

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 24 March 1992

ACCIDENT REHABILITATION AND COMPENSATION INSURANCE BILL

Proposed Amendments

Rt. Hon. W. F. BIRCH, in Committee, to move the following amendments:

Clause 1 (2): To insert, after the expression "117.", the expression "119A."

To insert, after the expression "124.", the expression "125."

To insert, after the expression "126.", the expression "126A, 128."

PART I

PRELIMINARY

Clause 2: To insert in paragraph (e) of the definition of the term "arising in the course of employment", after the words "make payments", the words "under this Act".

To insert in paragraph (g) of that definition, after the word "unless", the words "paragraph (e) of this definition applies or".

To insert in that paragraph, after the words "associated employer", the words "for the purpose of transporting employees".

To insert in the definition of the term "incapacity", after the words "make payments", the words "under this Act".

To omit from the definition of the term "motor vehicle injury" the words "repair, and", and substitute the words "repair, or".

Clause 3 (1): To add the words "and has the extended meaning assigned to it by section 7 (3) of this Act".

Clause 4 (7): To omit the word "negligence", and substitute the word "negligent".

Clause 4 (8): To omit the word "test", and substitute the word "trial".

Clause 4 (9): To omit the words "prescribed procedures", and substitute the words "procedures prescribed by regulations made under this Act".

Clause 4 (10): To omit the words "the Health Commissioner if appropriate", and substitute the words "any other body that may be appropriate".

Clauses 5B and 5c: To omit these clauses. (To be inserted as clauses 8A and 8B).

PART IA

COVER AND RELATIONSHIP WITH OTHER ACTS

Clause 7 (1): To insert, after the word "occurring", the words "in New Zealand".

Clause 7 (3): To omit the words "physical injury or".

Clause 8 (1): To add the words “; and, while the person is outside New Zealand, **section 87A** of this Act shall apply”.

Clause 8: To omit subclauses (2) to (4), and substitute the following subclause:

(2) Nothing in this section shall extend cover as medical misadventure to personal injury relating to any treatment provided to the person while outside New Zealand unless the treatment is provided by a person who has qualifications equivalent to that of a registered health professional in New Zealand and the personal injury would be medical misadventure if the personal injury occurred in New Zealand.

New clauses 8A and 8B: To insert, after clause 8, the following clauses:

8A. General exclusions from cover—(1) For the avoidance of doubt it is hereby declared that personal injury caused wholly or substantially by gradual process, disease, or infection is not covered by this Act unless it is—

- (a) Personal injury caused by gradual process, disease, or infection arising out of and in the course of employment as defined in **section 5A** or **section 8B** of this Act; or
- (b) Personal injury that is medical misadventure; or
- (c) A consequence of personal injury or treatment for personal injury.

(2) For the avoidance of doubt it is hereby declared that—

- (a) Personal injury caused wholly or substantially by the ageing process; and
- (b) Personal injury to teeth that is caused by the natural use of those teeth—

is not covered by this Act.

Cf. 1982, No. 181, s. 2 (1)

8B. Cover in respect of personal injury caused by gradual process, disease, or infection where exposure occurred before 1 April 1974—(1) Subject to **subsection (2)** of this section, where any person suffers personal injury caused by gradual process, disease, or infection from exposure of that person before the 1st day of April 1974 arising out of and in the course of employment within the meaning of **section 5A** of this Act that ceased before that date, the person shall be entitled to cover under this Act as if that personal injury had been suffered on or after the 1st day of July 1992 or such later date as is determined under **section 5A (5)** of this Act.

(2) Where any person who would have cover by virtue of **subsection (1)** of this section commences or has commenced any proceedings or receives any sum by way of damages, compensation, or settlement of any claim other than under this Act in respect of that personal injury, that person shall not be entitled to any treatment, service, rehabilitation, related transport, compensation, grant, or allowance under this Act, irrespective of the outcome of those proceedings or the amount received by way of damages, compensation, or settlement.

(3) **Subsection (2)** of this section shall not apply in any case where the proceedings have been discontinued before the 1st day of April 1993, and no sum of money has been paid or is payable by way of settlement of the proceedings.

