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ELIZABETHAE II REGINAE

A.D. 1980

No. 97 of 1980

An Act relating to certain aspects of workers compensation insurance; to establish a fund against which claims relating to workers compensation may be made in the event of the insolvency of an insurance company or an uninsured employer; and for other purposes.

[Assented to 11 December 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Workers Compensation (Insurance) Act, 1980". Short title.

 2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

 3. (1) In this Act, unless the contrary intention appears— Interpretation.
 - "the Commission" means the State Government Insurance Commission:
 - "the Commissioner" means a person holding, or acting in, the office of Commissioner of Stamps, or Deputy Commissioner of Stamps, under the Stamp Duties Act, 1923-1979:
 - "common law liability" means a liability arising at common law and includes a liability arising under the Wrongs Act, 1936-1975:
 - "exempt employer" means an employer in respect of whom a certificate of exemption is in force under section 123 of the principal Act:
 - "insurance company" means a body (whether corporate or unincorporate) carrying on the business of insurance:
 - "policy of workers compensation insurance" means a policy of insurance under which an employer is insured against—
 - (a) liabilities of the employer arising under the principal Act;
 - or
 - (b) common law liabilities of the employer in respect of injury to workers of that employer,
- or both:

“premium” in relation to a policy of insurance does not include stamp duty:

“the principal Act” means the Workers Compensation Act, 1971-1979:

“workers compensation liability” means—

- (a) a liability of an employer arising under the principal Act;
- or
- (b) a common law liability of an employer in respect of injury to a worker of that employer.

(2) A word or expression that is defined in the principal Act and appears in this Act shall, unless the contrary intention appears, be interpreted for the purposes of this Act according to the definition in the principal Act.

(3) Where a policy of insurance is in part a policy of workers compensation insurance, and in part relates to other forms of insurance, a reference to “premium” in this Act means, in relation to that policy, the portion of the premium payable under the policy that is referable to workers compensation insurance.

(4) For the purposes of this Act the Commissioner may determine conclusively what portion of a premium payable under a policy of insurance that relates both to workers compensation insurance and to other forms of insurance is referable to workers compensation insurance.

The
Statutory
Reserve Fund.

4. (1) There shall be a fund at the Treasury entitled the “Statutory Reserve Fund”.

(2) The following moneys shall be paid into the fund:

- (a) the moneys received or recovered by the Commissioner by way of additional levy under subsection (3);
- (b) the moneys received or recovered from exempt employers under subsection (6);
- (c) the moneys that the Treasurer is required to pay into the fund under subsection (9);
- (d) any advance made to the fund by the Treasurer under subsection (10);
- (e) any interest or accretions arising from investment under subsection (11);
- and
- (f) any moneys recovered by the Treasurer in respect of rights to which he is subrogated under section 5 (9).

(3) The stamp duty payable under the Stamp Duties Act, 1923-1979, (whether as a licence fee, a component of a licence fee, or upon a return) in relation to policies of workers compensation insurance shall, subject to subsection (5), be increased by an additional levy equal to the prescribed percentage (not exceeding two per centum) of the premiums payable under those policies.

(4) For the purposes of subsection (3), the prescribed percentage is a percentage fixed by the Treasurer on the advice of the Public Actuary and prescribed by regulation.

(5) If, on the thirty-first day of December in any year, the amount standing to the credit of the fund equals or exceeds five million dollars there shall be no additional levy in the following year.

(6) Once in each year (other than a year in which there is to be no additional levy), the Commissioner shall, by instrument in writing, require each exempt employer to pay to him such amount, specified in the instrument, as would, in the opinion of the Commissioner, have been payable by that employer during that year in consequence of the additional levy under subsection (3) if that employer had not been an exempt employer, and any such amount may be recovered by the Commissioner as a debt.

(7) For the purpose of determining the amount payable by an exempt employer under subsection (6) the Commissioner may, by notice in writing, require the employer—

(a) to furnish the Commissioner with such information;

and

(b) to produce such documents for inspection by the Commissioner, as the Commissioner considers necessary.

(8) An employer who fails to comply with a requirement under subsection (7) within the time allowed in the notice shall be guilty of an offence and liable to a penalty (recoverable summarily) not exceeding two thousand dollars.

