

LEGISLATIVE COUNCIL

Read 1° 24 May 1983

(Brought in by the Honourable W. A. Landeryou)

(No. 2)

A BILL

To amend the *Workers Compensation Act 1958* with respect to the Commencement of Weekly Payments and the arrangements for Persons in receipt of Weekly Payments to return to Work 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
5 say):

1. (1) This Act may be cited as the *Workers Compensation* Short title.
(Amendment) Act 1983.

(2) The several provisions of this Act except section 9 shall come Commencement.
into operation on a day or the respective days to be fixed by
proclamation or successive proclamations of the Governor in Council
published in the *Government Gazette*.

(3) Section 9 shall be deemed to have come into operation on 21
December 1982.

Principal Act No. 6419.

Reprinted to No. 9372.

Subsequently amended by Nos. 9549, 9610, 9613, 9683, 9699, 9747 and 9840.

Amendment of No. 6419 s. 9.

Return to work.

(4) In this Act the *Workers Compensation Act 1958* is called the **Principal Act.**

2. In section 9 of the Principal Act in paragraph (b) of clause 1 of *The Clauses Referred To* for sub-paragraph (iv) there shall be substituted the following sub-paragraph: 5

“(iv) An employer shall provide suitable employment for his injured worker during the worker’s partial incapacity for work but, if the employer fails to do so, the worker shall be compensated as if his incapacity for work were total, unless—

(a) where an order is made under section 83 (3) or where section 98 (3) applies, the Insurance Commissioner; or

(b) in any other case, the insurer—

provides, or arranges for, such suitable employment having regard to the worker’s incapacity and place of abode.”.

Amendment of No. 6419 s. 9.

3. In section 9 of the Principal Act after clause 5 of *The Clauses Referred To* there shall be inserted the following clause: 15

Commencement of weekly payments.

‘5A. (1) Subject to sub-clause (2), an employer shall commence making weekly payments as soon as is practicable after the occurrence of the incapacity in respect of which they are payable, and in any case not more than fourteen days after the worker has provided to the employer— 20

(a) a certificate from a medical practitioner, certifying that the worker is incapacitated for work and certifying the nature of that incapacity; and

(b) an assertion in writing by the worker that he believes himself to be entitled to compensation in respect of that incapacity. 25

(2) An employer who disputes his liability to make weekly payments under this Act to a worker may within the period of fourteen days referred to in sub-clause (1) apply to the Board for an order that he is not required to commence making weekly payments. 30

(3) Where an employer makes an application under sub-clause (2) in relation to a worker, the provisions of sub-clause (1) shall be suspended in relation to that worker pending the determination of the application.

(4) Upon the hearing of an application made under sub-clause (2), the Board may— 35

(a) dismiss or, upon such terms as it thinks fit, adjourn, the application;

- 5 (b) if it considers that a genuine dispute exists concerning the liability of the employer to make weekly payments, order that this clause shall not apply in relation to so much of the weekly payments as is the subject of the genuine dispute and upon the making of such an order this clause shall accordingly not apply; or
- 10 (c) if it considers that there is not a genuine dispute in relation to a part of the weekly payments, dismiss the application insofar as it relates to that part of the weekly payments, and order that sub-clause (6) shall apply to that part of the weekly payments with such modifications as the Board considers are necessary.

(5) In this clause "genuine dispute" does not include a dispute as to a worker's capacity for employment.

- 15 (6) Where an application made under sub-clause (2) is dismissed, the employer shall—

- (a) commence making weekly payments to the worker; and
- (b) pay to the worker an amount equal to—
- 20 (i) the total of all outstanding weekly payments; and
- (ii) interest at a rate determined by the Board for the purposes of this sub-clause not exceeding 12 per centum per annum upon each outstanding weekly payment, from the time when that payment would have been payable until the money is paid.

- 25 (7) In sub-clause (6) "outstanding weekly payment" means a weekly payment which the employer, if an application under sub-clause (2) had not been made, would have been required to pay to the worker within the period commencing on the day when the first payment would have been payable pursuant to sub-clause (1) and concluding
- 30 immediately before the first day of the period in respect of which is paid the first weekly payment pursuant to paragraph (a) of sub-clause (6).

- (8) For the purposes of this Act a payment made under paragraph (b) of sub-clause (6) shall be deemed to be a weekly payment payable
- 35 under this Act.

- (9) Where—
- (a) an application made under sub-clause (2) is dismissed; and
- (b) the Board is of the opinion that the applicant made the application without reasonable grounds for doing so, and
- 40 knowing that he had no reasonable grounds for doing so—

the Board may impose a penalty of an amount not exceeding \$1000 on the applicant.

