

Compensation (Commonwealth Employees)

No. 122 of 1972

An Act to amend the *Compensation (Commonwealth Employees) Acts 1971*, and to make certain Transitional Provisions.

[Assented to 2 November 1972]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title
and citation.

1.—(1.) This Act may be cited as the *Compensation (Commonwealth Employees) Act 1972*.

(2.) The *Compensation (Commonwealth Employees) Acts 1971** are in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Compensation (Commonwealth Employees) Act 1971–1972*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

*Act No. 48, 1971, as amended by No. 136, 1971.

3. This Act is divided into Parts, as follows:—

Parts.

Part I.—Preliminary (Sections 1–3).

Part II.—Amendments of the Principal Act (Sections 4–13).

Part III.—Transitional Provisions relating to Certain Seamen (Sections 14–19).

PART II.—AMENDMENTS OF THE PRINCIPAL ACT.

4. Section 5 of the Principal Act is amended by inserting in sub-section (1.), after the definition of “ medical treatment ”, the following definition:—

Interpretation.

“ ‘ overtime ’ includes—

- (a) any duty on shifts or on Saturdays, Sundays or other holidays; and
- (b) excess travelling time;”.

5. Section 7 of the Principal Act is amended by omitting paragraph (d) of sub-section (7.) and inserting in its stead the following paragraph:—

Persons in relation to whom Act applies.

“ (d) a seaman to and in relation to whom the *Seamen’s Compensation Act 1911–1971* applies.”.

6. Section 8 of the Principal Act is amended—

Employment to include attendance at certain places.

(a) by omitting sub-section (3.) and inserting in its stead the following sub-section:—

“ (3.) For the purposes of this Act other than section 32, the employment of an employee by the Commonwealth includes the attendance of the employee at his place of employment or, if his living accommodation is accommodation to which sub-section (1.), (2.) or (3.) of section 34 of this Act applies, at that accommodation (other than a part of that place, or of that accommodation, constituting separate living accommodation of the employee or another employee) at any time during a period when he is not required to engage in his employment, where the attendance is reasonably incidental to his employment.”; and

(b) by inserting in sub-section (5.), after the word “ employee ” (third occurring), the words “ or another employee ”.

7. Section 39 of the Principal Act is amended by omitting from sub-section (11.) the words “ any of the last four preceding sub-sections,” and inserting in their stead the words “ sub-section (6.), (7.), (9.) or (10.) of this section,”.

Compensation payable in respect of certain losses.

Compensation payable in respect of injuries resulting in total incapacity.

8. Section 45 of the Principal Act is amended—

(a) by inserting after sub-section (2.) the following sub-sections:—

“(2A.) Notwithstanding the last preceding sub-section, but subject to the succeeding provisions of this section, if the prescribed amount applicable to the employee under the next succeeding sub-section in respect of a week, being one of the first twenty-six weeks of the period, or of the aggregate of the periods, of the incapacity, is greater than the amount of compensation that would, but for this sub-section, be payable to him in respect of that week under the last preceding sub-section (including sub-sections (3.) and (4.) of this section, if applicable), the amount of compensation payable to him in respect of that week is that prescribed amount.

“(2B.) For the purposes of the last preceding sub-section, the prescribed amount applicable to an employee in respect of a week is—

(a) in the case of an employee who is, during that week, employed by the Commonwealth under conditions of employment providing for sick leave payments—an amount equal to the sum of—

(i) the sick leave payment that he would receive in respect of that week if, during that week, he were entitled to, and were granted, sick leave on full pay by reason of an illness that is not attributable to an injury in relation to which this Act applies; and

(ii) the amount, if any, that was payable to the employee under the next succeeding section in respect of the week that ended immediately before the commencement of the period of the incapacity or, where there are two or more periods of incapacity, the last of those periods;

(b) in the case of an employee who is not employed by the Commonwealth during that week, but was, immediately before he ceased to be employed by the Commonwealth, employed under conditions of employment providing for sick leave payments—an amount equal to the amount that would be applicable to him under the last preceding paragraph if he had continued in that employment; or

(c) in any other case—an amount determined by the Commissioner, having regard to the following:—

(i) if the employee is, during that week, employed by the Commonwealth—the amount of the earnings, if any, payable to him in respect of that week in respect of that employment;

(ii) if the employee is not, during that week, employed by the Commonwealth—the amount of the earnings,

if any, that, if he had continued in the employment in which he was engaged immediately before he ceased to be employed by the Commonwealth, would have been payable to him in respect of that week in respect of that employment; and

(iii) any other matter that the Commissioner considers to be relevant.

