



ANALYSIS

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1978, No. 36

An Act to amend the Accident Compensation Act 1972

[11 October 1978]

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—This Act may be cited as the Accident Compensation Amendment Act 1978, and shall be read together with and deemed part of the Accident Compensation Act 1972 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting in subsection (1), in its appropriate alphabetical order, the following definition:

“‘New Zealand’ means:

“(a) The North Island, the South Island, Stewart Island, the Chatham Islands, and all other land territories, islands, and islets lying between the 162nd degree of east longitude and the 173rd degree of west longitude and between the 33rd and 53rd parallels of south latitude; and

“(b) Those islands situated in the South Pacific Ocean lying between the 177th and 180th degrees of west longitude and between the 29th and 32nd parallels of south latitude, commonly known as the Kermadec Group; and

“(c) Those parts of the internal waters of New Zealand (as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977) that are adjacent to the aforementioned land territories, islands, and islets; and

“(d) Those parts of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977) that are adjacent to or surround the aforementioned land territories, islands, or islets; and

“(e) Any installation or drilling rig (whether permanent or temporary) while constructed, erected, placed, or used in, on, or above those parts of the continental shelf (as defined in section 2 of the Continental Shelf Act 1964) that are appurtenant to the above-mentioned land territories, islands, and islets, for the purpose of the exploration of the continental shelf, or of the exploitation of the mineral or other natural non-living resources of that continental shelf; and in this paragraph the terms ‘installation’ and ‘drilling rig’ include any ship, floating platform, aircraft, or other device that is for the time being in, on, or above the continental shelf and being used in connection with any such installation or drilling rig:”.

3. Extension of cover under earners’ scheme—(1) Section 59 of the principal Act (as substituted by section 18 of the Accident Compensation Amendment Act (No. 2) 1973, and amended by section 3 (1) of the Accident Compensation Amendment Act 1974) is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Subject to subsection (3) of this section, the period or periods during which the cover of any person under the earners’ scheme in respect of personal injury by accident shall be deemed to have so extended shall be a period not exceeding 13 weeks, which period shall be the 7 days after the day on which his cover under the earners’ scheme would, but for this section, have ceased, plus a further 7 days for each complete 30 days, if any, during the 12 months immediately before the day on which that cover would, but for this section, have ceased, whether or not that cover was continuous:

“Provided that the Commission may in its discretion determine that the cover shall be deemed to extend for such further period (if any) as the Commission considers reasonable, having regard to that person’s employment history, state of health, and age, and to the circumstances under which he ceased to be an earner.”

(2) Section 3 of the Accident Compensation Amendment Act 1974 is hereby amended by repealing subsection (1).

4. Rewards and penalties according to safety records—The principal Act is hereby amended by repealing section 73, and substituting the following section:

“73. (1) Subject to any regulations made under this Act, the Commission may from time to time, after having regard to the accident experience of an employer or a self-employed person as compared with the general accident experience of employers or self-employed persons in the same class of business and such other factors as it considers relevant under the circumstances, in its discretion and on such terms and conditions as it thinks fit, by notice in writing to the employer or self-employed person concerned,—

“(a) Either impose on the employer or self-employed person a penalty of such amount as it thinks fit (not exceeding 100 percent of the amount of annual levy on earnings as an employee or, as the case may be, earnings as a self-employed person that that employer or self-employed person was last liable to pay immediately before the date of that notice), or require the employer or self-employed person to pay a levy at a penalty rate (not exceeding the normal rate of levy for his class by more than 100 percent), on the earnings for such period as the Commission specifies:

“(b) Either pay to the employer or self-employed person a safety-incentive bonus of such amount as it thinks fit (not exceeding 50 percent of the amount of annual levy on earnings as an employee or, as the case may be, earnings as a self-employed person that that employer or self-employed person was last liable to pay immediately before the date of that notice), or permit the employer or self-employed person to pay a rebated rate of levy (not being below the normal rate for his class by more than 50 percent), on the earnings for such period as the Commission specifies.

“(2) Where an employer or a self-employed person is required to pay a penalty under the foregoing provisions of this section, payment shall be made not later than the date specified in the notice; and the provisions of sections 75, 81, and 82 and subsections (2) to (7) of section 171 of this Act shall apply to that penalty as if it were a levy payable under sections 71 and 72 of this Act.

