



## ANALYSIS

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1962, No. 123

**An Act to amend the Workers' Compensation Act 1956**

[14 December 1962]

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**—(1) This Act may be cited as the Workers' Compensation Amendment Act 1962, and shall be read together with and deemed part of the Workers' Compensation Act 1956 (hereinafter referred to as the principal Act).

(2) Except as hereinafter expressly provided, nothing in this Act or in any provision of this Act shall apply with

respect to claims for compensation or other rights or liabilities in respect of accidents happening before the commencement of this Act or of that provision, as the case may be.

**2. Share fishermen**—(1) Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “share farmer”, the following definition:

“‘Share fisherman’ means a member of the crew of a fishing boat registered under the Fisheries Amendment Act 1945 who is remunerated wholly or partly by a share in the profits or gross earnings of the fishing venture and who is not the owner or one of the owners of the fishing boat:”.

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

(a) By adding to the definition of the term “employer” in subsection (1) the words “and also, in relation to a share fisherman, means the owner of the vessel to which the share fisherman belongs”:

(b) By inserting in the definition of the term “worker” in subsection (1), after the words “share farmer”, the words “and a share fisherman”.

(3) This section shall come into force on the first day of April, nineteen hundred and sixty-three.

**3. Application of principal Act to members of Parliament**—

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

“(8) It is hereby declared that for the purposes of this Act a member of the House of Representatives is, as such, a worker employed by the Crown.”

(2) Section 2 of the principal Act is hereby further amended by omitting from the definition of the term “worker” in subsection (1) the words “subsections four and six”, and substituting the words “subsections four, six, and eight”.

**4. Accidents to waterside workers awaiting engagement**—

The principal Act is hereby further amended by inserting, after section 6A (as inserted by section 2 of the Workers' Compensation Amendment Act 1960), the following section:

“6B. (1) Without limiting the provisions of section 3 of this Act, it is hereby declared that where an accident happens to

a person whose name is entered on a bureau register kept under section 28 of the Waterfront Industry Act 1953—

“(a) While, having presented himself for engagement on waterside work, he is at any place of engagement or is in any premises set aside as a place of waiting or is in any premises to which he has been directed by the Waterfront Industry Commission or is travelling by the most direct practicable route between any of those places; and

“(b) During the hours of engagement of labour prescribed under any principal order of the Waterfront Industry Tribunal under the Waterfront Industry Act 1953; and

“(c) While he has not been engaged for work within the meaning of and in the manner prescribed by any such principal order,—

the accident shall be deemed to arise out of and in the course of employment if the accident would have been deemed so to have arisen had it happened at any place of employment.

“(2) For the purposes of this section, the expression ‘any place of employment’ means any place at which a person to whom this section applies would be performing waterside work after having been engaged for such work.

“(3) For the purposes of this Act, any person to whom this section applies shall be deemed to be a worker employed by the Waterfront Industry Commission constituted under the Waterfront Industry Act 1953.”

**5. Certain accidents to workers deemed to arise out of employment**—The principal Act is hereby further amended by inserting after section 6B (as inserted by section 4 of this Act) the following section:

“6c. Without limiting the provisions of section 3 of this Act, it is hereby declared that where an accident happening to a worker arises in the course of his employment, the accident shall be deemed to arise out of his employment if—

“(a) The accident is caused by another person’s misconduct, skylarking, or negligence, or by steps taken in consequence of any such misconduct, skylarking, or negligence, or by the behaviour or presence of an animal (including a bird, a fish, an insect, or a reptile), or is caused by or consists in the worker being struck by any object or by lightning, or is caused by any force of nature; and

“(b) The worker did not directly or indirectly induce or contribute to the happening of the accident by any act not incidental to his employment.”

**6. Reciprocal application of Act outside New Zealand—**

(1) The principal Act is hereby further amended by repealing section 9, and substituting the following section:

“9. (1) Dependants of a deceased worker who are not resident in New Zealand shall not be entitled to compensation under this Act, unless by the law of the country or territory or place in which they reside the dependants of a deceased worker who are resident in New Zealand would be entitled to compensation where the death of the worker resulted from an injury in that country or territory or place.

“(2) For the purposes of this section, a certificate by the Secretary of Labour as to the effect of the law of the country or territory or place in which dependants of a deceased worker who are not resident in New Zealand reside shall, in any Court or before any person acting judicially, be received as evidence of the effect of that law.”

