



ANALYSIS

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1974, No. 71

An Act to amend the Accident Compensation Act 1972

[8 November 1974]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Accident Compensation Amendment Act 1974, and shall be read together with and deemed part of the Accident Compensation Act 1972 (hereinafter referred to as the principal Act).

(2) Sections 6 and 12 of this Act shall come into force on the 1st day of April 1975.

(3) Section 4 of this Act shall be deemed to have come into force on the 1st day of April 1974.

2. Interpretation—(1) Subsection (1) of section 2 of the principal Act is hereby amended by repealing the definition of the expression “personal injury by accident”, and substituting the following definition:

“‘Personal injury by accident’—

“(a) Includes—

“(i) The physical and mental consequences of any such injury or of the accident:

“(ii) Medical, surgical, dental, or first aid misadventure:

“(iii) Incapacity resulting from an occupational disease or industrial deafness to the extent that cover extends in respect of the disease or industrial deafness under sections 65 to 68 of this Act:

“(iv) Actual bodily harm arising in the circumstances specified in section 105B of this Act, which section was inserted by section 6 of the Accident Compensation Amendment Act 1974:

“(b) Except as provided in the last preceding paragraph, does not include—

“(i) Damage to the body or mind caused by a cardio-vascular or cerebro-vascular episode unless the episode is the result of effort, strain, or stress that is abnormal, excessive, or unusual for the person suffering it, and the effort, strain, or stress arises out of and in the course of the employment of that person as an employee:

“(ii) Damage to the body or mind caused exclusively by disease, infection, or the ageing process.”

(2) The principal Act is hereby consequentially amended—

(a) By inserting in the definition of the term “occupational disease” in subsection (1) of section 2, after the words “any disease”, the words “or industrial deafness”:

(b) By inserting in section 65, after the words “extend to occupational diseases”, the words “and industrial deafness”.

3. Extension of cover under earners' scheme—(1) Section 59 of the principal Act is hereby amended by omitting from the proviso to subsection (2) the words “not exceeding 15 months from the date on which he would, but for this section, have ceased to have cover under the earners' scheme”.

(2) Section 59 of the principal Act is hereby further amended by adding the following subsection:

“(7) In any case where a person who suffers personal injury by accident is deemed to have cover under the earners' scheme in respect of that injury by virtue of the foregoing provisions of this section and that person has, apart from the provisions of subsection (5) of this section, not been an earner at any time during the period of 6 months immediately preceding the date of the accident, all compensation paid by the Commission under this Act in relation to that injury or in relation to death resulting therefrom, and all amounts paid by the Commission in respect of rehabilitation assistance in relation to that injury, and all costs and expenses which, in the opinion of the Commission, can be separately identified as resulting from that case, shall, unless they are chargeable to the Motor Vehicle Compensation Fund in accordance with the provisions of section 97 (2) of this Act, be charged to the Supplementary Compensation Fund.”

(3) Subsection (2) of section 69 of the principal Act is hereby consequentially amended by inserting, after the words “out of” in each place where they appear in paragraphs (b), (c), and (f), the words “the Supplementary Compensation Fund or”.

(4) Section 102b of the principal Act is hereby consequentially amended by adding to subsection (2) the following paragraph:

“(f) All compensation, amounts, costs, and expenses that have to be charged to the Supplementary Compensation Fund pursuant to section 59 (7) of this Act.”

4. Calculation of earnings—Section 103 of the principal Act is hereby amended by adding to subsection (2) the following paragraph:

“(m) Any payment made by an employer in respect of which he is reimbursed by the Commission under section 113 (4c) of this Act, to the extent that the Commission is, by reason of such reimbursement, relieved and discharged from liability to pay

earnings related compensation which otherwise would be payable by the Commission to the employee.”

5. Relevant earnings—(1) Subsection (7) of section 104 of the principal Act is hereby amended—

(a) By omitting the expression “subsection (2)”, and substituting the expression “subsections (1) and (2)”:

(b) By omitting the words “that subsection”, and substituting the words “those subsections”.

