



ANALYSIS

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1993, No. 55

**An Act to amend the Accident Rehabilitation and
Compensation Insurance Act 1992** [26 June 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993, and shall be read together with and deemed part of the Accident Rehabilitation and Compensation Insurance Act 1992 (hereinafter referred to as the principal Act).

(2) Except as provided in sections 2 (5), 3 (5), 4 (2), 5 (3), 8 (3), and 34 (3) of this Act, this Act shall come into force on the 1st day of July 1993.

2. Interpretation—(1) Section 3 of the principal Act is hereby amended by adding to the definition of the term “accident” the words “or treatment provided outside New Zealand by or at the direction of a person who has qualifications equivalent to those of a registered health professional in New Zealand”.

(2) Section 3 of the principal Act is hereby further amended by omitting the definition of the term “incapacity”, and substituting the following definition:

“‘Incapacity’ means incapacity for employment; and includes absence from employment by reason of necessary health care treatment or service of a kind for which the Corporation or an exempt employer is required or permitted to make payments either directly or indirectly (irrespective of whether or not it makes any payment in the particular case) in respect of personal injury covered by this Act:”.

(3) Section 3 of the principal Act is hereby further amended by repealing the definition of the term “Minister”, and substituting the following definition:

“ ‘Minister’ means, subject to any enactment, the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:”.

(4) Section 3 of the principal Act is hereby further amended by inserting, before the definition of the term “registered health professional”, the following definition:

“ ‘Purchase agreement’ has the same meaning as in the Health and Disability Services Act 1993:”.

(5) Subsection (1) of this section shall be deemed to have come into force on the 1st day of July 1992.

3. Definition of “medical misadventure”—(1) Section 5 (1) of the principal Act is hereby amended by inserting in the definition of the term “medical mishap”, after the word “by”, the words “, or at the direction of,”.

(2) Section 5 (5) of the principal Act is hereby amended by omitting the words “medical misadventure” in the second place where they occur, and substituting the words “medical error or medical mishap”.

(3) Section 5 of the principal Act is hereby further amended by repealing subsection (8), and substituting the following subsections:

“(8) Where personal injury to a person results from medical error or medical mishap that occurs in a clinical trial, that personal injury shall constitute medical misadventure only where—

“(a) The trial—

“(i) Has been approved by an ethics committee approved by the Health Research Council or the Director-General of Health; and

“(ii) The ethics committee has certified that it is satisfied that the trial is not conducted principally for the benefit of the manufacturer or distributor of the medicine or item in respect of which the trial is carried out; or

“(b) The person has not agreed in writing to participate in the trial.

“(8A) For the purposes of subsection (8) of this section, the term ‘treatment’ includes anything done or omitted as part of a clinical trial.”

(4) Section 5 of the principal Act is hereby further amended by adding the following subsection:

“(11) For the purposes of section 9 (2) of this Act, the term ‘registered health professional’, in this section, includes a person who has qualifications equivalent to those of a registered health professional in New Zealand.”

(5) This section shall be deemed to have come into force on the 1st day of July 1992.

4. Personal injury caused by gradual process, disease, or infection arising out of and in the course of employment—(1) Section 7 of the principal Act is hereby amended by adding the following subsection:

“(13) This section shall apply only where the exposure occurred in New Zealand or the person concerned was ordinarily resident in New Zealand when the exposure to the gradual process, disease, or infection actually occurred (even if the person is ordinarily resident in New Zealand on the date on which the personal injury is deemed to have occurred).”

(2) This section shall be deemed to have come into force on the 1st day of July 1992.

5. Cover for personal injury occurring in New Zealand—(1) Section 8 (2) (d) of the principal Act is hereby amended by adding the words “covered by this Act”.