(10) Where—

- (a) an application made under sub-clause (2) is heard by a person authorized to hear the application and is not heard by the Board;
- (b) the application is dismissed; and 5
- (c) the person hearing the application is of the opinion that the applicant may have made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the person hearing the application shall refer the matter to the Board 10
for determination under sub-clause (9).

(11) An employer who—

- (a) fails to commence to make weekly payments pursuant to this clause; or
- (b) where the operation of sub-clause (1) is suspended by the 15
making of an application under sub-clause (2) and the application is dismissed or an order is made under paragraph (c) of sub-clause (4), fails to commence to make weekly payments or to pay any other amount payable under sub-clause (6) or under that order— 20

shall be guilty of an offence against this Act and liable to a penalty not exceeding \$1000.

(12) The fact that an application made under sub-clause (2) has been dismissed shall not be taken into account by the Board in any proceedings other than proceedings under this clause or under clause 25
6A.’

Amendment of
No. 6419 s. 9.

4. (1) In section 9 of the Principal Act after clause 6 of *The Clauses Referred To* there shall be inserted the following clause:

Return to work.

‘6A. (1) Where a worker—

- (a) is in receipt of weekly payments in respect of total incapacity; 30
and
- (b) returns to work (whether or not with the employer by whom compensation is payable)—

the employer by whom compensation is payable is entitled to suspend the making of weekly payments from the day on which the worker so 35
returns to work.

(2) Subject to sub-clause (3), where a worker to whom sub-clause (1) applies—

- (a) within three months after he returns to work ceases to work; 40
and

(b) provides to the employer by whom compensation was payable—

- 5
- (i) a certificate from a medical practitioner, certifying that the worker is incapacitated for work and certifying the nature of that incapacity; and
 - (ii) an application by the worker for the resumption of weekly payments—

10 the employer by whom compensation was payable shall as soon as is practicable, and in any case not more than fourteen days after he has received the certificate and application, re-commence making weekly payments.

(3) Where—

- 15
- (a) under sub-clause (2) a worker provides a certificate from a medical practitioner to the employer by whom compensation was payable; and
 - (b) the employer with whom the worker returned to work is not the employer by whom compensation was payable—

the worker shall provide a copy of the certificate and application to the employer with whom the worker returned to work.

20 (4) An employer who—

- (a) receives an application by a worker made under sub-clause (2); and
- (b) asserts that the incapacity for work does not result from and is not materially contributed to by the original injury—

25 may within the period of fourteen days referred to in sub-clause (2) apply to the Board for an order that he is not required to re-commence making weekly payments.

30 (5) Where an employer makes an application under sub-clause (4) in relation to a worker, the provisions of sub-clause (2) shall be suspended in relation to that worker pending the determination of that application.

(6) Upon the hearing of an application made under sub-clause (4) the Board may—

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- (a) dismiss or, upon such terms as it thinks fit, adjourn, the application;
 - (b) if it considers that there is a genuine dispute as to whether the incapacity for work results from or is materially contributed to by the original injury, order that the suspension of the worker's right to payment shall continue in respect of so much of the weekly payments as is the subject of the genuine dispute and upon the making of such
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an order the suspension of the worker's right to payment shall continue accordingly.

(7) Where an application made under sub-clause (3) is dismissed, the employer shall—

- (a) re-commence making weekly payments to the worker; and 5
- (b) pay to the worker an amount equal to—
 - (i) the total of all outstanding weekly payments; and
 - (ii) interest at a rate determined by the Board for the purposes of this sub-clause not exceeding 12 per centum per annum upon each outstanding weekly payment, 10 calculated from the time when that payment would have been payable until the money is paid. 10

(8) In sub-clause (7) "outstanding weekly payment" means a weekly payment which the employer, if an application under sub-clause (3) had not been made, would have been required to pay to the worker 15 within the period commencing on the day when the first payment would have been payable pursuant to sub-clause (2) and concluding immediately before the first day of the period in respect of which is paid the first weekly payment pursuant to paragraph (a) of sub-clause (7). 20

(9) For the purposes of this Act a payment made under paragraph (b) of sub-clause (7) shall be deemed to be a weekly payment payable under this Act.