(9) The Treasurer shall, in each year, pay into the fund an amount that would, in the opinion of the Treasurer, have been payable by the Crown in consequence of the additional levy under subsection (3) if the Crown were a non-exempt employer and were liable to stamp duty.

(10) The Treasurer may advance moneys to the fund on such terms and conditions as he thinks fit (and this subsection is, without further appropriation a sufficient authority for the payment of those moneys from the General Revenue of the State).

(11) The Treasurer may invest any moneys that form part of the fund, and are not immediately required for the purposes of this Act, in such manner as he thinks fit.

(12) The costs of administering this Act shall be paid out of the fund.

5. (1) Subject to this section, a person is entitled to make a claim against the fund—

Claims
against
the fund.

(a) in respect of liabilities arising under a policy of workers compensation insurance that are, by reason of the insolvency of the insurance company by which the policy was issued, unsatisfied;

(b) in respect of workers compensation liabilities—

(i) that are not covered by a policy of workers compensation insurance;

and

(ii) that are, by reason of the insolvency of an employer or former employer, unsatisfied.

(c) in respect of costs—

(i) that were reasonably incurred in attempting to recover moneys from an insurance company in respect of liabilities arising under a policy workers compensation insurance, or from an employer in respect of workers compensation liabilities;

and

(ii) that are, by reason of the insolvency of the insurance company or the employer, not recoverable from the insurance company or employer.

(2) Where a liability referred to in subsection (1) is a liability in respect of weekly payments, the liability shall be regarded as being unsatisfied when any one of the weekly payments is not paid in full on the day on which it falls due, and a claim based upon that liability may then be made under this section in respect of weekly payments whether, at the date of the claim, they have fallen due or are to be made in the future.

(3) No claim may be made under this section in respect of a liability of an employer or insurance company that became insolvent before the first day of July, 1979.

(4) A claim under this section must be made within six months after the claimant becomes aware of the circumstances on which his claim is based unless he became aware of those circumstances before the commencement of this Act, in which case the claim must be made within six months after the commencement of this Act.

(5) A claim against the fund—

(a) must be in writing and lodged with the Commission;

and

(b) must contain such information as the Commission may require.

(6) The Commission shall determine whether a claim lodged under this section should be—

(a) allowed wholly or in part;

or

(b) disallowed,

and notice of the determination shall be served personally or by post on the claimant.

(7) A determination of the Commission under subsection (6) should be made as expeditiously as possible and, wherever possible, within twenty-one days after the date of lodgment of the claim.

(8) In making a determination under subsection (6) the Commission is not bound by any settlement or agreement between a worker and an employer or insurance company.

(9) Where a claimant is dissatisfied with a determination of the Commission under subsection (6), he may, within twenty-one days after the day on which notice of the determination is served upon him, appeal to the Court against the determination, and the Court may, if it thinks fit, vary or reverse the determination.

(10) Upon an appeal under this section—

(a) the Court shall, subject to any relevant rules of Court, be constituted of a single Judge;

and

(b) the Court shall have power to review all aspects of the determination of the Commission.

(11) Subject to the limitations (if any), prescribed by regulation, the Treasurer shall pay out of the fund the whole of the amount of a claim, or a part of a claim, that has been allowed under this section.

(12) Where the Treasurer makes a payment under subsection (11), he shall be subrogated, to the extent of the payment—

(a) to the rights of the claimant against the insurance company or employer to whom the claim relates;

(b) where the claim relates to an insurance company that has rights in respect of the claim under a contract of re-insurance—to the rights of the insurance company under the contract of re-insurance;

and

(c) where the claim relates to an employer who has rights of indemnity in respect of the claim against a third party—to those rights of indemnity.

6. If an insurance company becomes insolvent, then—

Insolvency of
insurance
company.

(a) for the purpose of determining whether an employer is insured as required by the principal Act, a policy of workers compensation insurance issued by the company shall, after the expiration of twenty-eight days from the day on which the company becomes insolvent, be disregarded;

and

(b) no claim may be made by an employer against the fund under this Act in respect of liabilities arising under a policy of workers compensation insurance issued by the company if the liabilities relate to an injury occurring after the expiration of twenty-eight days from the day on which the company becomes insolvent.

7. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act. Regulations.

(2) The powers conferred by the Industrial Conciliation and Arbitration Act, 1972-1979, to make rules of Court shall be deemed to include power to make rules of Court in relation to appeals under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor