

WORKERS' COMPENSATION AND ASSISTANCE.

No. 104 of 1984.

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

[Assented to 19 December 1984.]

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:—

1. (1) This Act may be cited as the *Workers' Compensation and Assistance Amendment Act 1984*.

Short title
and citation.

(2) 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 and
28 of 1984.

Commence-
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Section 46
amended.

3. Section 46 of the principal Act is amended in subsection (3) by deleting "3" and substituting the following—

" 4 or 8 ".

Section 101
amended.

4. Section 101 of the principal Act is amended by inserting after paragraph (c) the following paragraphs—

" (ca) to purchase, sell, lease, take on lease, mortgage, exchange or otherwise acquire, deal in or dispose of real and personal property;

(cb) to improve, develop or alter real property; ".

Sections 101A
and 101B
inserted.

5. After section 101 of the principal Act the following sections are inserted—

Borrowings
by the
Commission.

" 101A. (1) Subject to this Act the Commission may, with the prior approval of the Treasurer, borrow such moneys as it thinks necessary from time to time for carrying out its functions.

(2) The Commission shall not exercise the powers conferred by this section unless a proposal in writing showing—

(a) the terms and particulars of the proposed loan;

(b) the rate of interest to be paid on that loan;

(c) the purpose to which the money borrowed is to be applied; and

(d) the manner in which the loan is to be repaid,

shall first be submitted by it on the recommendation of the Minister to, and approved by, the Treasurer.

(3) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.

101B. (1) The Treasurer is hereby authorized to guarantee— Guarantees of borrowings.

(a) the repayment of any amount borrowed from time to time under section 101A; and

(b) the payment of interest and such other charges in respect of such borrowings as he has approved.

(2) Before a guarantee is given by the Treasurer under this section, the Commission shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.

(3) The Treasurer shall cause any money required for fulfilling any guarantee given by him under this section to be paid out of the Consolidated Revenue Fund which, to the extent necessary, is hereby appropriated accordingly and the Treasurer shall cause any amounts received or recovered from the Commission or otherwise in respect of moneys so paid by him to be paid into the Consolidated Revenue Fund. ”.

Section 106
amended.

6. Section 106 of the principal Act is amended—

(a) in subsection (2)—

(i) by deleting “and” at the end of paragraph (a);

(ii) by deleting the full stop at the end of paragraph (b) and substituting a semi-colon; and

(iii) by inserting after paragraph (b) the following—

“ and

(c) all moneys borrowed by the Commission under section 101A. ”; and

(b) in subsection (3) by inserting after paragraph (c) the following paragraph—

“ (ca) interest on and repayments of money borrowed by the Commission under section 101A and charges in respect of such borrowings; ”.

Section 124
amended.

7. Section 124 of the principal Act is amended—

(a) in paragraph (c) by deleting “3 (2), (3), or (4)” and substituting the following—

“ 4 ”; and

(b) in paragraph (d) by deleting “or 3 (2), (3), or (4)” and substituting the following—

“ 4 or 8 ”.

8. Schedule 5 to the principal Act is amended by deleting clauses 3, 4, 5 and 6 and substituting the following clauses—

Schedule 5
amended.

“ 3. *Incapacity for Work Resulting from Disabilities of Pneumoconiosis and Mesothelioma—Weekly Payments.*

(1) This clause shall be read and construed subject to the qualification on entitlement in section 34 and subject to sections 46 and 47.

(2) In this clause “weekly payments” means weekly payments of compensation calculated and varied in accordance with Schedule 1.

(3) Subject to the provisions of this Schedule and to Schedule 1 clause 7 (3), where a worker aged 65 or more on the proclaimed date had suffered one of those disabilities before that date and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability under the repealed Act, in respect of any incapacity resulting from that disability on or after the proclaimed date he is entitled to receive weekly payments.

(4) Subject to the provisions of this Schedule and Schedule 1 clause 7 (3), where a worker who attains or has attained the age of 65 after the proclaimed date has or had suffered one of those disabilities before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the day he attains or attained that age he is entitled to receive weekly payments.