(10) Where—

- (a) an application made under sub-clause (3) is dismissed; and 25
- (b) the Board is of the opinion that the applicant made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the Board may impose a penalty of an amount not exceeding \$1000 on the applicant. 30

(11) Where—

- (a) an application made under sub-clause (3) is heard by a person authorized to hear the application and is not heard by the Board;
- (b) the application is dismissed; and 35
- (c) the person hearing the application is of the opinion that the applicant may have made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so—

the person hearing the application shall refer the matter to the Board 40 for determination under sub-clause (10).

(12) An employer who—

- (a) fails to re-commence to make weekly payments pursuant to this clause; or
- 5 (b) where the operation of sub-clause (2) is suspended by the making of an application under sub-clause (3) and the application is dismissed, fails to re-commence to make weekly payments or to pay an amount payable under paragraph (b) of sub-clause (7)—

shall be guilty of an offence against this Act and liable to a penalty not
10 exceeding \$1000.

(13) The fact that an application made under sub-clause (3) has been dismissed shall not be taken into account by the Board in any proceedings other than proceedings under this clause.’.

(2) In section 9 of the Principal Act in clause 7 of *The Clauses Referred To*, for paragraph (a) of sub-clause (1) there shall be substituted the following paragraph:

Amendment of No. 6419 s. 9. Consequential amendment.

“(a) he is entitled to do so under clause 6A.”.

5. In section 9 of the Principal Act before clause 7 of *The Clauses Referred To* there shall be inserted the following clause:

Amendment of No. 6419 s. 9.

20 ‘6B. (1) Where—

Late payments.

- (a) an employer fails to make any weekly payment on or before the day on which he is required to do so; and
- (b) the obligation of the employer to make that weekly payment has not been suspended—

25 the employer shall pay to the worker in respect of each weekly payment so unpaid in addition to any other payment the employer is required to make under this Act, an amount represented by the formula

$$\frac{A}{100} \times B, \text{ where—}$$

A is the amount of that weekly payment payable to the worker; and

30 B is the number of weeks occurring within the period commencing immediately after the day on which payment of that weekly payment was due and concluding at the end of the day on which payment of that weekly payment is made, and for the purpose of that calculation a part of a week shall be reckoned as a whole week.

35 (2) For the purposes of this Act an amount payable under sub-clause (1) shall be deemed to form part of a weekly payment of compensation payable under this section.’.

Amendment of
No. 6419 s. 9.

6. In section 9 of the Principal Act for sub-clause (3) of clause 7 of *The Clauses Referred To* there shall be substituted the following sub-clauses:—

“(3) An employer who fails to make all weekly payments due and payable under this Act at intervals of not more than two weeks shall be guilty of an offence against this Act and liable to a penalty not exceeding \$1000. 5

(4) A weekly payment may be made by post by properly addressing, prepaying and posting to the worker a letter containing a cheque for the amount of the weekly payment and for all the purposes of this Act payment shall be deemed to have been made when the letter was posted.”. 10

Amendment of
No. 6419 s. 80.
Applications to
be placed in
summary list.

7. In section 47 of the Principal Act, after sub-section (1A) there shall be inserted the following sub-section:

“(1B) Notwithstanding the provisions of sub-section (1), an application by an employer for an order that he is not required to commence or re-commence making weekly payments shall be placed by the Registrar in the summary list, and the provisions of sub-section (1A) shall not apply to such an application.”. 15

Amendment of
No. 6419 s. 80.
Delegation of
powers.

8. In section 80 of the Principal Act after sub-section (13) there shall be inserted the following sub-section: 20

“(13A) The jurisdiction, powers and duties conferred or imposed on the Board by sub-clause (4) of clause 5A and sub-clause (6) of clause 6A of *The Clauses Referred To* in section 9 may be exercised or performed by— 25

- (a) a member of the Board;
- (b) the registrar; or
- (c) an officer appointed for the purposes of this Act.”.

Amendment of
No. 9840 s. 3 (a).
Correction of
reference.

9. In section 3 (1) (a) of the *Workers Compensation (Amendment) Act 1982* after the expression ‘‘the amount’’ there shall be inserted the expression ‘‘(where secondly occurring)”. 30

Transitional
provisions.

10. (1) The provisions of the Principal Act as amended by sections 2 and 3 of this Act shall apply to all claims for compensation under section 9 of the Principal Act made on and after the day or days on which those provisions are so amended. 35

(2) The provisions of the Principal Act as amended by section 4 of this Act shall apply to workers who return to work on and after the day of commencement of section 4.

(3) The provisions of the Principal Act as amended by section 5 of this Act shall apply to weekly payments which become payable on and after the day of commencement of section 5. 40