(2) Section 104 of the principal Act is hereby further amended by repealing subsection (8), and substituting the following subsection:

“(8) Notwithstanding the foregoing provisions of this section, in any case where a person suffers personal injury by accident during the period for which his cover under the earners’ scheme is deemed (under section 59 of this Act) to extend, his relevant earnings shall be calculated in accordance with this section as if the accident had happened on the day immediately preceding the first day of that period:

“Provided that if, after the expiration of a period of 6 months from the day immediately preceding the first day of that period, and before the date of the accident, any Order in Council or Orders in Council made under subsection (4) of section 114 of this Act have come into force, the amount of the relevant earnings of that person, as determined under the foregoing provisions of this subsection, shall be increased by adding thereto the appropriate percentage of that amount, being the percentage specified by that Order in Council, or, as the case may be, the aggregate of the percentages specified by those Orders in Council.”

(3) Section 104 of the principal Act is hereby further amended by inserting in subsection (12), before the words “at any time or times”, the word “as”.

6. Criminal injuries—The principal Act is hereby amended by inserting, after section 105A, the following section:

“105B. (1) For the purposes of subsection (2) of this section the expression ‘actual bodily harm’ includes pregnancy and mental or nervous shock.

“(2) Where any person suffers actual bodily harm, by any act or omission of any other person (being an act or omission that occurs in New Zealand after the commencement of this

section), and it is proved to the satisfaction of the Commission that the act or omission is within the description of any of the offences specified in sections 128, 132, and 201 of the Crimes Act 1961, that bodily harm shall, for the purposes of this Act, be deemed to be personal injury by accident occurring at the time of the act or omission, and the provisions of this Act shall apply accordingly, irrespective of whether any person is charged with the offence.

“(3) For the purposes of subsection (2) of this section, a person shall be deemed to have intended an act or omission within the description of any of the offences mentioned in that subsection, notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.”

7. Earnings related compensation after first week—(1) Section 113 of the principal Act is hereby amended by repealing the first and second provisos to subsection (2), and substituting the following proviso:

“Provided that, if the Commission considers, having regard to the medical and other evidence available to it, that the person is, in any such period, not endeavouring to work in paid employment to the extent of his capacity or not working in paid employment to the extent to which he would be able to do so if the only factor affecting his ability to work in paid employment were his incapacity due to the injury, the Commission may fix the amount to be deducted, in accordance with the foregoing provisions of this subsection, at such figure as, having regard to that evidence, it considers appropriate.”

(2) Section 113 of the principal Act is hereby further amended—

- (a) By omitting from subsection (4B) the words “during the period of short term incapacity (as defined in section 2 (1) of this Act) or any part of that period”, and substituting the words “for any period of his incapacity”:
- (b) By omitting from the proviso to subsection (4B) the words “of short term incapacity to which the determination does not relate or during any period after the period of short term incapacity”, and substituting the words “of his incapacity to which the determination does not relate”.

8. Compensation for loss of potential earning capacity in certain cases—(1) Section 118 of the principal Act is hereby amended—

- (a) By omitting from subparagraph (v) of paragraph (c) of subsection (1) all words after the words “so completing his study or training”, and substituting the word “; or”:
- (b) By adding to subparagraph (vi) of that paragraph the word “; or”:
- (c) By omitting from subsection (3) the words “under section 113 of this Act shall be made on”, and substituting the words “in accordance with the provisions of subsection (2) of this section shall be made as at”:
- (d) By omitting from subsection (4) the words “before an assessment in accordance with the provisions of subsection (2) of this section has been made”, and substituting the words “which is before the date as at which an assessment in accordance with the provisions of subsection (2) of this section is made”:
- (e) By inserting in subsection (5), before the words “In any case to which”, the words “Subject to subsection (7) of this section”:
- (f) By omitting from the first proviso to subsection (5) the words “was studying or training for any career or profession at the time of the accident”, and substituting the words “is a person to whom subparagraph (iii) or subparagraph (v) or subparagraph (vii) of paragraph (c) of subsection (1) of this section applies”.