“(2c.) For the purposes of the last preceding sub-section—

(a) an employee who would be, or would have been, employed but for his incapacity shall be taken to be employed, or to have been employed, as the case may be;

(b) a reference to a sick leave payment is a reference to a payment by way of salary, wages or pay in respect of a period during which the employee concerned is absent from his employment by reason of illness; and

(c) a reference to earnings, in relation to an employee—

(i) includes a reference to the earnings that would be, or would have been, payable to the employee but for his incapacity; and

(ii) does not include a reference to a payment in respect of overtime or a reference to an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the employee in respect of his employment.”; and

(b) by omitting from sub-section (3.) the words “the last preceding sub-section” and inserting in their stead the words “sub-section (2.) of this section”.

9. Section 46 of the Principal Act is amended by omitting from paragraph (b) of sub-section (2.) the word “sub-section” and inserting in its stead the words “sub-sections (2A.) and ”.

Compensation payable in respect of injuries resulting in partial incapacity.

10. Section 50 of the Principal Act is amended by omitting from paragraph (a) of sub-section (2.) the words “in pursuance of this Act” and inserting in their stead the words “under a provision of this Act, other than sub-section (2A.) of section 45.”.

Recurrent payments after payment of lump sum.

11. Section 99 of the Principal Act is amended—

(a) by omitting from sub-section (6.) the words “so much of”; and

(b) by omitting from sub-section (6.) all the words after the word “dependant” (second occurring).

Compensation payable where damages recovered.

12. The Principal Act is amended as set out in the Schedule to this Act.

Amendments relating to compensation.

Application of amendments.

13.—(1.) The amendments made by this Act, other than sections 8, 9, 10 and 11, apply in relation to any weekly payments of compensation made in respect of a period occurring on or after the date of commencement of this Act notwithstanding that the compensation is payable in respect of an injury sustained, a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, before that date.

(2.) Where, on or after the date of commencement of this Act, an employee—

- (a) dies;
- (b) suffers a loss of a kind referred to in section 39, 40 or 42 of the Principal Act;
- (c) suffers facial disfigurement of a kind referred to in section 41 of that Act; or
- (d) becomes liable for any cost of a kind referred to in sub-section (3.) of section 37 of that Act,

the amendments made by this Act, other than sections 8, 9, 10 and 11, apply in relation to any compensation payable in respect of that death, loss, disfigurement or cost, notwithstanding that it results from an injury sustained, a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, before that date.

(3.) The amendments made by sections 8, 9 and 10 of this Act apply in relation to—

- (a) an injury the date of which is the date of commencement of this Act or a subsequent date; and
- (b) the contraction, aggravation, acceleration or recurrence of a disease, the date of which is, by virtue of sub-section (2.) of section 29 of the Principal Act, to be deemed to be the date of commencement of this Act or a subsequent date.

(4.) The amendments made by section 11 of this Act apply in relation to damages recovered on or after the date of commencement of this Act.

(5.) Expressions used in this section have the same respective meanings as in the Principal Act.

PART III.—TRANSITIONAL PROVISIONS RELATING TO CERTAIN SEAMEN.

Interpretation.

14.—(1.) In this Part—

“prescribed person” means—

- (a) a person who died before the proclaimed date and, at the time of his death, was a seaman to and in relation to whom the *Commonwealth Employees' Compensation Act 1930* as amended and in force at that time applied; or

(b) a person who—

- (i) at any time during the transitional period, was a seaman to and in relation to whom the *Seamen's Compensation Act 1911–1971* did not apply; and
- (ii) at the same time, would have been an employee as defined by section 5 of the Principal Act if section 5 of this Act had come into operation on the proclaimed date,

as the case requires;

“seaman” means a seaman as defined by the *Seamen's Compensation Act 1911* as amended and in force at the relevant time;

“the proclaimed date” means the date fixed under sub-section (2.) of section 2 of the Principal Act;

“the transitional period” means the period that commenced on the proclaimed date and ended immediately before the date of commencement of this Act.

(2.) A reference in this Part to an injury sustained by a prescribed person includes a reference to a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by that person.

(3.) Except so far as is inconsistent with the last two preceding sub-sections, expressions used in this Part have the same respective meanings as in the Principal Act.

15.—(1.) The Principal Act shall be deemed to have applied at all relevant times during the transitional period to and in relation to prescribed persons as if section 5 of this Act had come into operation on the proclaimed date.

Application of Principal Act to prescribed persons.

(2.) Without limiting by implication the generality of the last preceding sub-section, anything that—

- (a) was done during the transitional period by, on behalf of, to or in relation to a prescribed person; and
- (b) would, if section 5 of this Act had come into operation on the proclaimed date, have had effect under the Principal Act,

shall for all purposes be deemed to have had effect, and to have effect, as if it had been done under the Principal Act.