(2) Section 8 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Cover under this Act shall also extend to personal injury that is mental or nervous shock suffered by a person as an outcome of any act of any other person performed on, with, or in relation to the first person (but not on, with, or in relation to any other person), being—

“(a) An act that is within the description of any offence listed in the First Schedule to this Act; and

“(b) An act that was performed in New Zealand, or outside New Zealand where the person on, with, or in relation to whom the act was performed was ordinarily resident in New Zealand when the act was actually performed (even if the person is ordinarily

resident in New Zealand on the date on which the personal injury is deemed to have been suffered).”

(3) Subsection (2) of this section shall be deemed to have come into force on the 1st day of July 1992.

6. Cover for personal injury occurring outside New Zealand—Section 9 of the principal Act is hereby amended by adding the following subsection:

“(3) 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 person was ordinarily resident in New Zealand when the medical error or medical mishap actually occurred (even if the person is ordinarily resident in New Zealand on the date on which the medical misadventure is deemed to have occurred).”

7. General exclusions from cover—Section 10 (1) (c) of the principal Act is hereby amended by adding the words “covered by this Act”.

8. Cover in respect of personal injury caused by gradual process, disease, or infection where exposure occurred before 1 April 1974—(1) Section 11 (1) of the principal Act is hereby amended by omitting the words “that ceased before that date”.

(2) Section 11 of the principal Act is hereby further amended by adding the following subsection:

“(5) Subsection (1) of this section shall not apply where—

“(a) The exposure occurred outside New Zealand and the person was not ordinarily resident in New Zealand when the exposure actually occurred (even if the person is ordinarily resident in New Zealand on the date on which the personal injury is deemed to have been suffered); or

“(b) The person who suffered the exposure died before the 1st day of July 1992.”

(3) This section shall be deemed to have come into force on the 1st day of July 1992.

9. Individual rehabilitation programme—(1) Section 20 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Every individual rehabilitation programme referred to in subsection (2) of this section shall be designed to identify the

person's entitlement to rehabilitation as described in section 18 of this Act; and shall include identification and facilitation of such other rehabilitation services as may be appropriate to further the rehabilitation of the person. Such identification and facilitation of other rehabilitation services shall not impose any responsibility on the Corporation to provide or fund rehabilitation beyond that otherwise imposed by this Act or regulations made under this Act."

(2) Section 20 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsection:

"(4) Before any individual rehabilitation programme is implemented,—

"(a) The case manager shall submit a copy of the programme to the Corporation for approval; and

"(b) The Corporation may approve the programme in whole or in part, and shall meet only the costs of matters in respect of which and to the extent to which the Corporation has given its prior written approval (which approval shall be given on behalf of the Corporation by a person who is not a case manager)."

10. Social rehabilitation—(1) Section 26 (4) (f) of the principal Act is hereby amended by adding the expression “; and”.

(2) Section 26 (4) of the principal Act is hereby further amended by adding the following paragraph:

"(g) Provision of, or payment for, teacher aides, teacher aide hours, and transport to or from school for a child requiring special assistance as the result of personal injury covered by this Act to enable the child to receive education."

(3) Any regulations made for the purposes of paragraph (g) of section 26 (4) of the principal Act (as added by subsection (1) of this section) may be deemed to have come into force on the 1st day of July 1992 or on such later date as is specified in those regulations.

11. New sections inserted—The principal Act is hereby amended by inserting, after section 27A, (as substituted by section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993) the following sections:

“27B. Restrictions on contributions to cost of treatment, etc.—(1) The Corporation shall not contribute to the cost of any treatment, service, physical rehabilitation, related transport, or certificate (in this section called a ‘purchased service’) pursuant to regulations made under this Act where that purchased service is provided, or is obliged to be provided or arranged, pursuant to—

“(a) A purchase agreement; or

“(b) An obligation created pursuant to section 51 of the Health and Disability Services Act 1993,—

except to the extent that those regulations expressly provide that the payment shall be made notwithstanding the application of any purchase agreement or obligation in respect of that purchased service.