(2) The principal Act is hereby further amended—

(a) By omitting from the definition of the expression “partial dependants” in subsection (1) of section 2, and also from the definition of the expression “total dependants” in the same subsection, the words “were domiciled or resident in New Zealand at the time of his death and”:

(b) By omitting from subsection (1) of section 20, and also from subsection (2) of that section, the words “and ordinarily resident in New Zealand”:

(c) By omitting from section 74 the words “part of the Commonwealth”, and substituting the words “country or territory or place”:

(d) By omitting from section 75 the words “part of the Commonwealth other than New Zealand” wherever they occur, and substituting in each case the words “country or territory or place outside New Zealand”:

(e) By omitting from paragraph (d) of subsection (2) of section 136, and also from paragraph (f) of the same subsection, the words “territory within the Commonwealth”, and substituting in each case the words “country or territory or place outside New Zealand”.

**7. Weekly payments**—Section 14 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Where compensation is payable in the form of a weekly payment, then, unless the worker expressly or impliedly otherwise consents, the first such payment shall be paid on or before the tenth day of the period of incapacity in respect of the first seven days, and subsequent payments shall be paid thereafter at weekly intervals:

“Provided that where an employer normally pays his workers their wages at intervals of more than a week it shall be sufficient compliance with the provisions of this subsection if the first payment of compensation is paid on or before the seventeenth day of the period of incapacity in respect of the first fortnight, and subsequent payments are paid thereafter at fortnightly intervals.”

**8. Compensation for injuries specified in First Schedule, and other permanent physical injuries**—Section 17 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) Nothing in subsections (1) to (4) or in subsection (6) of this section shall limit the amount of compensation payable during any period of temporary incapacity resulting from any injury, but any such period for which compensation is paid shall be deducted from the period of six years referred to in subsection (1) of this section in assessing the compensation payable in respect of the same injury under subsections (1) to (4) and subsection (6) of this section:

“Provided that, where the compensation is paid in respect of any period of partial incapacity, the injured worker may elect, instead of having that period deducted, to have the amount of that compensation deducted from the compensation payable under this section.”

**9. Time for claiming compensation in respect of radiation disease**—Section 19 of the principal Act is hereby amended by omitting from paragraph (a) of subsection (2) the words “five years”, and substituting the words “twenty years”.

**10. Dependants' allowances**—(1) Section 20 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (4), after the words “those dependants”, the words “or a woman who is employed by him as a house-keeper under a contract of service”.

(2) Subsection (1) of this section shall apply with respect to compensation payable after the passing of this Act for any period after the passing of this Act in respect of accidents happening before or after the passing of this Act.

**11. Medical and funeral expenses**—(1) Section 22 of the principal Act (as substituted by section 2 of the Workers' Compensation Amendment Act 1958) is hereby amended—

- (a) By inserting in paragraph (a), after the word "funeral", the words "but not exceeding the prescribed maximum amount":
- (b) By omitting from paragraph (a) and also from paragraph (b) the words "or in respect of the total sum".

(2) This section shall come into force on the first day of April, nineteen hundred and sixty-three.

**12. Provision of artificial limbs or aids**—The principal Act is hereby further amended by repealing section 23, and substituting the following section:

"23. Where, as the result of the injury, the provision of any artificial limb or aid for the worker becomes necessary or desirable, the employer shall be liable to pay, in addition to the compensation otherwise payable under this Act, the reasonable cost of the artificial limb or aid and of its normal repair or renewal."

**13. Damage to teeth or artificial limbs or aids or clothing**—Section 24 of the principal Act is hereby amended by repealing the second proviso thereto.

**14. Restriction on ending of weekly payments of compensation**—Section 30 of the principal Act is hereby amended—

- (a) By inserting in paragraph (b) of subsection (1), after the words "the worker", the words "in accordance with the provisions of section thirty-seven of this Act":
- (b) By inserting in subsection (4), after the words "section thirteen", the words "or section seventeen, as the case may require".

**15. Agreements as to compensation**—Section 37 of the principal Act is hereby amended by adding the following subsection:

“(6) For the purposes of this Act and of any rule of law, an agreement for payment of the appropriate amount of compensation due under the foregoing provisions of this Act shall be deemed to be an agreement for valuable consideration given by all parties to the agreement.”

**16. Proceedings to be in Compensation Court**—Section 46 of the principal Act is hereby amended by omitting from subsection (1) the words “Subject to the provisions of sections forty-nine and fifty of this Act”, and substituting the words “Except where otherwise expressly provided in this Act”.

**17. Power to exempt employers**—(1) Section 84 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Every certificate granted under this section shall come into force or be deemed to have come into force on such date as may be specified in the certificate, whether before or after the date of the application or the date of the certificate.”

(2) Section 84 of the principal Act is hereby further amended by omitting from subsection (5) the words “but not earlier than the first day of April then last past”.

**18. Insurance companies that are authorised insurers**—Section 101 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every such notice shall take effect on the date of its delivery to the Secretary of Labour.”

