrial deafness or a proportion thereof has occurred in circumstances not creating any liability to pay compensation under this Act then that deafness or proportion of deafness shall be excluded from the assessment of deafness for the purposes of calculating compensation under this Division. 15

(3) Notwithstanding the provisions of sub-section (1) the date of injury shall be deemed to be—

(a) the last day of the worker's employment in the service of the employer from whom compensation is recoverable pursuant to section 25D and if the employment was not continuous, then a separate claim shall be deemed to have been made in respect of each period of such employment; or 20

(b) in the case where at the date of the claim the worker is still employed in the service of an employer from whom compensation is recoverable pursuant to section 25D the date of injury shall be deemed to be the date of the notice of the injury. 25

Compensation in case of incapacity.

25G. (1) Compensation for industrial deafness shall be payable as follows: 30

(a) Where the worker's total or partial incapacity for work results from or is materially contributed to by the injury the compensation shall be in accordance with the provisions of section 9; 35

Compensation for specified deafness.

(b) Where the industrial deafness has not caused or materially contributed to the worker's incapacity to work, the compensation shall be in accordance with the provisions of section 11.

(2) In

(2) In calculating the compensation for industrial deafness payable pursuant to section 11 the following provisions shall apply:

(a) The loss of hearing shall be calculated using the method prescribed by the regulations; and

(b) In respect of a worker who is over the age of 50 years it shall be conclusively presumed that his loss of hearing is to the extent of one-half of a decibel for each complete year of his age in excess of 50 years to be attributed to presbycusis and that loss shall not be included for the purposes of calculating the loss of his hearing in respect of industrial deafness.

25H. (1) In this section "prior injury" means industrial deafness for which the worker has received or become entitled to receive compensation for loss of hearing.

(2) If a worker, after having on one or more occasions (whether before or after the commencement of section 2 of the *Workers Compensation (Amendment) Act 1981*) suffered a prior injury, suffers a further loss of hearing in respect of industrial deafness he shall be deemed to have suffered a further injury.

(3) A worker who suffers a further injury referred to in sub-section (2) shall be entitled to receive in respect of that further injury, in addition to any other compensation payable under this Division a percentage, calculated in accordance with sub-section (4) of the amount that would have been payable for a total loss of hearing.

(4) The percentage referred to in sub-section (3) shall be the difference between the total percentage of loss of hearing in respect of industrial deafness from which the worker was suffering immediately after the injury in respect of which the claim is made and the total percentage of the loss of hearing in respect of industrial deafness immediately after the prior injury (or in the case of more than one prior injury) the latest of the prior injuries.

25I. Notwithstanding the provisions of section 28 (4) every award of the Board for the payment of compensation for industrial deafness, other than an award which specified leave to apply in the event of an appellate court decision or legislative change, shall be a final award in respect of the percentage of the diminution of the worker's hearing on the date of the award and all such awards made after the commencement of this Division shall state the percentage of diminution of the worker's hearing in respect of industrial deafness at the date of the award in relation to which the amount of the compensation is assessed.

25J. An award for compensation for industrial deafness made pursuant to section 11 shall fully extinguish all rights of the worker to compensation for industrial deafness pursuant to that section up to the date thereof but shall not prevent the worker from obtaining compensation for further industrial deafness suffered after that date. 5

Transitional.

(2) The Principal Act as amended by section 2 of this Act shall apply to—

- (a) an award of the Board for the payment of compensation for industrial deafness whether made before or after the commencement of this section; and 10
- (b) an injury to a worker whether it occurred before or after the commencement of this section.

Consequential amendments.

3. The Principal Act shall be amended as follows:

- (a) In section 1 (2) after the expression “Division 3— Compensation for Industrial Diseases ss. 12–25.” there shall be inserted the following expression: “Division 3A—Compensation for Industrial Deafness ss. 25A–25J.”; 15
- (b) In section 5A (3) for the expression “Division 3” there shall be substituted the expression “Division 3 or 3A”. 20

PART II.—GENERAL AMENDMENTS

Amendment of No. 6419 s. 2F.