“(2) The Corporation shall not contribute to the cost of any purchased service provided, or obliged to be provided or arranged, by any person under a contract of service or a contract for services with a person who is obliged to provide or arrange the provision of that purchased service pursuant to a purchase agreement or an obligation created pursuant to section 51 of the Health and Disability Services Act 1993, except to the extent that regulations made under this Act expressly provide that the payment shall be made notwithstanding the application of any purchase agreement or obligation.

“27C. Restrictions on contributions for treatment provided by those in State services—(1) The Corporation shall not contribute to the cost of any treatment, service, physical rehabilitation, related transport, or certificate pursuant to regulations made under this Act where that treatment, service, physical rehabilitation, related transport, or certificate is provided by a person acting under a contract of service in, or a contract for services with, the State services.

“(2) In this section, ‘State services’—

“(a) Means all instruments of the Crown in respect of the Government of New Zealand, whether Departments, corporations, agencies, or other instruments; and

“(b) Includes the Education service as defined in the State Sector Act 1988 (except as provided in paragraph (c) (iv) of this subsection); but

“(c) Does not include—

“(i) The Governor-General; or

- “(ii) Any Minister of the Crown; or
- “(iii) Any corporation listed in the First Schedule to the State-Owned Enterprises Act 1986; or
- “(iv) Any university, polytechnic, or college of education; or
- “(v) Any Crown health enterprise or regional health authority; or
- “(vi) The Public Health Commission; or
- “(vii) Any unit of the defence forces of New Zealand to the extent that it is providing hyperbaric oxygen services.

“27D. Corporation may rely on advice as to purchased service—For the purposes of ascertaining whether any treatment, service, physical rehabilitation, related transport, or certificate is a purchased service in respect of which the Corporation is prohibited from contributing to the cost by reason of section 27B of this Act, the Corporation shall be entitled, in the absence of proof to the contrary, to rely upon written advice by or on behalf of—

- “(a) Any purchaser or other person who is a party to a purchase agreement; or
- “(b) Any person who is under an obligation created pursuant to section 51 of the Health and Disability Services Act 1993,—

that the treatment, service, physical rehabilitation, related transport, or certificate is such a purchased service.”

12. Test of incapacity—Section 37 of the principal Act is hereby amended by omitting the words “section 49 of this Act applies”, and substituting the words “any of sections 44, 45, 46, or 49 of this Act applies”.

13. Calculation of weekly earnings where earner had earnings solely as an employee during the 12 months before commencement of incapacity—(1) Section 40 (2) (a) of the principal Act is hereby amended by omitting the words “first week of incapacity”, and substituting the words “sixth day after the day on which the incapacity first commenced”.

(2) Section 40 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) In respect of any weekly period of incapacity after the period referred to in paragraph (a) of this subsection, 1/52nd of the earnings of that person as an

employee during the 52 weeks immediately before the commencement of the incapacity.”

14. Calculation of weekly earnings where earnings are solely earnings other than earnings as an employee during the 12 months before commencement of incapacity—Section 41 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) The weekly earnings of any person to whom this section applies shall be,—

“(a) In respect of each of the 4 weeks next following the sixth day after the day on which the incapacity first commenced, the greater of—

“(i) The earnings of that person, other than earnings as an employee, in the most recent income year (as defined in section 2 of the Income Tax Act 1976) last ended before the commencement of the period of incapacity as shown in an income tax return, divided by the number of weeks in that income year; or

“(ii) The amount of \$245 a week, or \$196 a week in respect of any period before the earner attains the age of 20 years, if, in either case, the person is liable to pay the minimum annual earner premium imposed by regulations made under this Act:

“(b) In respect of any period of incapacity after the period referred to in paragraph (a) of this subsection, the earnings of that person other than earnings as an employee in the most recent income year (as defined in section 2 of the Income Tax Act 1976) last ended before the commencement of the period of incapacity as shown in an income tax return, divided by the number of weeks in that income year.