(4) Any person who has cover under this Act by virtue of this section and who has lodged a claim with the Corporation in respect of the personal injury before the 1st day of October 1992, shall be eligible for benefits under sections 78 and 79 of the Accident Compensation Act 1982 as if that Act had not been repealed and as if the personal injury was personal injury by accident within the meaning of that Act, and section 138 of this Act shall apply in respect of any such entitlement.

Clause 13 (3) (c): To insert, after the words "covered by this Act", the words "or personal injury by accident covered by the Accident Compensation Act 1972 or the Accident Compensation Act 1982".

Clause 13 (5): To omit the words "to which", and substitute the words "covered by".

To omit the word "applies".

Clause 13 (6): To omit the expression "17", and substitute the expression "15A".

PART II

REHABILITATION, TREATMENT, AND PREVENTION OF PERSONAL INJURY

Clause 22 (6): To omit the word "shall" where it first occurs, and substitute the word "may".

Clause 26 (2): To omit the words "result in a reduction of the Corporation's liability or potential liability to pay compensation for loss of earnings or loss of potential earning capacity under Part III of this Act", and substitute the words "be cost effective for the Corporation".

Clause 27 (5): To omit this subclause.

Clause 29c (b): To omit the word "work", and substitute the word "employment".

Clause 29c (c): To omit the word "work", and substitute the word "employment".

Clause 29F: To omit the words "31st day of July", and substitute the words "30th day of June".

PART III

COMPENSATION

Clause 34 (2): To omit the words "in the employment in which the work injury occurred".

Clause 38 (1): To omit the word "have", and substitute the word "had".

Clause 38 (2) (a): To omit from the definition of B the word "those". To add to that definition the words "other than as an employee".

Clause 38: To add the following subclause:

(3) Where during the 12 months immediately preceding the commencement of the incapacity an employee has more than 1 employer, the calculations made under subsection (2) of this section shall be made separately and then be combined.

Clause 41 (2): To omit the words "an earner", and substitute the words "a person".

Clause 41 (11) (b): To omit the word "The", and substitute the words "Where no application for a refund has been made under paragraph (a) of this subsection, the".

Clause 42 (2): To insert, after the words “shall be deemed to have had”, the word “weekly”.

To omit the words “a week”.

Clause 47: To omit the words “Where any”, and substitute the word “Any”.

Clause 47 (4): To insert, after the words “personal injury” where they first occur, the words “covered by this Act”.

To omit the words “to which”, and substitute the words “covered by”.

To omit the word “applied”.

Clause 48 (2): To insert, after the words “has been paid”, the words “for a total of 24 months from the commencement of incapacity”.

To omit the words “for a total of 24 months from the commencement of incapacity”.

Clause 49 (1): To insert, after the words “loss of earnings” in both places where they occur, the words “or loss of potential earning capacity”.

Clause 50 (5): To omit this subclause, and substitute the following subclause:

(5) The Corporation shall not pay any independence allowance unless the assessment of the degree of disability of the person in respect of whom it is to be paid has been made in accordance with—

(a) Scales prescribed under this Act which may be based on impairment or disability or a combination of impairment and disability; or

(b) In the absence of the scales referred to in **paragraph (a)** of this subsection, the American Medical Association Guides to the Evaluation of Permanent Impairment (Second Edition)—

and any such allowance shall be payable from the date of the assessment or the date determined under **subsection (2)** of this section, whichever is the later.

Clause 50 (13): To insert, after the words “personal injury” where they first occur, the words “covered by this Act”.

To omit the words “to which”, and substitute the words “covered by”.

To omit the word “applied”.

Clause 50: To insert, after subclause (13), the following subclause:

(13A) Where any person who has received a payment under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 is assessed for the purposes of establishing an entitlement to an independence allowance, the person’s disability assessed under **subsection (5)** of this section shall be reduced by the percentage or percentages of permanent loss or impairment of bodily function upon which any payment or payments under section 119 of the Accident Compensation Act 1972 or section 78 of the Accident Compensation Act 1982 were based.

Clause 54 (2) (b): To omit the words “who was dependent on the deceased at the date of the deceased’s death”.