(5) Subject to the provisions of this Schedule, where a worker attains or has attained the age of 65 after the proclaimed date and one of those disabilities of the worker occurs or has occurred on or after his attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.

(6) Subject to the provisions of this Schedule, where a worker was aged 65 or more on the proclaimed date and one of those disabilities of the worker occurs on or after the day on which the Workers' Compensation and Assistance Amendment Act 1984 comes into operation, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.

(7) Subject to the provisions of this Schedule, where a worker aged 65 or more on the proclaimed date suffers from one of those disabilities and the disability occurred on or after the proclaimed date but before the coming into operation of the Workers' Compensation and Assistance Amendment Act 1984, in respect of any incapacity resulting from that disability he is entitled to receive—

- (a) a lump sum payment equivalent to the value of weekly payments he would have received prior to the coming into operation of the Workers' Compensation and Assistance Amendment Act 1984 if he had been entitled to receive such weekly payments from the time the disability occurred but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
- (b) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to paragraph (a), does not exceed the aggregate of 52 such weekly payments.

4. Election to take Redemption Amount as Lump Sum or Supplementary Amount Weekly.

A worker entitled to receive weekly payments of compensation under clause 3 may elect during his lifetime and while he is so entitled and—

- (a) where he receives payments under clause 3 (3), within 3 months of the coming into operation of the Workers' Compensation and Assistance Amendment Act 1984;
- (b) where he receives payments under clause 3 (4), within the period ending on the date that is—
 - (i) 3 months after the coming into operation of the Workers' Compensation and Assistance Amendment Act 1984; or

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(ii) one year after he becomes or became entitled to receive payments,

whichever date is the later;

(c) where he receives payments under clause 3 (5)—

(i) if, at the coming into operation of the Workers' Compensation and Assistance Amendment Act 1984, he has received such payments for a period of not less than one year, within 3 months of the coming into operation of that Act; or

(ii) in any other case, within the period of one year from the time when he became or becomes entitled to receive weekly payments;

(d) where he receives payments under clause 3 (6), within the period of one year from the time when he becomes entitled to receive weekly payments; or

(e) where he receives—

(i) only a lump sum payment under clause 3 (7), at the time of receiving that lump sum payment; or

(ii) a lump sum payment and weekly payments under clause 3 (7), before receiving the aggregate of 52 weekly payments,

to receive the redemption amount as a lump sum or to receive the supplementary amount weekly during his lifetime from the date he so elects and the employer shall be liable to pay compensation accordingly and not in accordance with clause 3.

5. Requirements for Election under Clause 4.

(1) A worker elects for the purposes of clause 4 if, and only if—

(a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant disability; and

- (b) that form is filed with the Board, and a copy of it is served on the employer, by or on behalf of the worker.

(2) A form of election shall not be 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, and the worker's dependants', future entitlement to compensation under this Act.

(3) Where the Registrar is not satisfied in accordance with subclause (2), he shall within 7 days notify the employer and the worker accordingly.

6. Effect of Receiving the Redemption Amount as a Lump Sum.

From the date a worker receives the redemption amount as a lump sum—

- (a) section 67 does not apply;
- (b) for the disability from which the incapacity resulted—
 - (i) the worker is not entitled to further compensation; and
 - (ii) clauses 9, 10, 17, 18 and 19 of Schedule 1 cease to apply to the worker; and
- (c) clauses 1, 2, 3, 4, 5 and 17 (2) of Schedule 1 shall not apply in respect of the worker's death.