“(2A) For the purposes of subsection (2) of this section, where the income tax return for the year last ended before the commencement of the period of incapacity is not available, the income tax return for the next previous year shall be used for the calculation of weekly earnings in respect of any period not later than 3 months after the commencement of the incapacity or until the first-mentioned income tax return is available, whichever occurs first.

“(2B) Where compensation is paid by virtue of subsection (2A) of this section and it is subsequently found that the amount paid is greater than would have been paid if subsection (2) of this section applied, the difference shall be recoverable by the Corporation as a debt due to it, or by deduction from any compensation or grant otherwise payable to that person (whether or not in respect of the same personal injury).”

15. Calculation of weekly earnings where earner had both earnings as an employee and other earnings during the 12 months before commencement of incapacity—

(1) Section 42 (2) (a) of the principal Act is hereby amended by omitting the words “the 4 weeks next following the first week of incapacity”, and substituting the words “each of the 4 weeks next following the sixth day after the day on which the incapacity first commenced”.

(2) Section 42 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In respect of any period of incapacity after the period referred to in paragraph (a) of this subsection, the total of—

“(i) The person’s earnings as an employee calculated under section 40 (2) (b) of this Act; and

“(ii) The weekly earnings of the person calculated under section 41 of this Act.”

16. Increase in weekly earnings for earners in full-time employment in certain circumstances—Section 43 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any person, being—

“(a) An earner in full-time employment whose earnings calculated under sections 40 to 42 of this Act are less than \$245 a week; or

“(b) An earner who is liable to pay the minimum annual earner premium imposed by regulations made under this Act but whose earnings calculated under sections 40 to 42 of this Act are less than \$245 a week,—

is incapacitated by reason of a personal injury for more than 5 weeks after the incapacity first commenced in respect of that personal injury, the person shall be deemed to have had weekly earnings of \$245 for the purpose of calculating compensation

for loss of earnings payable in respect of any period after that 5-week period.”

17. Compensation for loss of potential earning capacity payable to person in respect of incapacity resulting from personal injury suffered before attaining 18 years of age or while studying—Section 46 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) In any case where that person’s degree of incapacity has been determined under section 51 of this Act, has a capacity for work of less than 85 percent as determined in accordance with the scales prescribed by regulations made under this Act; and”.

18. Abatement of compensation for loss of earnings or loss of potential earning capacity—Section 47 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) If, following the application of subsection (1) of this section, the total of the compensation for loss of earnings or loss of potential earning capacity and the earnings from employment of the person exceeds the weekly earnings of the person as determined under sections 40 to 43, 45, or 46 of this Act, the compensation for loss of earnings or loss of potential earning capacity shall be further reduced so that the total of that compensation and the earnings of the person do not exceed the weekly earnings as so determined.”

19. Cessation of compensation for loss of earnings or loss of potential earning capacity—(1) Section 49 (1) of the principal Act is hereby amended by inserting, after the expression “12 months”, the words “or more”.

(2) Section 49 (2) of the principal Act is hereby amended by omitting the expression “12-month” in both places where it occurs.

20. Assessment of degree of incapacity—Section 51 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) An assessment of incapacity under this section shall not include as incapacity any impairment, handicap, incapacity, disability, or inability to do any thing that does not result from personal injury covered by this Act or personal injury by

accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982.”

21. Age limits—The principal Act is hereby amended by repealing sections 52 and 53, and substituting the following section:

“52. (1) Except as provided in this section, a person who has attained the national superannuation qualification age shall not be entitled to any compensation for loss of earnings or loss of potential earning capacity under this Act.

“(2) Where a person first becomes entitled to compensation for loss of earnings—

“(a) On or after attaining national superannuation qualification age; or

“(b) Within 12 months before attaining national superannuation qualification age,—

that person shall not be disentitled on account of age to that compensation for a period of 12 months from the later of the date of attaining national superannuation qualification age or date of first entitlement; and that person shall not be so disentitled for a further 12 months if the person makes an election in accordance with this section not to receive national superannuation in respect of any period during that further 12-month period while that person is entitled to receive that compensation.