Clause 54 (3): To omit the words “or age”.

Clause 54 (6): To omit this subclause.

Clause 55 (1): To omit the word “dependent”.

Clause 55 (4): To omit the word “dependent”.

To omit the words “cease upon”, and substitute the words “not be payable after”.

Clause 55: To add the following subclause:

(5) The weekly compensation payable to a child under **subsection (1)** of this section shall not be cancelled or suspended by reason of the age that the deceased would have attained if the deceased had not died.

Clause 56: To add the following subclause:

(5) The weekly compensation payable to a dependant under **subsection (1)** of this section shall not be cancelled or suspended by reason of the age that the deceased would have attained if the deceased had not died.

Clause 59: To omit the expression “57”, and substitute the expression “56”.

To omit the words “where the dependency status of any person changes”.

PART IV

CLAIMS FOR PAYMENTS

Clause 65 (2A): To omit the expression “3 (1) (c)”, and substitute the expression “7 (3)”.

Clause 66 (2): To omit the words “rehabilitation, compensation, grant, or allowance” in both places where they occur, and substitute in each case the words “payment or rehabilitation”.

Clause 67: To insert, after subclause (1), the following subclause:

(1A) Where any work injury claim is lodged with an employer (other than an exempt employer), that employer shall forward the claim to the Corporation together with a work injury report as soon as practicable.

Clause 67 (3): To insert, after the words “where any”, the word “exempt”.

Clause 67 (5): To omit the expression “3 (1) (c)”, and substitute the expression “7 (3)”.

Clause 68 (1): To omit the word “rehabilitation,”, and substitute the words “treatment, service, rehabilitation, related transport,”.

Clause 72: To omit the words “sections 43, 44, and 58”, and substitute the expression “paragraph (a)” of the definition of the term “other dependant” in section 2 of this Act and in sections 39, 42, 43, 44, 47, 56, and 75”.

Clause 76 (2) (d): To add the words “, other than any amount paid under section 27 of this Act”.

Clause 78 (2): To insert, after the words “paid in respect of that, where they first occur, the words “treatment, service, rehabilitation, related transport,”.

To omit the word “compensation” where it fifthly occurs (penultimate line), and substitute the words “treatment, service, rehabilitation, related transport, compensation, grant, or allowance”.

Clause 80 (2): To omit the words “compensation, grant, or allowance”, and substitute the word “amount”.

Clause 83: To insert, after the words “in respect of”, the word “any”.

Clause 84: To insert, after the words “penal institution”, the words “within the meaning of the Penal Institutions Act 1954”.

Clause 87A: To insert, after subclause (2), the following subclause:

(2A) No compensation based on weekly earnings shall be payable to any person who suffered personal injury outside New Zealand which is covered by this Act, and who is not for the time being in New Zealand, unless that person—

- (a) Had earnings within the meaning of this Act while absent from New Zealand prior to suffering the personal injury; or
- (b) Had earnings within the period of 6 months immediately before leaving New Zealand.

Clause 87A (5): To omit the words “the person”, and substitute the words “that person”.

PART V

REVIEWS AND APPEALS

Clause 88 (4): To omit this subclause, and substitute the following subclause:

(4) An application pursuant to this section—

(a) May be made in the prescribed form within 3 months after the date on which the claimant is entitled to treat the claim in respect of which the review is sought as having been rejected under **section 68** of this Act; and

(b) In any other case, an application in the prescribed form may be made within 3 months after the date on which notice in writing has been given of the decision in respect of which the review is sought—

and each such application shall state briefly the grounds on which the application is made.

Clause 89 (4): To insert, after paragraph (b), the following paragraph:

(ba) Where the applicant is a registered health professional who applied for the review under **section 88 (2A)** of this Act, allow the claimant to be present and be heard either personally or by a representative; and

Clause 90 (2) (d): To omit the expression “**88 (3) or (4)**”, and substitute the expression “**88 (2A) or (3)**”.

Clause 90 (7): To omit the words “send to the Registrar of the District Court in which the appeal is to be heard”, and substitute the words “make available in accordance with regulations made under this Act”.

