



WORKERS REHABILITATION AND COMPENSATION (REVIEW AUTHORITIES) AMENDMENT ACT 1993

No. 52 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 52 of 1993

An Act to amend the Workers Rehabilitation and Compensation Act 1986.

[Assented to 20 May 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Review Authorities) Amendment Act 1993*.

(2) The *Workers Rehabilitation and Compensation Act 1986* is referred to in this Act as “the principal Act”.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Sections 3 and 14 (c) will come into operation on assent.

Amendment of s. 32—Compensation for medical expenses, etc.

3. Section 32 of the principal Act is amended—

(a) by inserting “under subsection (9)” after “in the *Gazette*” in subsection (1a)(a); and

(b) by striking out subsection (4) and substituting the following subsections:

(4) Where a worker has been charged more than the amount that the worker is entitled to claim for the provision of a service in respect of which compensation is payable under this section, the Corporation may reduce the charge by the amount of the excess.

(4a) A decision of the Corporation under subsection (4) is not reviewable.; and

- (c) by inserting “where the charge has been disallowed under subsection (5)” before “the provider’s right” in subsection (6)(a)(ii); and
- (d) by striking out from subsection (8) “of a kind approved by the Corporation for the purposes of this section” and substituting “provided by a person who has an agreement with the Corporation for the provision of those programmes or services”; and
- (e) by striking out subsection (10) and substituting the following subsection:

(10) The Corporation must, before fixing or varying a scale under this section, consult with—

(a) the Self-Insurers Association of South Australia Incorporated;

and

(b) associations or persons who, in the opinion of the Corporation, represent persons who provide the kinds of services to which this section applies.

Amendment of s. 53—Determination of claim

4. Section 53 of the principal Act is amended by inserting after subsection (6) the following subsections:

(7) The Corporation may, in an appropriate case, by notice in writing to the worker, redetermine a claim.

(8) The redetermination of a claim does not give rise to any right on the part of the Corporation to recover from the worker money paid under a previous determination unless the previous determination was made in consequence of the worker’s fraud.

Amendment of s. 61—The Crown and certain agencies to be exempt employers

5. Section 61 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) A regulation for the purposes of subsection (4) may, if the regulation so provides, take effect from a day antecedent to the day on which it is made.

Amendment of s. 63—Delegation to exempt employer

6. Section 63 of the principal Act is amended by inserting “, other than the powers conferred under section 32 (9) and (10)” after “Section 32” in subsection (1)(a).

Amendment of s. 64—The Compensation Fund

7. Section 64 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (3) the following paragraph:

- (c) the costs of maintaining the Review Panel and the Medical Advisory Panels, and other costs of a prescribed kind relating to the review system under this Act;;

(b) by inserting after subsection (3) the following subsection:

(3a) The amount to be paid from the Compensation Fund under subsection (3)(c) will be determined by agreement between the Chief Executive Officer of the department of the Minister to whom the administration of this Act is committed and the Corporation or, in default of agreement, by the Minister.

Substitution of s. 77

8. Section 77 of the principal Act is repealed and the following section is substituted:

Establishment of the Review Panel

77. The *Review Panel* is established.

Composition of the Panel

77a. The Panel consists of—

- (a) a Review Officer to be called “the Chief Review Officer”; and
- (b) such other Review Officers as are appointed and hold office under this Division.

Appointment of Review Officers

77b. (1) The Governor may, on the recommendation of the Minister, appoint a person to the office of Chief Review Officer and appoint such other persons as the Minister considers necessary for the proper administration of the system of review established by this Act to the office of Review Officer.

(2) Subject to subsection (3), the Minister may not recommend a person for appointment as the Chief Review Officer or as a Review Officer until that person has been interviewed by a committee established by the Minister (which must include at least one member of the board appointed under section 8(1)(b) (or the deputy of such a member) and at least one member of the board appointed under section 8(1)(c) (or the deputy of such a member)), and the committee has reported to the Minister on the suitability of the prospective appointee for appointment.

(3) Subsection (2) does not apply in relation to the appointment of a person who has previously held office as a Review Officer.

Conditions of appointment

77c. (1) A Review Officer is to be appointed for a term of five years and is, on the expiration of a term of office, eligible for reappointment.

(2) The salary and conditions of office of a Review Officer are to be as determined by the Governor.

- (3) A person ceases to hold office as a Review Officer if the person—
- (a) resigns by notice in writing addressed to the Minister; or
 - (b) completes a term of office and is not reappointed; or
 - (c) is removed from office by the Governor on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties satisfactorily.

(4) A Review Officer is not a member of the Public Service.

(5) Unless otherwise determined by the Governor in the relevant instrument of appointment, a Review Officer is an employee within the meaning of the *Superannuation Act 1988*.

(6) A Review Officer incurs no liability for an honest act or omission in carrying out or purportedly carrying out official functions.

Responsibilities of the Chief Review Officer

77d. (1) The Chief Review Officer is responsible, subject to the general direction of the Minister, for the administration of the business of the Review Panel.

(2) A Review Officer authorised by the Minister may, if the office of Chief Review Officer is vacant, or the Chief Review Officer is absent or unavailable to carry out the duties of office, exercise any of the powers or functions of the Chief Review Officer.