(2) Section 118 of the principal Act is hereby further amended by adding to paragraph (c) of subsection (1) the following subparagraph:

“(vii) Having completed his study or training for an occupation, career, or profession, had entered upon that occupation, career, or profession, and the fixing of his relevant earnings under the provisions of subsection (5) of this section would result in a higher rate of compensation being payable to him for the time being, under section 113 of this Act, than would otherwise be so payable:

“Provided that this subparagraph shall not apply in a case where the relevant earnings for the time being applicable (apart from this section) for the

purposes of the said section 113 would be less than the amount prescribed for the purposes of this section, unless the Commission is of the opinion that those relevant earnings would have reached that amount if the accident had occurred at a later time, not being more than 24 months after the date on which the person entered upon that occupation, career, or profession or 12 months after the date of the accident (whichever is the earlier)".

(3) Section 118 of the principal Act is hereby further amended by adding the following subsection:

"(7) Nothing in this section shall affect the entitlement of any earner to earnings related compensation in accordance with section 113 of this Act in respect of any period before the date as at which an assessment in accordance with the provisions of subsection (2) of this section is made."

9. Compensation for non-economic loss related to permanent loss or impairment of bodily function—(1) Section 119 of the principal Act and the Second Schedule to that Act are hereby amended by omitting the expression "\$5,000" in each place where it occurs, and substituting in each case the expression "\$7,000".

(2) In any case where the accident which gave rise to the personal injury occurred before the 1st day of October 1974, section 119 of the principal Act and the Second Schedule to that Act shall be read as if subsection (1) of this section had not been passed.

10. Compensation for other non-economic loss—(1) Section 120 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the word "further":
- (b) By omitting from subsection (6) the words "lump sums which may be paid under this section and under section 119 of this Act are", and substituting the words "lump sum which, apart from this subsection, may be paid under this section, together with the lump sum (if any) which may be paid under section 119 of this Act, is":
- (c) By inserting in the proviso to subsection (6), after the word "and", the words "the lump sum (if any) payable under".

(2) Section 120 of the principal Act is hereby further amended—

(a) By omitting from subsection (5) the expression “\$7,500”, and substituting the expression “\$10,000”:

(b) By omitting from subsection (6) the expression “\$12,500”, and substituting the expression “\$17,000”.

(3) In any case where the accident which gave rise to the personal injury occurred before the 1st day of October 1974, section 120 of the principal Act shall be read as if subsection (2) of this section had not been passed.

11. First Schedule amended—(1) The First Schedule to the principal Act is hereby amended—

(a) By omitting from the item in Part I relating to section 74 of the principal Act the expression “\$10,400”, and substituting the expression “\$15,600”:

(b) By omitting from the item in Part IV relating to section 104 of the principal Act the expression “\$200”, and substituting the expression “\$300”.

(2) In relation to earnings as an employee paid on or before the 31st day of March 1974 and in relation to earnings as a self-employed person derived during the financial year ending with or before the 30th day of September 1974, the First Schedule to the principal Act shall be read as if paragraph (a) of subsection (1) of this section had not been passed.

(3) Paragraph (b) of subsection (1) of this section shall apply for the purpose of calculating compensation payable for any period of incapacity which occurs on or after the 1st day of April 1975, whether the accident occurred before, on, or after the commencement of this section, but for the purpose of calculating compensation payable for any period which occurs before that date the First Schedule to the principal Act shall be read as if the last-mentioned paragraph had not been passed.

12. Repeals, revocations, savings, and transitional provisions—(1) The enactments specified in the First Schedule to this Act are hereby repealed on the 1st day of April 1975.

(2) The regulations and order specified in the Second Schedule to this Act are hereby revoked on the 1st day of April 1975.