Clause 91 (1) (a): To omit the words “while under oath”.

Clause 91 (3): To omit the words “the appellant” (page 92, line 2), and substitute the words “any party”.

To omit the word “appellant” (page 92, line 3), and substitute the word “party”.

Clause 92 (2) (f): To omit the words “of this Act—”, and substitute the words “of this Act; or”.

Clause 92 (2): To insert, after paragraph (f), the following paragraph:

(fa) A question of whether conduct to which subsection (6) or subsection (7) of section 4 of this Act applies constitutes negligence—

Clause 94: To add, after the word “assessors”, the word “and”.

Clause 96 (2): To omit the expression “sections 72 to 79”, and substitute the expression “Part V (other than sections 71 and 71A)”.

Clause 98: To omit the words “incurred by that Department”.

PART VI

FINANCE

Clause 99 (3) (b): To omit the word “Act—”, and substitute the words “Act; and”.

Clause 99 (3): To insert, after paragraph (b), the following paragraph:

(c) Making appropriate payments to the subsequent Work Injury Account—

To omit the expression “17”, and substitute the expression “8B”.

Clause 105 (1) (c): To insert, after the words “loss of” where they secondly occur, the word “potential”.

Clause 105 (2): To omit the words “in respect of which the person has cover under this Act”, and substitute the words “covered by this Act”.

Clause 106 (3) (b): To insert, after the word “rehabilitation,”, the words “related transport,”.

Clause 106 (3) (c): To insert, after the word “rehabilitation,”, the words “related transport,”.

Clause 106 (4): To insert, after the words “prescribed work” where they secondly occur, the word “injury”.

Clause 107 (1) (a): To insert, after the word “trade”, the word “plate”.

Clause 107 (3) (b): To omit the word “Act—”, and substitute the words “Act; and”.

Clause 107 (3): To insert, after paragraph (b), the following paragraph:

(c) Making appropriate payments to the Subsequent Work Injury Account—

Clause 112 (1): To insert, after the words “motor vehicle injury”, the words “or payments out of the Medical Misadventure Account”.

Clause 112 (3): To add the words “, and in payments to the Medical Misadventure Account and the Subsequent Work Injury Account”.

Clause 116 (5): To omit the words “; and for that purpose the Corporation shall have all the powers of the Commissioner of Inland Revenue”, and substitute the words “as a debt due to the Corporation”.

Clause 117: To omit this clause, and substitute the following clause:

117. Penalties for late payment of premiums—Where—

- (a) Any premium payable under section 100 or section 101 of this Act; or
- (b) Any premium payable by an earner in respect of earnings other than as an employee under section 113 of this Act; or

(c) Any premium payable by an earner in respect of earnings as an employer under section 113 of this Act where the employer of that earner is not required to make deductions under section 114 of this Act; or

(d) Any premium in respect of which a notice is issued under section 126 of this Act—

is not paid on or before the last date allowed for payment, a penalty of 10 percent of the amount unpaid shall be added to that amount, and the penalty shall compound at the rate of 10 percent at 6-monthly intervals and shall be recoverable as if it were part of the premium.

Clause 117A To omit this clause, and substitute the following clause:

117A. Penal premium—Every person who is or will be liable to pay—

(a) Any premium under section 100 or section 101 of this Act; or

(b) Any premium in respect of earnings other than as an employee under section 113 of this Act; or

(c) Any premium in respect of earnings as an employee under section 113 of this Act where the employer of that person is not required to make deductions under section 114 of this Act; or

(d) Any premium in respect of which a notice is issued under section 126 of this Act—

who evades, attempts to evade, or does or omits to do anything with the intent to evade, the determination or payment of the whole or part of any of the premium which is or may become payable by the person under this Act (hereinafter referred to as the “deficient premium”) shall be chargeable, by way of a penalty, in addition to any other penalty for which the person may be liable, with an additional amount (in this section referred to as the “penal premium”) not exceeding an amount equal to treble the amount of the deficient premium; and sections 420 to 426 of the Income Tax Act 1976 shall apply as if the penal premium were an amount of penal tax in respect of which the Commissioner of Inland Revenue had made an assessment under section 422 of the Income Tax Act 1976.