“(3) Where a person first becomes entitled to compensation for loss of earnings 12 months or more but less than 24 months before attaining national superannuation qualification age, that person shall not be disentitled on account of age to that compensation for a period of 24 months from the date of first entitlement to that compensation, so long as the person elects not to receive national superannuation after attaining national superannuation qualification age while the compensation is payable.

“(4) Any election made under subsection (2) or subsection (3) of this section must be made—

“(a) Within 1 month before the date on which the election would take effect; or

“(b) Within 1 month after the amount of that compensation has been determined under this Act (including any decision on review or appeal) and notified to the person,—

whichever last occurs.

“(5) Any election under subsection (2) or subsection (3) of this section may be exercised or reversed outside the period specified in subsection (4) of this section only if the Corporation is satisfied that the circumstances of the person have changed significantly since the expiry of that period.

“(6) Nothing in this section shall entitle any person to compensation for loss of earnings or loss of earning capacity in respect of any period for which that person is not otherwise entitled by virtue of this Act.”

22. Independence allowance—Section 54 of the principal Act is hereby amended by repealing subsection (13), and substituting the following subsection:

“(13) An assessment of disability under this section shall not include as disability any impairment, handicap, incapacity, or inability to do any thing that does not result from personal injury covered by this Act or personal injury by accident in respect of which a claim has been accepted under the Accident Compensation Act 1972 or the Accident Compensation Act 1982.”

23. Child care payments in respect of children of deceased persons—The principal Act is hereby amended by inserting, after section 56, the following section:

“56A. (1) Compensation shall be payable to the extent required or permitted by regulations made under this Act for child care in respect of any child of a person who dies as a result of personal injury covered by this Act.

“(2) Regulations made for the purposes of this section may be combined with regulations made in respect of child care pursuant to section 26 of this Act, but need not be in the same terms as those regulations.”

24. Weekly compensation to surviving spouse—Section 58 of the principal Act is hereby amended by repealing subsections (5) and (6), and substituting the following subsections:

“(5) Except as provided in this section, a person who has attained the national superannuation qualification age shall not be entitled to any compensation under this section unless the person makes an election not to receive national superannuation, after attaining national superannuation qualification age, while the compensation is payable.

“(6) Where a person first becomes entitled to compensation under this section in respect of a deceased person—

“(a) On or after attaining national superannuation qualification age; or

“(b) Within 12 months before attaining national superannuation qualification age,—

that person shall not be disentitled to that compensation on account of age for a period of 12 months from the later of the date of attaining national superannuation qualification age or the date of first entitlement; and shall never be disentitled on account of age after that period if the person makes an election in accordance with this section not to receive national superannuation in respect of any further period during which that person is entitled to receive that compensation.

“(7) Where a person first becomes entitled to compensation under this section 12 months or more before attaining national superannuation qualification age, that person shall not be disentitled on account of age to that compensation, so long as the person elects not to receive national superannuation, after attaining national superannuation qualification age, while the compensation is payable.

“(8) Any election made under subsection (5) or subsection (6) or subsection (7) of this section must be made—

“(a) Within 1 month before the date on which the election would take effect; or

“(b) At any time not later than 1 month before the attainment by the person of the national superannuation qualification age; or

“(c) Within 1 month after the amount of that compensation has been determined under this Act (including any decision on review or appeal) and notified to the person,—

whichever last occurs.

“(9) Any election under subsection (5) or subsection (6) or subsection (7) of this section may be exercised or reversed outside the period specified in subsection (8) of this section only if the Corporation is satisfied that the circumstances of the person have changed significantly since the expiry of that period.

“(10) Nothing in subsection (5) or subsection (6) or subsection (7) of this section shall entitle any person to compensation under this section in respect of any period for which that person is not otherwise entitled by virtue of this Act.”

