

WORKERS' COMPENSATION AMENDMENT ACT 1982

No. 101 of 1982

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WORKERS' COMPENSATION AMENDMENT ACT 1982

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AN ACT to amend the Workers' Compensation Act 1927 for the purposes of extending the powers and functions of the nominal insurer, making provision for the discharge by him of liabilities incurred by employers under that Act, and for other purposes, and to make provision for the retrospective operation of certain of those amendments in relation to Palmdale Insurance Limited.

[Royal Assent 18 January 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Workers' Compensation Amendment Act 1982*.

Short title.

2—In this Act, the *Workers' Compensation Act 1927** is referred to as the Principal Act.

Principal Act.

* 18 Geo. V No. 82. For this Act, as amended to 1st September 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 35 of 1979, No. 72 of 1980, No. 41 of 1981, and No. 9 of 1982.

Amendment of section 16 of Principal Act (Enforcement of payment of moneys).

3—Section 16 (1) of the Principal Act is amended by omitting “the same”, where firstly occurring, and substituting “the order or determination or by any other officer of the Supreme Court authorized by the Rules of that Court to sign orders and judgments of that Court”.

Amendment of section 16B of Principal Act (When proceedings may be taken against the nominal insurer).

4—(1) Section 16B (1) of the Principal Act is amended as follows:—

- (a) by omitting “the like proceedings may be taken” and substituting “the same claims, whether by way of legal proceedings or not, may be made”;
- (b) by omitting “like judgment” and substituting “same judgment”;
- (c) by omitting “taken or had” and substituting “made or obtained”.

(2) Section 16B of the Principal Act is further amended by omitting subsection (2) and substituting the following subsection:—

(2) Where, in respect of such a liability as is referred to in section 34 (1) (c), the same claims may be made under subsection (1) against the nominal insurer as could, but for this subsection, have been made against the person by whom the liability was incurred, those claims shall not be made against that person.

Amendment of section 16C of Principal Act (Judgment against nominal insurer).

5—(1) Section 16C of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:—

(3) Where a claim is made for the recovery of compensation or damages and the person against whom the claim is made or his solicitor knows or has reason to believe that such circumstances exist as would, under section 16B, entitle a claim for that compensation or those damages to be made against the nominal insurer, that person or his solicitor—

- (a) shall, if no proceedings have been instituted in respect of the claim, notify the nominal insurer in writing within 48 hours after the receipt of the claim by the person or his solicitor and shall allow the nominal insurer to take over the conduct of all negotiations in respect of the claim and its defence in any subsequent proceedings; or

(b) shall, if proceedings have been instituted in respect of the claim, within 48 hours after filing a notice of defence, serve a copy of that notice on the nominal insurer.

(3A) Where the nominal insurer is served with a copy of a notice of defence as required by subsection (3) (b) or where he has reasonable grounds for believing that judgment in the relevant proceedings may be entered against him under subsection (1), he may apply to the court to be made a party to those proceedings and to take over the conduct of the defence.

(2) Section 16c (4) of the Principal Act is amended by omitting "(3)" and substituting "(3A)".

(3) Section 16c (6) of the Principal Act is amended by omitting "(3)" and substituting "(3A)".

(4) Section 16c (7) of the Principal Act is amended by inserting "(3A)," after "(3),".

6—After section 16c of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 16CA.

16CA—Where any of the circumstances referred to in section 16B (1) exist in relation to an approved insurer with whom or which an employer maintains such a policy of insurance or indemnity as is referred to in section 34 (1), the nominal insurer is liable to discharge any liability incurred by the employer under this Act to pay any compensation, damages, or expenses, whether or not the employer has made any payments towards the discharge of such a liability.

Liability of nominal insurer to discharge liabilities incurred by employers under this Act.

7—After section 16D of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 16DA.

16DA—Where an approved insurer is insured under a contract of reinsurance against liability in respect of a policy of insurance or indemnity issued by the insurer under section 34 and any such liability is incurred by the approved insurer, then, if that insurer, being a company, is wound up—

Right of nominal insurer to recover reinsurance money.

(a) the nominal insurer shall be entitled to the benefit of, and may exercise, the rights and powers of the approved insurer under that contract of reinsurance so as to enable the nominal insurer to recover from the reinsurer and retain the amount due under that contract of reinsurance; and

- (b) to the extent that recovery is not made from a reinsurer pursuant to paragraph (a), the nominal insurer shall be a creditor of, and have the same rights against, the approved insurer as the employer concerned would have had if the indemnity provided by the policy of insurance had not been met.

Amendment of section 16E of Principal Act (Recovery by nominal insurer from employer, &c.).

8—Section 16E of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “instituted;” and substituting “instituted, except where the employer has maintained with an approved insurer a policy of insurance or indemnity under section 34; or ”;
- (b) by omitting from paragraph (b) “sustained; or ” and substituting “sustained.”;
- (c) by omitting paragraph (c).

Retrospective operation of certain amendments in relation to Palmdale Insurance Limited.

9—(1) In this section, “the company” means Palmdale Insurance Limited, being a company whose winding up was commenced under the *Companies Act* 1962 in January 1980.

(2) The provisions of section 16B of the Principal Act, as amended by this Act, apply to and in relation to any liability incurred by the company in respect of a policy of insurance or indemnity maintained with it by an employer under section 34 of the Principal Act as if those provisions, as so amended, had been in force when that liability was incurred by the company and whether or not that liability was incurred before 1st January 1980.

(3) The nominal insurer is liable to discharge a liability of a kind referred to in section 16CA of the Principal Act, as inserted by this Act, that was incurred by an employer who maintained with the company a policy of insurance or indemnity under section 34 of the Principal Act as if section 16CA of the Principal Act had been in force when that liability was incurred by the employer and whether or not that liability was incurred before 1st January 1980.

(4) Where—

- (a) a liability was incurred by the company under a policy of insurance or indemnity maintained by an employer under section 34 of the Principal Act, whether or not that liability was incurred before 1st January 1980; and

(b) the company was insured under a contract of reinsurance against such a liability,
the nominal insurer—

(c) shall be entitled to the benefit of, and may exercise, the rights and powers of the company under that contract of reinsurance as provided by paragraph (a) of section 16DA of the Principal Act, as inserted by this Act, as if that paragraph had been in force when that liability was incurred; and

(d) shall, to the extent that recovery is not made from a reinsurer pursuant to paragraph (c) of this subsection, be a creditor of, and have the same rights against, the company as mentioned in paragraph (b) of section 16DA of the Principal Act, as so inserted, as if that paragraph of that section had been in force when that liability was incurred.

(5) Where, before the commencement of this Act, the nominal insurer paid an amount in satisfaction of a claim made, or a judgment obtained, against him in respect of a liability under the Principal Act incurred by an employer who had maintained with the company a policy of insurance or indemnity under section 34 of the Principal Act, whether or not that liability was incurred before 1st January 1980, section 16E of the Principal Act, as amended by this Act, shall be deemed to have been in force when that amount was paid.