Clause 119 (2): To omit the words “compensation for loss of earnings and loss of potential earning capacity”, and substitute the word “amounts”.

To insert, after the word “Subsequent”, the word “Injury”.

Clause 119 (3): To omit the word “Subsequent”, and substitute the words “funds in the Subsequent Work”.

Clause 119 (5) (a): To insert, after the words “personal injury” (page 114, line 25), the words “or personal injury by accident”.

Clause 119A (1): To omit this subclause, and substitute the following subclause:

119A. Source and application of funds—(1) For the purposes of financing treatment, services, rehabilitation, related transport, compensation, grants, and allowances provided under this Act in respect of personal injury that is medical misadventure, the Corporation shall derive its funds from—

(a) Any premiums that may be payable by registered health professionals of the same class as the registered health professional responsible for the medical misadventure:

- (b) Where there is no such premium, from the Earners' Account (in the case of an earner) or the Non-Earners' Account (in the case of a non-earner).

Clause 119A (3): To omit the word "rehabilitation", and substitute the words "for treatment, services, rehabilitation, related transport,".

Clause 127: To insert, after the words "potential earning capacity", the words ", and all payments under sections 51, 52, 54, 55, and 56 of this Act".

PART VII

TRANSITIONAL PROVISIONS

Clause 131: To omit the expression "68", and substitute the expression "88".

Clause 132: To omit the words "Subject to section 133A of this Act, the", and substitute the word "The".

To omit the expression "47", and substitute the expression "45".

Clause 133: To omit the words "Subject to section 133A of this Act, section 43", and substitute the words "Section 43".

Clause 133A: To omit subclause (1), and substitute the following subclauses:

133A. Special provision for certain payments made under former Acts—(1) Nothing in section 132 or section 133 of this Act shall apply to payments calculated under section 114 of the Accident Compensation Act 1972 or section 60 of the Accident Compensation Act 1982.

(1A) Where the Corporation is not satisfied that payments under the Acts referred to in subsection (1) of this section are an accurate reflection of the person's capacity to earn, the Corporation shall reassess those payments under section 45 of this Act; and for that purpose the provisions of sections 45, 46, and 47 of this Act shall apply notwithstanding the provisions of section 114 of the Accident Compensation Act 1972 and section 60 of the Accident Compensation Act 1982.

Clause 133A (2): To omit from line 11 on page 123 the word "and", and substitute the word "or".

Clause 134 (1): To omit the words "and has attained the national superannuation qualification age or has not attained that age but is, immediately before the 1st day of July 1992, within 24 months of attaining that age,".

Clause 137 (2): To omit the word "The" where it first occurs, and substitute the words "Subject to section 137A of this Act, the".

Clause 137 (2) (e): To omit the word "replaced", and substitute the word "repealed".

Clause 137A: To omit this clause, and substitute the following clause:

137A. Cessation of earnings related compensation to surviving spouse on account of age—Notwithstanding section 137 of this Act, no payment shall be made to a surviving spouse who has attained an age greater than the age at which that person would cease to be entitled to that payment by virtue of section 66 (2) of the Accident Compensation Act 1982.

Clause 144: To omit the words "subsection (3) or subsection (4) of section 16", and substitute the expression "section 128A".

PART IX
MISCELLANEOUS PROVISIONS

Clause 155A (2): To omit the word “Customs,”, and substitute the word “Justice,”.

To insert, after the words “Social Welfare”, the words “and the Customs Department”.

Clause 155B (3): To omit the words “earnings related compensation”, and substitute the words “compensation based on weekly earnings”.

Clause 155B (3) (b): To omit the words “earnings related compensation”, and substitute the words “compensation based on weekly earnings”.

Clause 156 (1): To omit the word “rehabilitation” in both places where it occurs, and substitute in each case the words “treatment, service, rehabilitation, related transport,”.

Clause 156 (2) (c): To insert, after the word “under”, the words “**section 41 or**”.

Clause 156 (2) (d): To omit the words “**section 54, section 55, or**”.