(3) Section 1 of the Criminal Injuries Compensation Act 1963 is hereby repealed on the 1st day of April 1975 or on the date of the passing of the Penal Institutions Amendment Act 1975, whichever is the later.

(4) The enactments, regulations, and order repealed or revoked by subsections (1) and (2) of this section, so far as they were in force immediately before the commencement of this section, shall continue (notwithstanding their repeal or revocation by this section) to apply to all rights, duties, liabilities, obligations, powers, conditions, exceptions, and limitations thereunder existing immediately before the commencement of this section as if they had not been repealed or revoked, except that, in relation to any such rights, duties, liabilities, obligations, powers, conditions, exceptions, and limitations,—

- (a) The functions vested in the Crimes Compensation Tribunal established under the Criminal Injuries Compensation Act 1963 shall, as from the commencement of this section, be exercised by the Accident Compensation Commission in place of the Crimes Compensation Tribunal:
- (b) Subject to paragraph (c) of this subsection, all references in the said enactments, regulations, and order to the Crimes Compensation Tribunal or the Tribunal shall be read as references to the Commission:
- (c) Without limiting or restricting the provisions of the principal Act, sections 4 to 11, 14, 24, and 30, subsections (1), (1A), (1B), (1C), (2), and (11) of section 12, and subsections (1), (2), (2A), and (3) of section 23 of the Criminal Injuries Compensation Act 1963 shall have no application where the functions mentioned in paragraph (a) of this subsection are being exercised by the Commission, and subsections (7) and (8) of section 17 of that Act shall be subject to section 5 of the principal Act:
- (d) In the exercise of those functions, the Commission, in determining the amount, if any, to be awarded for compensation under the said enactments, regulations, and order in respect of any injury, or death resulting therefrom, shall make such deductions (if any) as it thinks fit in respect of any compensation which may have been paid or is payable under the

principal Act in respect of the same injury, or (as the case may be) the death resulting therefrom, in pursuance of any claim made under that Act.

(5) If, in any case where a person (on or after the 1st day of April 1974 and before the 1st day of April 1975) has suffered personal injury by accident in respect of which he had cover under the principal Act, and an award is or has been made in respect of that injury, or death resulting therefrom, under the enactments, regulations, and order repealed or revoked by subsections (1) and (2) of this section in pursuance of an application made thereunder, and if a claim is or has been made under the principal Act for compensation under that Act in respect of the same injury, or (as the case may be) the death resulting therefrom, the Commission shall make such deductions (if any) as it thinks fit from the compensation that would otherwise be payable under the principal Act, in respect of the compensation awarded under the said enactments, regulations, and order.

(6) The enactments and regulations repealed or revoked by subsections (1) and (2) of this section, so far as they were in force immediately before the commencement of this section, shall continue (notwithstanding their repeal or revocation by this section) to apply to all claims to compensation for loss of or damage to real or personal property under section 22A of the Criminal Injuries Compensation Act 1963 while that section remains in force as if every reference in the said enactments and regulations to the Crimes Compensation Tribunal were a reference to a Magistrate's Court presided over by a Magistrate.

SCHEDULES

Section 12 (1)

FIRST SCHEDULE

ENACTMENTS REPEALED

- 1963, No. 134—The Criminal Injuries Compensation Act 1963, except sections 1 and 22A.
- 1967, No. 67—The Criminal Injuries Compensation Amendment Act 1967.
- 1969, No. 55—The Criminal Injuries Compensation Amendment Act 1969.
- 1970, No. 137—The Age of Majority Act 1970: So much of the First Schedule as relates to the Criminal Injuries Compensation Act 1963.
- 1971, No. 92—The Criminal Injuries Compensation Amendment Act 1971.
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Section 12 (2)

SECOND SCHEDULE

REGULATIONS AND ORDER REVOKED

Title	Statutory Regulations Serial Number
The Criminal Injuries Compensation (Evidence) Regulations 1967	1967/105
The Criminal Injuries Compensation Order 1973	1973/304

This Act is administered in the Accident Compensation Commission.