“(3) In respect of any period for which a penalty rate or a rebated rate of levy is so payable by any employer or self-employed person the provisions of this Act shall apply as if that rate were the appropriate rate prescribed by Order in Council in respect of the levy.

“(4) For the purposes of this section the expression ‘accident experience’, in relation to any employer or self-employed person, means only the experience of that employer or self-employed person in relation to accidents that arise out of and in the course of employment by that employer or as a self-employed person, as the case may be.”

5. Statements by self-employed persons—(1) Section 78 of the principal Act (as substituted by section 28 (1) of the Accident Compensation Amendment Act (No. 2) 1973) is hereby amended by repealing subsections (2), (3), and (4), and substituting the following subsections:

“(2) Every person who was a self-employed person on the 1st day of October 1974 and also on the 30th day of September 1974 and has continued, until and including the 1st day of October 1977, to be a self-employed person and who completes, within the 12 months commencing on the 1st day of October 1977, a financial year during which he has been a self-employed person, shall—

- “(a) Deliver, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section:
- “(b) Where he continues, during any 12 months commencing on a 1st day of October succeeding the 1st day of October 1977, to be a self-employed person and completes, during that 12 months, a financial year during which he has been a self-employed person, deliver, in respect of every such financial year, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, in relation to every such statement, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section.
- “(3) Every person who, on or after the 1st day of October 1974 and before the 1st day of October 1977, commenced (whether or not for the first time) to be a self-employed person and has continued, until and including the 1st day of October 1977, to be a self-employed person and who completes, within the 12 months commencing on the 1st day of October 1977, a financial year during which he has been a self-employed person shall—
- “(a) Deliver, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section:
- “(b) Where he continues, during any 12 months commencing on a 1st day of October succeeding the 1st day of October 1977, to be a self-employed person and completes, during that 12 months, a financial year during which he has been a self-employed person, deliver, in respect of every such financial year, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, in relation to every such statement, within the period

of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section.

“(4) Every person who, on or after the 1st day of October 1977 commences (whether or not for the first time) to be a self-employed person shall—

“(a) Deliver, within the period of 1 month commencing on the date on which he so commences, a statement in a form approved by the Commission and pay a levy calculated at the rate of \$3 for every month or part of a month that falls within the period commencing on the date on which he so commences and ending with the 30th day of September next following that date:

“(b) Where he continues to be a self-employed person until the end of the financial year during which he so commences—

“(i) If that financial year ends before the 1st day of October next following the date on which he so commences, deliver, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section:

“(ii) If that financial year ends on or after the 1st day of October next following the date on which he so commences, deliver, within the period of 1 month commencing on that 1st day of October, a statement in a form approved by the Commission and pay a levy amounting to \$36 and deliver, on or before the delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section:

“(c) Where he continues, after the end of the financial year in which he so commences, to be a self-employed person and completes, after that financial year, a financial year during which he has been a self-employed person, deliver, in respect of every such last-mentioned financial year, on or before the

delivery date, a statement of his earnings as a self-employed person during that financial year and, subject to section 79 of this Act, pay, in relation to every such statement, within the period of 1 month immediately following the due date, a levy calculated in accordance with subsection (5) of this section.”

(2) Section 78 of the principal Act (as so substituted) is hereby further amended by adding, after subsection (9) (as added by section 9 (1) of the Accident Compensation Amendment Act 1975), the following subsection:

“(10) In this section—

“‘Delivery date’, in relation to a statement of earnings as a self-employed person during a financial year, means the date by which the person by whom that statement is required to be delivered is required to furnish, under and for the purposes of the Income Tax Act 1976, a return of the income derived by him during that financial year:

“‘Due date’, in relation to a levy calculated in accordance with subsection (5) of this section means the 7th day of February next following the delivery date of the statement of earnings as a self-employed person in relation to which that levy is calculated.”

(3) The Accident Compensation Self-Employed Levy Payment Regulations 1978 are hereby consequentially amended by revoking regulation 2.