4. Section 2F of the Principal Act shall be amended as follows:

- (a) In sub-section (1) after the word “sub-sections” there shall be inserted the expression “(1A)”;
- (b) After sub-section (1) there shall be inserted the following sub-section: 25
 - “(1A) An employer shall not be entitled to be recompensed from the Fund for an additional amount in respect of an injury of a worker occurring after 1 July 1982.”. 30

5. Section 2G of the Principal Act shall be amended as follows:

- (a) In sub-section (3) after the word “sub-sections” there shall be inserted the expression “(3A)”;
- (b) After sub-section (3) there shall be inserted the following sub-section: 35
 - “(3A) An insurer shall not be entitled to be recompensed from the Fund for an amount paid or required to be paid under sub-section (1) on behalf of an employer which relates to any additional amount payable in respect of an injury of a worker occurring after 1 July 1982.”. 40

6. After

6. After section 5 (1) of the Principal Act there shall be inserted the following sub-section:

Amendment of
No. 6419 s. 5.

“(2) If personal injury deemed under section 8 (2) (b) (v) to arise out of or in the course of the employment is caused to a worker who has a contract of employment with more than one employer, his employers shall be liable to pay compensation in equal shares in accordance with the provisions of this Act.”.

New
sub-section
inserted.

7. For section 7 of the Principal Act there shall be substituted the following section:

10 “7. Where any employer who resides or has a place of business in Victoria engages a worker in Victoria then, if personal injury is caused to such a worker outside Victoria under such circumstances that if the injury had occurred in Victoria he or his dependants would have been entitled to compensation under this Act, the
15 worker and, in the case of the death of the worker, his dependants shall subject to this Act be entitled to compensation in accordance with this Act.”.

8. Section 8 (2) of the Principal Act shall be amended as follows:

Amendment of
No. 6419
s. 8 (2).

- 20 (a) The expression “of sub-section (1)” (where first occurring) is hereby repealed;
- (b) In paragraph (b) for sub-paragraph (iv) there shall be substituted the following sub-paragraphs:
- 25 “(iv) is travelling between his place of residence and a place of pick-up; or
- (v) who has a contract of employment with more than one employer, is travelling on any working day on which he has attended at his place of employment pursuant to his contract of employment with one
30 employer between that place and his place of employment pursuant to his contract of employment with another employer;”.

9. For section 16 (1) of the Principal Act there shall be inserted the following sub-sections:

Amendment of
No. 6419 s. 16.

35 “(1) Where the employer of the worker—

- (a) cannot be identified; or
- (b) is dead or cannot be found or (in the case of a company) has been wound up—

New
sub-sections
inserted.

40 any claim for compensation shall be made against a nominal defendant to be named by the Board.

(1A) Without

(1A) Without affecting the generality of sub-section (1), where the employer cannot be found at the last known place of abode or the registered office of the employer or the last place of business at which the worker was employed by the employer, the employer shall be deemed to be unable to be found and sub-section (1) shall apply to and in relation to the worker accordingly.” 5

Amendment of No. 6419 s. 26.

10. Section 26 of the Principal Act shall be amended as follows:

(a) In paragraph (f) of sub-section (2) after the word “costs” there shall be inserted the expression “(other than burial and cremation costs)”;

(b) For sub-section (11) there shall be substituted the following sub-sections:

“(11) The reasonable costs of burial or cremation of any worker shall not exceed such amount or amounts as are fixed for the purposes of this section by order or successive orders of the Governor in Council published in the *Government Gazette*. 15

(12) Where a worker dies more than 80 kilometres from his usual place of residence, notwithstanding sub-section (11) the Board may, if it so determines order an amount to be paid by an employer with respect to that part of the cost of transporting the body to the burial or cremation that relates to transporting the body from the place of death to 80 kilometres from that residence.”. 25

Amendment of No. 6419 s. 29.

11. In section 29 (3) of the Principal Act for the word “eight” there shall be substituted the word “twelve”.

Amendment of No. 6419 s. 72.

12. In section 72 of the Principal Act after sub-section (1A) there shall be inserted the following sub-section:

“(1B) Every employer and such classes of persons as may be prescribed for the purposes of this sub-section shall give to the Insurance Commissioner or an insurer approved by the Governor in Council (as the case requires) such certificates or make such statutory declarations in respect of gross earnings of any worker or workers and the class of employment engaged in by any worker or workers as may be prescribed by regulation.”. 30 35

Amendment of No. 6419 s. 73.

13. For section 73 (1) (e) of the Principal Act there shall be substituted the following paragraph:

“(e) for prescribing forms for use between any of the following classes: worker employer insurer and medical practitioner, before and after a claim for compensation 40

has

has been made in respect to such claims and matters incidental thereto and any such form or forms to the like effect shall be sufficient in law;”.