25. Weekly compensation payable to other dependants—Section 60 of the principal Act is hereby amended by repealing subsections (3) to (5), and substituting the following subsections:

“(3) Compensation payable under this section to a dependant shall cease upon the earlier of the person—

“(a) Attaining national superannuation qualification age, or the expiry of any extended period of entitlement obtained under subsection (4) or subsection (5) of this section; or

“(b) Deriving annual earnings greater than \$12,740; or

“(c) Attaining a capacity for work of 85 percent or more as determined in accordance with scales prescribed by regulations made under this Act.

“(4) Where a person first becomes entitled to compensation under this section in respect of a deceased person—

“(a) On or after attaining national superannuation qualification age; or

“(b) Within 12 months before attaining national superannuation qualification age,—

that person shall not be disentitled to that compensation on account of age for a period of 12 months from the later of the date of attaining national superannuation qualification age or date of first entitlement; and that person shall not be so disentitled for a further 12 months if the person makes an election in accordance with this section not to receive national superannuation in respect of any period during that further 12-month period for which that person is entitled to receive that compensation.

“(5) Where a person first becomes entitled to compensation under this section 12 months or more but less than 24 months before attaining national superannuation qualification age, that person shall not be disentitled on account of age to that compensation for a period of 24 months from the date of first entitlement to that compensation so long as the person elects not to receive national superannuation, after attaining national superannuation qualification age, while the compensation is payable.

“(5A) Any election made under subsection (4) or subsection (5) of this section must be made—

“(a) Within 1 month before the date on which the election would take effect; or

“(b) At any time not later than 1 month before the attainment by the person of the national superannuation qualification age; or

“(c) Within 1 month after the amount of that compensation has been determined under this Act (including any decision on review or appeal) and notified to the person,—

whichever last occurs.

“(5B) Any election under subsection (4) or subsection (5) of this section may be exercised or reversed outside the period specified in subsection (5A) of this section only if the Corporation is satisfied that the circumstances of the person have changed significantly since the expiry of that period.

“(5C) Nothing in subsection (4) or subsection (5) of this section shall entitle any person to compensation under this section in respect of any period for which that person is not otherwise entitled by virtue of this Act.”

26. Claims—Section 63 (3) of the principal Act is hereby amended by inserting, after the word “involves”, the words “medical misadventure or”.

27. Claims not actioned may be treated as rejected—Section 66 of the principal Act is hereby amended by adding the following subsection:

“(3) Where any claim is being processed in accordance with regulations made under this Act for the purpose of obtaining the independent advice referred to in section 5 (9) of this Act, subsections (1) and (2) of this section shall have effect in relation to that claim as if, for the expression ‘1 month’, there were substituted in each case the expression ‘3 months’.”

28. Revision of decisions—(1) The principal Act is hereby amended by inserting, after section 67, the following section:

“67A. (1) The Corporation may revise any decision made by the Corporation if it appears to the Corporation that the decision has been made in error, whether by reason of mistake or by reason of false or misleading information having been supplied or by reason of fresh evidence or for any other reason; and the Corporation may—

“(a) Amend the decision; or

“(b) Revoke the decision and substitute a new decision.

“(2) Every amendment to a decision or substituted decision shall constitute a fresh decision of the Corporation for the purposes of this Act.”

(2) Section 68 of the principal Act is hereby consequentially amended by omitting the expression “and 67”, and substituting the expression “67, and 67A”.

29. Indexation of compensation based on weekly earnings and related amounts—Section 70 of the principal Act is hereby consequentially amended by inserting, after the word “sections”, the expression “41,”.

30. Suspension, cancellation, or refusal of compensation and rehabilitation—Section 73 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The Corporation shall, and any exempt employer may, upon the unreasonable refusal or failure of any person to—

“(a) Comply with any requirement made under any provision of this Act relating to any claim; or

“(b) Undergo medical or surgical treatment in respect of personal injury (irrespective of whether the Corporation or exempt employer is required or permitted to contribute towards the costs of that treatment); or

“(c) Agree to, or comply with, an individual rehabilitation programme,—

decline to make any payment under this Act.”