6. Deduction of levy from payment due to defaulters—

(1) The principal Act is hereby amended by inserting, after section 81, the following section:

“81A. (1) Where an employer or a self-employed person (hereafter in this section called ‘the defaulter’) has made default in payment of any levy which he is required to pay under sections 76 to 80 of this Act or any penalty under section 73 or section 81 of this Act, the Commission may from time to time by notice in writing require any person to deduct from any amount payable or to become payable by that person to the defaulter such sum as may be specified in the notice, and to pay every sum so deducted to the Commission to the credit of the defaulter within such time as may be specified in the notice.

“(2) Any notice under this section may at any time be revoked by the Commission by a subsequent notice to the person to whom the original notice was given (hereafter in

this section called 'the debtor'), and shall be so revoked at the request of the defaulter at any time when the Commission is satisfied that all such levies (including penalty, if any) then due and payable by the defaulter have been paid.

“(3) A copy of every notice given under this section and of the revocation of any such notice shall be given to the defaulter by the Commission.

“(4) Whenever pursuant to a notice under this section any deduction is made from any amount payable to a defaulter, he shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

“(5) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$200 who—

“(a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to the defaulter; or

“(b) Fails after making any such deduction to pay the sum so deducted to the Commission within the time specified in that behalf in the notice.

“(6) The Commissioner of Inland Revenue may act in the name of and as agent of the Commission in instituting and prosecuting any proceedings under this section.”

(2) The principal Act is hereby further amended by inserting in section 75 (5), after the expression “section 81”, the expression “subsections (1), (2), and (3) of section 81A”.

7. Cover for persons not ordinarily resident in New Zealand—The principal Act (as amended by section 37 of the Accident Compensation Amendment Act (No. 2) 1973) is hereby further amended by repealing section 102c, and substituting the following section:

“102c. (1) Any person who is not ordinarily resident in New Zealand shall not have cover under the supplementary scheme while he is on board the ship or aircraft or other means of conveyance—

“(a) Used by him in the course of coming to New Zealand; or

“(b) On which he entered and is accommodated or carried in the course of his visiting New Zealand; or

“(c) On which he has embarked in the course of leaving New Zealand.

“(2) Without restricting the generality of subsection (1) of this section, a person shall, for the purposes of that subsection, be deemed to be on board a ship or aircraft or other means of conveyance while he is in the act of embarking thereon or disembarking therefrom.”

8. Limitations affecting earnings related compensation—

(1) Section 104 (13) of the principal Act (as substituted by section 11 (1) of the Accident Compensation Amendment Act 1975) is hereby amended by adding the words “for the purpose of calculating earnings related compensation payable in respect of any period before the 1st day of December 1978”.

(2) Section 113 of the principal Act is hereby amended by adding, after subsection (12) (as substituted by section 43 (3) of the Accident Compensation Amendment Act (No. 2) 1973), the following subsection:

“(13) Notwithstanding anything in the foregoing provisions of this section, the weekly amount of earnings related compensation for the time being payable to any person in accordance with this section in respect of any period of incapacity that occurs on and after the 1st day of December 1978 shall not exceed the maximum amount prescribed for the purposes of this subsection, being the amount specified in Part IV of the First Schedule to this Act or such other amount (not differing therefrom by more than 20 percent) as may from time to time be specified for the purposes of this subsection by the Governor-General by Order in Council.”

(3) Section 114 of the principal Act (as substituted by section 18 (1) of the Accident Compensation Amendment Act 1975) is hereby amended by repealing subsection (10), and substituting the following subsection:

“(10) Notwithstanding anything in the foregoing provisions of this section, the weekly amount of earnings related compensation that is, for the time being, payable to the injured person or, in a case to which section 123 of this Act applies, would for the time being have been payable to him, in accordance with this section shall not—

“(a) In respect of any period of incapacity occurring before the 1st day of December 1978, exceed 80 percent of the maximum amount for the time being prescribed for the purposes of section 104 (13) of this Act; and

“(b) In respect of any period of incapacity occurring on or after that date, exceed the maximum amount for the time being prescribed for the purposes of section 113 (13) of this Act.”