(3) The Chief Review Officer may (without derogation from his or her own powers) delegate to another Review Officer any administrative power or function.

(4) A delegation under subsection (3) may be absolute or conditional and is revocable at will.

(5) A Review Officer is subject to direction by the Chief Review Officer on administrative matters (including the duties to be performed by the Review Officer and the times and places at which those duties are to be performed), and on the practices and procedures to be observed in proceedings under this Act, but is not subject to any direction as to the decision that may be made on the determination of any proceedings.

(6) The Chief Review Officer must, on or before 30 September in each year, prepare a report for the Minister on the work of the Review Officers under this Act during the preceding financial year.

(7) The Minister must, within six sitting days after receiving a report under subsection (6), cause copies to be laid before both Houses of Parliament.

(8) The Chief Review Officer must provide to the Minister such other reports as the Minister may require from time to time.

Rules

77e. The Governor may, by regulation, make rules regulating the practice and procedure to be followed in connection with proceedings before a Review Officer.

Amendment of s. 79—Membership of the Tribunal

9. Section 79 of the principal Act is amended—

- (a) by inserting the word “and” between paragraphs (b) and (c) of subsection (1); and
- (b) by striking out paragraph (d) of subsection (1) and the word “and” appearing immediately before that paragraph; and
- (c) by striking out subsections (3a) and (4).

Substitution of s. 80

10. Section 80 of the principal Act is repealed and the following section is substituted:

Constitution of Tribunal

80. (1) For the purpose of any proceedings, the Tribunal will, in accordance with the direction of the President or the rules of the Tribunal, be constituted of—

- (a) one member of the Tribunal; or
- (b) three members of the Tribunal.

(2) Where the Tribunal is constituted by three members, a decision in which any two members concur is a decision of the Tribunal.

Amendment of s. 82—Rules of the Tribunal

11. Section 82 of the principal Act is amended by striking out from subsection (2)(a) “presidential”.

Amendment of s. 92—Representation

12. Section 92 of the principal Act is amended by inserting “, or deputy member,” after “member” in subsection (1)(a).

Amendment of s. 92a—Costs

13. Section 92a of the principal Act is amended by inserting after subsection (5) the following subsections:

(5a) The representative of a person in proceedings before a review authority must neither charge nor seek to recover in respect of his or her representation in those proceedings, and any other associated work, an amount by way of costs in excess of the amount allowable under scales published from time to time by the Minister in the *Gazette*.

(5b) The Minister must consult with the Crown Solicitor before fixing or varying a scale for the purposes of subsection (5a).

Amendment of s. 95—Application for review

14. Section 95 of the principal Act is amended—

- (a) by striking out from subsection (1) “to the Corporation”; and
- (b) by inserting “(including a decision in the nature of a redetermination of a claim)” after “compensation” in subsection (2)(a); and
- (c) by striking out from subsection (2)(da) “or reduce”; and
- (d) by striking out paragraph (e) of subsection (2); and
- (e) by striking out from subsection (4) “the Corporation, in its discretion,” and substituting “the Chief Review Officer, or another Review Officer authorized by the Chief Review Officer for the purposes of this provision, in his or her discretion,”; and
- (f) by striking out subsections (5) and (6) and substituting the following subsections:
 - (5) An application for review must be made in accordance with the regulations.
 - (6) Where an application is made under this section, the Corporation must first endeavour to resolve the questions in issue by agreement.; and
- (g) by striking out paragraph (b) of subsection (7) and substituting the following paragraph:
 - (b) the questions in issue have not been resolved after 14 days from the date on which the application is first received by the Corporation and the applicant requests the reference of those questions to a Review Officer,.

Amendment of s. 97—Appeals to Tribunal

15. Section 97 of the principal Act is amended by inserting after paragraph (a) of subsection (5) the following paragraph:

- (ab) refer the subject matter of the appeal, or any matter arising in the course of the appeal, back to a Review Officer with such directions or suggestions as the Tribunal thinks fit to make;.

Transitional provision

16. (1) Regulation 162 of 1992 (relating to agencies and instrumentalities of the Crown) will be taken to have come into operation at 4 p.m. on 30 September 1987.

(2) Proceedings before a Review Officer under the principal Act immediately before the commencement of this provision may, subject to such directions as the Chief Review Officer thinks fit, be continued under the principal Act as amended by this Act.

(3) Proceedings before the Tribunal under the principal Act immediately before the commencement of this provision will, subject to such directions as the President of the Tribunal thinks fit, continue before the Tribunal as if this Act had not been enacted.

(4) A person who was, immediately before the commencement of this provision, a Review Officer under the principal Act will, subject to this Act, continue in office as a Review Officer under the principal Act as amended by this Act without interruption of his or her continuity of service and without prejudice to existing or accruing rights in respect of employment.

(5) A person to whom subsection (4) applies will be taken to have been appointed, as from the commencement of this provision, for the balance of any term of office that applied before the commencement of this provision, or for a period of five years, whichever is the lesser.

(6) The Governor may, by instrument in writing, vary any condition of employment that would otherwise apply to a person under subsection (4) (and any such instrument will have effect according to its terms).

(7) Proceedings cannot be instituted before a Review Officer after the commencement of section 3 of this Act in respect of any decision of the Corporation under section 32(4) of the principal Act before that commencement.

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

ROMA MITCHELL Governor