31. Certain payments in respect of children payable to parent or financially responsible person—Section 80 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any person who has not attained the age of 16 years is entitled to any payment (other than compensation for loss of earnings under sections 38 and 39 of this Act), that payment shall be made to a person who is caring for that person or, if the Corporation or exempt employer is satisfied that it would not be appropriate to make payment to any such person, then to another person or to trustees whom, in either case, the Corporation or exempt employer is satisfied will apply the payment as required by subsection (2) of this section.”

32. Denial of compensation where criminal act involved—Section 84 (2) of the principal Act is hereby amended by inserting, after the words “pay the”, the words “treatment, services, rehabilitation, related transport,”.

33. Application for review—Section 89 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Nothing in subsection (4) of this section shall confer any right to apply for a review of any decision relating to the entitlement under this Act of any person to any payment or rehabilitation or the making of any payment directly or indirectly under this Act in respect of that person.”

34. New sections substituted—(1) The principal Act is hereby amended by repealing section 104, and substituting the following sections:

“104. **Experience rating of employers**—(1) The basic premium payable under section 101 of this Act by an employer may be adjusted by reference to the accident experience of or attributed to that employer.

“(2) The adjustment referred to in subsection (1) of this section shall be by way of a premium loading being imposed on the employer or a premium discount being allowed to the employer.

“(3) The basis of and procedure for adjusting the basic premium shall be that prescribed by regulations made under this Act.

“(4) Without limiting the basis of or procedure for adjusting the basic premium that may be prescribed, the regulations may provide for all or any of the following matters:

“(a) The division of employers into different categories by reference to the size of the employer, the basic premium payable by the employer, the industry class or classes applicable to the employer or such other basis as is considered appropriate, in each case taking the employer by itself or together with employers who are or were related to or connected with it:

“(b) The treatment of different categories of employers on different bases for experience rating purposes, including the imposition of a premium loading on an employer or the granting of a premium discount to an employer within a particular category:

“(c) The attribution of claims, and the costs to the Corporation of such claims, associated with one employer to another employer where all or part of an activity carried on by that first employer has subsequently been carried on by that other employer or where the 2 employers are or were related or connected.

“(5) Without limiting the matters that may be taken into account in making regulations under this Act, regulations made under this Act relating to adjustments to basic premiums payable by employers may take account of—

“(a) The amount of the basic premium, earnings as an employee, or other payments by an employer, in each case either by itself or aggregated with any such amount payable by persons who are or were related to or connected with an employer:

“(b) The inability to allocate, or difficulties associated with allocating to particular employers, any costs incurred by the Corporation:

“(c) The accident experience of or attributed to an employer for such period and on such basis as appears appropriate for experience rating.

“(6) The premium loading imposed on an employer and the premium discount payable to an employer shall be treated as an adjustment to the basic premium payable under section 101 of this Act and the provisions of this Act shall apply accordingly.

“(7) Notwithstanding subsections (1) to (6) of this section, no amount of funding levy deemed by section 59 (3) of the Health and Safety in Employment Act 1992 to be included in any amount of basic premium (as calculated before adjustment under this section) shall be taken into account when that amount of basic premium is adjusted under this section.

“104A. **Grouping of employers**—Where 2 or more employers are related or connected, regulations made under this Act may, in relation to the setting of and liability for basic premiums payable by employers, the adjusting of those basic premiums, and related late payment penalties provide for any one or more of the following:

“(a) Certain employers to be treated as a single employer:

“(b) Those employers to be jointly and severally liable for the obligations of each of the other employers:

“(c) Those employers to be represented by a nominated employer:

“(d) The rights and obligations of those employers to be set off against each other by the Corporation:

“(e) The provision of information to the Corporation by an employer on behalf of others, the provision of information between employers, and the provision of information to employers by persons who are or may be shareholders of those employers:

“(f) Such other matters as are considered appropriate.