(4) The First Schedule to the principal Act is hereby amended by inserting in Part IV, after the item relating to the amount prescribed for the purposes of section 104 of the principal Act, the following item:

“Amount prescribed for the purposes of section 113 (13) of this Act, which relates to the maximum weekly rate of earnings related compensation \$240”

(5) Section 15 (2) of the principal Act is hereby consequentially amended by repealing paragraph (d), and substituting the following paragraph:

“(d) The amount prescribed for the purposes of section 113 (13) of this Act, which relates to the maximum weekly rate of earnings related compensation:”.

(6) The principal Act is hereby further consequentially amended—

(a) By adding to section 15 (2) (e) the words “pursuant to section 114 (9) of this Act”:

(b) By inserting in section 113 (1) (a) before the word “Until”, the words “Subject to subsection (13) of this section”:

(c) By inserting in section 114 (1) (e), after the words “which amount shall”, the words “, subject to subsection (10) of this section,”:

(d) By inserting in section 181 (2) (a), after the expression “104,”, the expression “113 (13),”:

(e) By omitting from the item relating to the amount prescribed for the purposes of section 104 of the principal Act in Part IV of the First Schedule the word “normal”, and substituting the word “certain”.

9. Persons travelling between places in New Zealand—

(1) The principal Act is hereby amended by repealing section 105A (as inserted by section 41 of the Accident Compensation Amendment Act (No. 2) 1973), and substituting the following section:

“105A. Where any person who has cover under this Act, not being a seaman or airman in the course of his employment as such, embarks in New Zealand on a ship or aircraft or other means of conveyance by sea or air to travel from one place in New Zealand to another place in New Zealand, or to

return to his place of embarkation without disembarking at any other place, but in either case does not go beyond a limit of 300 nautical miles from any point or points in New Zealand, that person shall, for the purposes of this Act, be deemed to have remained in New Zealand.”

(2) Section 41 of the Accident Compensation Amendment Act (No. 2) 1973 is hereby consequentially repealed.

10. Conveyance by ambulance—(1) The principal Act is hereby further amended by inserting, after section 109, the following section:

“109A. Notwithstanding sections 107 to 109 of this Act, where a person suffers personal injury by accident in New Zealand, and the person has cover under this Act in respect of the injury, and it is necessary, as a result of the injury, to transport the injured person in an ambulance, the Commission shall pay the reasonable costs of such transportation:

“Provided that in respect of such transportation by any ambulance service provided by or under contract to any hospital board constituted under the Hospitals Act 1957, the Commission shall pay the costs to the Government in trust under section 46 of the Public Revenues Act 1953 or under section 52 of the Public Finance Act 1977, in either case to be paid out as directed by the Minister of Health for the benefit of ambulance services.”

(2) This section shall be deemed to have come into force on the 1st day of April 1977.

11. Payments to minors and persons under disability or needing protection—(1) The principal Act is hereby further amended by repealing section 126 (as amended by section 47 of the Accident Compensation Amendment Act (No. 2) 1973), and substituting the following section:

“126. (1) In any case where compensation is payable under this Act to any person, and the Commission has notice that there is another person with authority to receive the compensation under the Mental Health Act 1969 or the Aged and Infirm Persons Protection Act 1912 or the Maori Affairs Act 1953, or by virtue of any order made under any of those Acts, the compensation shall be paid to that other person.

“(2) Subject to subsection (1) of this section, in any case where compensation is payable under this Act to any person—

“(a) Who is for the time being under the age of 20 years; or

“(b) In respect of whom it appears to the Commission, whether or not application is made by that person or any other person, that it would be in the interests of the first-mentioned person (whether by reason of his mental or physical infirmity or otherwise howsoever) or of any spouse or child or dependant of that first mentioned person that the compensation should not be paid by the Commission direct to that first-mentioned person—

the Commission may, in its discretion, and at such time or times and during such period or periods and on such terms and conditions (if any) as it thinks fit, pay the whole or any part of the compensation to—

“(c) That first-mentioned person; or

“(d) Any guardian of, or any person caring for, that first-mentioned person or to any other person appointed by the Commission to be applied for the maintenance, education, advancement, or benefit of that first-mentioned person, and his spouse, children, and other dependants or of one or more of them to the exclusion of the others or other of them, in such shares and proportions and in such manner as the appointee thinks fit; or

“(e) Any other person or to a trustee corporation (as defined in section 2 of the Trustee Act 1956) appointed by the Commission to be held in trust and applied (as to capital as well as to the income thereof) by the appointee for the maintenance, education, advancement, or benefit of that first-mentioned person and his spouse, children and other dependants or one or more of them to the exclusion of the others or other of them in such shares and proportions and in such manner as the appointee thinks fit.