Clause 156 (2): To insert, after paragraph (d), the following paragraph:

(da) Compensation continued under **sections 131 and 137** of this Act—

Clause 156 (2): To omit the words “(or income in respect of persons to whom **paragraph (d)** of this subsection applies)”.

Clause 157 (1) (d): To insert, after the words “maximum amounts” (penultimate line), the words “and deemed minimum accounts”.

Clause 157 (1) (f): To add the words “for those with earnings other than as an employee”.

Clause 157 (1) (l): To insert, after the words “certificates, and” where they secondly occur, the word “related”.

Clause 157 (1) (o) and (p): To omit these paragraphs, and substitute the following paragraphs:

(o) Prescribing the formula or formulae for indexation under **section 72** of this Act:

(p) Prescribing the formula or formulae for indexation under **section 73** of this Act:

Clause 157 (4) (a): To omit the words “by accident” in both places where they occur.

Clause 157 (4) (b): To add the words “or loss of potential earning capacity”.

Clause 157 (4) (d): To insert, after the words “services, or”, the word “related”.

Clause 161A (1) (a): To insert, after the words “loss of earnings”, the words “or loss of potential earning capacity”.

Clause 161A (1) (b): To insert, after the words “loss of earnings”, the words “or loss of potential earning capacity”.

Clause 161A (1) (c): To insert, after the words “loss of earnings”, the words “and loss of potential earning capacity”.

New clauses 161C to 161F: To insert, after clause 161B, the following clauses:

161c. Amendment to Privacy Commissioner Act 1991—The Third Schedule to the Privacy Commissioner Act 1991 is hereby amended by omitting the item relating to the Accident Compensation Act 1982, and substituting the following item:

“Accident Rehabilitation and Compensation Insurance Act 1992	Sections 155A and 155B”
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161d. Amendment to Criminal Justice Act 1985—The Criminal Justice Act 1985 is hereby amended by repealing section 62, and substituting the following section:

“62. Application of Accident Rehabilitation and Compensation Insurance Act 1992 to persons serving sentence of community service or periodic detention—Where an offender performs any service or does any work for the purposes of a sentence of community service or of periodic detention, the following provisions shall apply:

- “(a) Where the offender suffers any personal injury for which there is cover under the Accident Rehabilitation and Compensation Insurance Act 1992 arising out of and in the course of performing that service or doing that work the personal injury shall be deemed for the purposes of section 34 of that Act only to have arisen out of and in the course of the offender’s employment, and compensation for loss of earnings to which the offender is entitled under sections 34 and 35 of that Act shall be payable by the Crown:
- (b) The cost of all other entitlements of the offender in respect of treatment, services, rehabilitation, related transport, compensation, grants, or allowances under that Act shall be met from the Earners’ Account in the case of an offender who is an earner and from the Non-Earners’ Account in all other cases.

161e. Amendment to Forest and Rural Fires Act 1977—Section 38 (6) of the Forest and Rural Fires Act 1977 is hereby amended by omitting the words “Accident Compensation Act 1982”, and substituting the words “Accident Rehabilitation and Compensation Insurance Act 1992”.

161f. Amendment to Transport (Vehicle and Driver Registration and Licensing) Act 1986—Section 57 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 is hereby repealed.

Third Schedule: To omit clause 1 (c), and substitute the following:

- (c) By inserting in subsection (4)(bb), after the word “Corporation” in both places where it occurs, the words “Accident Rehabilitation and Compensation Insurance Corporation”.

Third Schedule: Clause 3 (1): To omit from the proposed new paragraph (c) the word “Where”, and substitute the word “Whether”.

Third Schedule: Clause 3 (2) (a): To insert in subparagraph (ii) of the definition of the term “earnings related compensation”, after the words “section 56 of that Act”, the words “and any payments continued to be paid under section 130, section 131, or section 137 of that Act

(excluding any payments continued under **section 131** of that Act in relation to section 68 of the Accident Compensation Act 1982)".

EXPLANATORY NOTE

This Supplementary Order Paper contains drafting amendments and other amendments to make provisions of the Bill consistent with amendments made by the Labour Select Committee.