7. Effect of Receiving Supplementary Amount.

From the date a worker commences to receive a supplementary amount weekly—

- (a) section 67 does not apply;
- (b) if his death results from the disability and a dependent spouse survives him—
 - (i) the dependent spouse is entitled to receive, and the employer is liable to pay into the custody of the Commission for the benefit of the spouse, as a lump sum the aggregate

of the supplementary amount for a worker with a dependent spouse at the rate applicable at the date of death for a period of 3 years, and after the amount is so paid there shall be liberty to apply to the Commission by or on behalf of the dependent spouse in respect of the manner in which that amount or any part of it is applied;

- (ii) the dependent spouse is also entitled to receive, and the employer is liable to pay weekly, from the date of the worker's death and during the dependent spouse's lifetime, the supplementary amount at the rate for a worker without a dependent spouse;

and

- (c) clauses 1, 2, 3, 4, 5 and 17 (2) of Schedule 1 do not apply in respect of the worker's death.

8. Payment of Supplementary Amount.

(1) An employer is not liable to pay compensation in accordance with clause 3 to a worker who does not make an election within the time specified in clause 4 but is liable to pay that worker the supplementary amount weekly during his lifetime from the last day on which the worker was entitled to make an election.

(2) A worker who—

- (a) receives a lump sum payment under clause 3 (7) (a);
- (b) is not entitled to receive weekly payments under clause 3 (7) (b); and
- (c) does not elect to take the redemption amount as a lump sum at the time of receiving the payment referred to in paragraph (a),

is entitled to receive a further lump sum payment equivalent to the value of the supplementary amounts weekly he would have been entitled to receive during

the period commencing one year after his disability occurred and ending on the day on which he is entitled to make an election under clause 4 (e) (i) and thereafter he is entitled to receive the supplementary amount weekly during his lifetime. ”.

Transi-
tional.

9. (1) In this section “the amended Schedule” means Schedule 5 to the principal Act as amended by section 8 of this Act.

(2) Nothing in section 8 renews a liability that has been discharged or an entitlement that has been extinguished, under Schedule 5 to the principal Act.

(3) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has elected to take the redemption amount as a lump sum or a supplementary amount weekly under Schedule 5 clause 3 to the principal Act.

(4) Where there is under the amended Schedule—

- (a) liability to pay compensation or to pay for the provision of other benefits or both; and
- (b) entitlement to receive compensation or other benefits, or both,

for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid or required to be paid under Schedule 5 to the principal Act shall be taken into account and deemed to be moneys paid or required to be paid under the amended Schedule.

Validation
and
ratification.

10. (1) In this section “the amended Schedule” means Schedule 5 to the principal Act as amended by section 8 of this Act.

(2) Where moneys have been paid by The State Government Insurance Office established under the State Government Insurance Office Act 1938 to a person on behalf of an employer before the coming into operation of this Act and such payment would have been authorized if clause 3 (7) and clause 4 or 8 of the amended Schedule had been in operation at the time the payment was made—

- (a) where the payment is expressed to be equivalent to weekly payments of compensation that payment shall be, and shall be deemed always to have been, as valid as if clause 3 (7) of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met;
- (b) where the payment is expressed to be equivalent to weekly payments of compensation and a redemption amount as a lump sum, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3 (7) and clause 4 of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met; or
- (c) where the payment is expressed to be equivalent to weekly payments of compensation and weekly supplementary amounts, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3 (7) and clause 4 or 8, whichever is appropriate, of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met.

(3) Notwithstanding sections 77 and 181 of the principal Act, any deed of release signed by a person in respect of a payment referred to in subsection (2) is declared to be legal and binding upon that person and may be filed with the Workers' Compensation Board.

(4) A form of election signed by a person in relation to a payment referred to in subsection (2) (b) or (2) (c) may be filed with the Workers' Compensation Board and is deemed to be, and to always have been, as valid and as effective as it would have been if it had been signed, filed and served in accordance with the provisions of the principal Act as amended by this Act.

(5) Where there is under the amended Schedule—

- (a) liability to pay compensation or to pay for the provision of benefits or both; and
- (b) entitlement to receive compensation or other benefits, or both,

to and by a person who has received a payment referred to in subsection (2) for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid as a payment referred to in subsection (2) shall be taken into account and be deemed to be moneys paid under the amended Schedule.

(6) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has received a payment referred to in subsection (2) (b) or (2) (c).