“(3) Where any compensation payable to any person under this Act has been paid to a trustee corporation or to any other person appointed by the Commission pursuant to subsection (2) (e) of this section—

“(a) If that first-mentioned person dies while any compensation is so held, the appointee shall pay the compensation to that first-mentioned person’s administrator or to a person to whom it may be paid under section 65 of the Administration Act 1969:

“(b) If—

“(i) That first-mentioned person, not being mentally or physically infirm, attains the age of 20 years; or

“(ii) That first-mentioned person, having been mentally or physically infirm, ceases to be so infirm after having attained the age of 20 years; or

“(iii) The appointee, on receipt of such evidence as he may require, is satisfied that the first-mentioned person, not being under the age of 20 years, is able to manage his own affairs,—

the appointee shall pay the balance of that compensation remaining in his hands to that first-mentioned person.

“(4) The receipt of any person or trustee corporation to whom any payment is made by the Commission pursuant to this section shall be a sufficient discharge therefor.

“(5) The Commission shall not be liable or accountable for any act, neglect, or default of any person or trustee corporation in respect of any compensation paid to any such person or trustee corporation pursuant to this section.

“(6) All compensation paid to a trustee under subsection (2) of this section shall be invested—

“(a) Where the compensation is paid to the Public Trustee, in the Common Fund of the Public Trust Office or (notwithstanding section 30 of the Public Trust Office Act 1957) in such other investments as are authorised by law for the investment of trust funds, or partly in the Common Fund and partly in such other investments as aforesaid as the Public Trustee thinks fit having regard to the circumstances of the person for whose benefit the compensation is so held:

“(b) Where the compensation is paid to the Maori Trustee, in the Common Fund of the Maori Trustee’s Account or in such other investments as are authorised by law for the investment of trust funds, or partly in that Common Fund and partly in such other investments as aforesaid as the Maori Trustee thinks fit having regard to the circumstances of the person for whose benefit the compensation is so held:

“(c) Where the compensation is paid to any trustee company or other person as trustee, in such investments as are authorised by law for the investment of trust funds, as the trustee company or that other person

thinks fit, having regard to the circumstances of the person or persons for whose benefit the compensation is so held.

“(7) Notwithstanding any Act or rule of law and notwithstanding in what manner the compensation is applied, any earnings related compensation paid to any person by the Commission pursuant to this section (not being payments to which subparagraph (i) or subparagraph (ii) of section 65 (2) (c) of the Income Tax Act 1976 applies) shall, for the purposes of the Income Tax Act 1976, be deemed to be and remain solely the income of the person to whom, apart from this section, that compensation was payable.”

(2) Section 135 (1) (b) of the principal Act (as substituted by section 51 (1) of the Accident Compensation Amendment Act (No. 2) 1973) is hereby consequentially amended by omitting the words “paragraph (b) of subsection (2) or subsection (4) or subsection (4A)”, and substituting the words “paragraph (d) or paragraph (e) of subsection (2)”.

(3) The Accident Compensation Amendment Act (No. 2) 1973 is hereby consequentially amended by repealing section 47.

12. Compensation under Act in cases where claim lies overseas, etc.—Section 131 of the principal Act is hereby amended by inserting in subsection (1), before the words “outside New Zealand”, the words “either within or”.

13. Regulations—(1) Section 181 of the principal Act is hereby amended by repealing paragraph (e) of subsection (1), and substituting the following paragraph:

“(e) Prescribing conditions under which penalty rates of levy and rebated rates of levy and a penalty or a safety-incentive bonus may be imposed or allowed under section 73 of this Act:”.

(2) Section 181 (1) of the principal Act is hereby further amended by—

(a) Omitting from paragraph (g) (as substituted by section 3 of the Accident Compensation Amendment Act 1977) the words “sections 76 to 80 of”;

(b) By omitting from the said paragraph (g) the words “those sections”, and substituting the words “this Act”.