14. In section 74 (1) of the Principal Act for the words
5 “Government Statist” (where twice occurring) there shall be substituted the word “registrar”. Amendment of
No. 6419 s. 74
(1).

15. Section 80 of the Principal Act shall be amended as follows: Amendment of
No. 6419 s. 80.

(a) For sub-section (4) there shall be substituted the following sub-sections:

10 “(4) One-half of the lay members of the Board shall be persons appointed by the Governor in Council from a panel of three persons nominated by notice in writing to the Minister by the Victorian Employers Federation jointly with insurers and the other half shall be persons
15 appointed by the Governor in Council from a panel of three persons nominated by notice in writing to the Minister by the Victorian Trades Hall Council.

20 (4A) Where either the Victorian Employers Federation jointly with insurers or the Victorian Trades Hall Council fails neglects or refuses to nominate a person for appointment to the Board, the Governor in Council may without nomination appoint any person to be a member of the Board and the person so appointed shall for all purposes be deemed to have been duly appointed.”;

25 (b) In sub-section (11)—

(i) for the words “insurers and members of the governing body of the Victorian Employers Federation” there shall be substituted the words
30 “Victorian Employers Federation jointly with insurers”;

(ii) for the words “members of the Melbourne” there shall be substituted the word “Victorian”;

(c) For sub-section (17) there shall be substituted the following sub-section:

35 “(17) The members of the Board and any person acting for any member while so acting shall each be paid such remuneration, expenses and allowances as are determined by the Governor in Council.”;

40 (d) In sub-section (19) for the words “respectively receive such travelling allowances as are prescribed” there shall be substituted the words “be subject to such terms and conditions of employment as are determined by the Governor in Council”.

16. In

Amendment of No. 6419 s. 82.

16. In section 82 (3) of the Principal Act after paragraph (c) there shall be inserted the following paragraph:

“(ca) such expenses as are approved by the Minister incurred by any committee appointed by the Minister to recommend premium rates;”.

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Amendment of No. 6419 s. 98.

17. In section 98 of the Principal Act after sub-section (1) there shall be inserted the following sub-section:

“(1A) Nothing in this Part shall be taken to require or authorize payment out of the Fund of the amount of any claim award or judgment under paragraph (a) of sub-section (1) where an injury is incurred more than 21 days from the date of a winding-up order in relation to the relevant insurer made by the Supreme Court of Victoria.”.

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Amendment of No. 6419.

18. After section 103 of the Principal Act there shall be inserted the following sections:

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New ss. 103A, 103B. Liquidator to notify Insurance Commissioner of winding up of insurer.

“103A. The liquidator of an insurer which has been wound up shall notify the Insurance Commissioner of the winding up order within seven days of the making thereof and provide the Insurance Commissioner with the names and addresses of all employers holding policies of accident insurance or indemnity with that insurer.

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Insurance Commissioner to notify employers and advertise effect of winding up.

103B. (1) The Insurance Commissioner shall within 21 days of the winding up order referred to in section 103A—

(a) notify in writing those employers holding policies of accident insurance or indemnity of whom he has notice pursuant to section 103A of the winding up order together with a brief statement of the effect the order has on the employer’s policy of accident insurance or indemnity; and

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(b) place a notice in a daily newspaper circulating generally throughout Victoria specifying the date of the winding up order of the insurer together with a brief statement of the effect of the order on employer’s policies of accident insurance or indemnity with the relevant insurer.

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(2) All costs incurred by the Insurance Commissioner in administering sub-section (1) shall be paid to the Commissioner out of the Insurers Guarantee and Compensation Supplementation Fund.”.

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Amendment of No. 6419 s. 100c.

19. In section 100c (1) of the Principal Act after the words “in relation to” there shall be inserted the expression “claims which arise under the Act,”.

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20. In section 117 (1) of the Principal Act after the words "in relation to" there shall be inserted the expression "claims which arise under the Act,".

Amendment of
No. 6419
s. 117 (1).

21. The provisions of section 26 of the Principal Act shall—

5 (a) where the death of a worker occurs on or after the commencement of section 10 apply as amended by section 10; and

Section 10 to
apply only to
deaths after
commencement
of section 10.

10 (b) except as provided by paragraph (a)—continue to apply notwithstanding the commencement of section 10 as in force immediately before the said commencement.

22. Section 3 (3) of the *Workers Compensation (Amendment) Act 1978* is hereby repealed.

Repeal of
No. 9136
s. 3 (3).