(3.) The succeeding provisions of this Part have effect without limiting by implication the generality of the last two preceding sub-sections.

16.—(1.) Where, during the transitional period, a payment was made by the Commonwealth by reason of—

- (a) the death of a prescribed person before, on or after the proclaimed date;

Payment made during transitional period.

- (b) an injury sustained by a prescribed person before, on or after that date; or
- (c) loss or damage of a kind referred to in section 28 of the Principal Act suffered by a prescribed person on or after that date,

being a payment that, if the Principal Act had applied to or in relation to the prescribed person at the time when the payment was made, would have been payable under a provision of that Act, that payment shall for all purposes be deemed to have had effect, and to have effect, as if it had been a payment of compensation made under that provision.

(2.) Without limiting by implication the generality of the last preceding sub-section, a payment referred to in that sub-section that, if the Principal Act had applied to or in relation to the prescribed person concerned at the time when the payment was made, would have had effect as a redemption of a liability of the Commonwealth, shall for all purposes be deemed to have had effect, and to have effect, as if it had been a redemption of a corresponding liability under the Principal Act.

Determinations made during transitional period.

17. Where, during the transitional period, the Commissioner determined—

- (a) the question whether a payment of a kind referred to in the last preceding section should be made; or
- (b) a matter or question relating to such a question,

that determination shall be deemed to have been, and to be, a determination made under the Principal Act.

Application of Part V. of Principal Act.

18. Where a person affected by a determination referred to in the last preceding section had not, before the commencement of this Act—

- (a) requested the Commissioner to refer to a Compensation Tribunal for reconsideration a matter or question to which the determination related; or
- (b) applied to a prescribed Court for a judicial review of the determination,

Part V. of the Principal Act as amended by this Act applies in relation to the determination as if the references in sections 76 and 90 of the Principal Act (other than the second reference in sub-section (3.) of each of those sections) to the date of service of a copy of the determination were references to the date of commencement of this Act or the date of service of the notice referred to in paragraph (c) of sub-section (1.) of section 61 of the Principal Act, whichever is the later.

Agreements relating to payments.

19. Where, during the transitional period, a prescribed person entered into an agreement with the Commonwealth relating to a payment referred to in section 16 of this Act, that agreement, to the extent that it is inconsistent with a provision of the Principal Act or of this Act, has no effect.

THE SCHEDULE

Section 12.

AMENDMENTS RELATING TO COMPENSATION

| Provision Amended | Amendment |
|-------------------|--|
| Section 37 (3) .. | Omit " One hundred and fifty dollars ", insert " Three hundred and fifty dollars ". |
| Section 39 (1) .. | Omit " Thirteen thousand five hundred dollars ", insert " Fourteen thousand five hundred dollars ". |
| Section 39 (3) .. | Omit " Thirteen thousand five hundred dollars ", insert " Fourteen thousand five hundred dollars ". |
| Section 39 (7) .. | Omit " Six thousand seven hundred and fifty dollars ", insert " Seven thousand two hundred and fifty dollars ". |
| Section 40 (1) .. | Omit " Six thousand seven hundred and fifty dollars ", insert " Seven thousand two hundred and fifty dollars ". |
| Section 41 (1) .. | Omit " Six thousand seven hundred and fifty dollars ", insert " Seven thousand two hundred and fifty dollars ". |
| Section 41 (6) .. | Omit " Six thousand seven hundred and fifty dollars ", insert " Seven thousand two hundred and fifty dollars ". |
| Section 42 (1) .. | Omit " One thousand three hundred and fifty dollars ", insert " One thousand four hundred and fifty dollars ". |
| Section 42 (2) .. | Omit " One thousand three hundred and fifty dollars ", insert " One thousand four hundred and fifty dollars ". |
| Section 43 (3) .. | Omit " Thirteen thousand five hundred dollars ", insert " Fourteen thousand five hundred dollars ". |
| Section 43 (4) .. | Omit " Thirteen thousand five hundred dollars ", insert " Fourteen thousand five hundred dollars ". |
| Section 45 (2) .. | Omit " Thirty-five dollars ", insert " Forty-three dollars ". |
| Section 45 (3) .. | Omit " Eight dollars fifty cents ", insert " Eleven dollars ". |
| Section 46 (2) .. | Omit sub-paragraph (i) of paragraph (a), insert the following sub-paragraph:— " (i) Forty-three dollars; or " |
| Section 48 (1) .. | Omit " Eight dollars ", insert " Nine dollars ". |