**19. Workers' Compensation Board**—Section 104 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Unless he sooner vacates his office as provided in subsection (3) of this section, every member of the Board (other than the General Manager) shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.”

**20. Workers' Compensation Board may delegate its functions and powers**—The principal Act is hereby further amended by inserting, after section 108, the following section:

“108A. (1) The Board may from time to time appoint committees consisting of two or more persons (whether members of the Board or not), and may from time to time, with the consent of the Minister, delegate to any such committee or

to any officer or servant of the Board (whether by name or as the holder for the time being of any office or position) any of the functions or powers of the Board.

“(2) Where any committee appointed by the Board or any officer or servant of the Board purports to act pursuant to any delegation under this section, it or he shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

“(3) Every delegation under this section may be revoked by the Board at any time, and no such delegation shall prevent the exercise of any function or power by the Board.”

**21. Penalties for evasion**—The principal Act is hereby further amended by repealing section 120, and substituting the following section:

“120. (1) If any person evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed on him by this Part of this Act or any regulations made for the purposes of this Part with intent to evade, the liability for any sum properly payable by him as premium or otherwise to his insurer (which sum is in this section referred to as the deficient premium), he commits an offence against this Part of this Act.

“(2) In any proceedings under this section, the Court may, in addition to or instead of imposing a fine, impose a penal charge, not exceeding the amount of the deficient premium.

“(3) Every penal charge imposed under this section shall be recoverable in the same manner as a fine, and, subject to the provisions of section 109 of the Public Revenues Act 1953, shall when recovered be paid to the Board.”

**22. Wages understated by employer**—(1) The principal Act is hereby further amended by inserting, after section 120 (as substituted by section 21 of this Act) the following section:

“120A. (1) Where any person, in a statement delivered by him or on his behalf to an authorised insurer as required by section 85 or section 89 of this Act, understates the amount of wages paid by him during any period, he shall be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty of an amount equal to ten per cent of the amount of the premium payable in respect of the amount by which the wages were understated (the amount of that premium being in this section referred to as the deficient premium) :

“Provided that, if the Board considers that having regard to all the circumstances of the case, a penalty of an amount equal to ten per cent of the deficient premium would be inadequate, it may fix a penalty of a greater amount, not exceeding fifty per cent of the amount of the deficient premium.

“(2) Notice of a decision of the Board fixing any penalty to which subsection (1) of this section applies may be given by delivering it to the person liable, or by leaving it at his usual or last known place of residence or business, or by posting it by registered letter to that address, and in the last-mentioned case the production of a receipt given to an officer of the Post Office and purporting to be signed by the person to whom it is addressed shall be sufficient proof of the service.

“(3) If in any case in which the Board has fixed a penalty of an amount greater than ten per cent of the deficient premium the person liable to the penalty considers the amount to be unreasonable, he may within twenty-one days after written notice of the decision of the Board fixing the penalty has been given by the Board in accordance with subsection (2) of this section apply to the Magistrate's Court nearest to his place of residence or business for an order reducing the amount of the penalty. A copy of the application shall be served on the Board within the same time.

“(4) On the hearing of the application the Court may by order confirm the amount of the penalty or, if it thinks fit, reduce it to any amount being not less than ten per cent of the deficient premium, and every such order shall be final and binding on the Board and on the applicant.

“(5) The Board, after consideration of all the circumstances of the case, may remit the whole or any part of any penalty payable under this section.

“(6) Any penalty payable under this section shall be recoverable by the Board as a debt from the person by whom or on whose behalf the statement was delivered.

“(7) No person shall be liable under this section to any penalty in respect of any understatement of the amount of wages paid by him during any period after the expiration of five years from the end of that period.”

(2) This section shall come into force on the first day of April, nineteen hundred and sixty-three.

**23. Dependants not entitled to recover damages after apportionment order made**—Section 124 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) When any compensation in respect of the death of a worker is recovered, and that compensation, or the balance thereof after deducting costs and expenses as provided in section 57 of this Act, has been allotted or disposed of by order of the Compensation Court as provided in sections 58 to 65 of this Act, no dependant of the worker shall be entitled thereafter to recover damages from any person in respect of the same accident.”

**24. Worker on compensation to advise of other employment**—The principal Act is hereby further amended by inserting, after section 134, the following section:

“134A. (1) Any worker who, while he is in receipt of weekly payments of compensation, obtains employment with any employer other than the employer who is liable to pay compensation shall immediately advise the last-mentioned employer of that employment and of the wages payable therefor.

“(2) A worker who fails to comply with the requirements of subsection (1) of this section commits an offence, and is liable on summary conviction to a fine not exceeding twenty-five pounds.”

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This Act is administered in the Department of Labour.

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