“104B. Experience rating of earners who have earnings other than as an employee—(1) The basic premium payable under section 102 of this Act by an earner who has earnings other than as an employee may be adjusted by reference to the accident experience of or attributed to that individual earner.

“(2) For the purposes of this section, sections 104 and 104A of this Act shall apply as if references in those sections to an employer were references to an earner who has earnings other than as an employee and regulations may be made under this Act accordingly.”

(2) Regulations made under the principal Act may provide for the matters referred to in sections 104 and 104A of this Act to take effect on and from the 1st day of April 1993 and to apply to any basic premium paid or payable on or after the 1st day of April 1993.

(3) This section shall be deemed to have come into force on the 1st day of July 1992.

35. Acceptance of claims by exempt employer—Section 107 of the principal Act is hereby amended—

(a) By inserting in subsection (1) (a), after the words “personal injury”, the words “covered by this Act”; and

(b) By inserting in subsection (2) (a) after the words “personal injury”, the words “covered by this Act”.

36. Source and application of funds—Section 113 (1) of the principal Act is hereby amended by adding the words “or from appropriations by Parliament to the Earners’ Account”.

37. Deduction on account of earner premiums—Section 115 (19) of the principal Act is hereby amended by omitting the expression “of the earnings as an employer of the irregular payment employee”, and substituting the words “to

the irregular payment employee of the earnings as an employee”.

38. Remission of penalties—The principal Act is hereby amended by inserting, after section 118, the following section:

“118A. The Corporation may remit all or part of any penalty imposed under section 115 (14) or section 118 of this Act if, in the special circumstances of any case, the Corporation considers it fair and reasonable to do so, and, if the amount so remitted has been paid, the Corporation shall, in its discretion either refund the amount paid or credit any amount so paid on account against the amount of any premium that may for the time being be due and payable by the person by whom such payment was made.”

39. Source and application of funds—(1) Section 122 (2) of the principal Act is hereby amended by omitting the expression “(a)”.

(2) Section 122 (3) of the principal Act is hereby amended by omitting the words “relating to a registered health professional who is of a class liable to pay a medical misadventure premium under this Act”.

40. Reserves—The principal Act is hereby amended by repealing section 128, and substituting the following section:

“128. The Minister shall, not later than the 30th day of September 1993, and as soon as practicable thereafter whenever there is a change in the reserves policy of the Corporation,—

“(a) Publish in the *Gazette*; and

“(b) Lay before the House of Representatives,—
a copy of the reserves policy or amended reserves policy of the Corporation.”

41. Relationship of this Act and former Acts—Section 135 (5) of the principal Act is hereby amended by omitting the words “is covered by this Act”, and substituting the words “would be covered by this Act had it occurred on or after the 1st day of July 1992”.

42. Weekly compensation—(1) Section 138 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Nothing in subsection (1) of this section shall apply in respect of any assessment of compensation under section 114 of the Accident Compensation Act 1972 or section 60 of the Accident Compensation Act 1982 unless the assessment had been completed before the 1st day of October 1992 or a decision in respect of any such assessment was subject to an application for review under Part IX of the Accident Compensation Act 1982 that was lodged before the 1st day of October 1992.”

(2) Section 138 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(3) Where subsection (1) of this section does not apply because a person was not entitled, immediately before the 1st day of July 1992, to be in receipt of compensation to which that subsection applies, the entitlement of that person to compensation for loss of earnings or loss of potential earning capacity in respect of any period after that date shall be determined under this Act.”

43. Cessation of earnings related compensation on account of age—The principal Act is hereby amended by repealing section 142, and substituting the following section:

“142. (1) Subject to this section, where any person is receiving payments by virtue of section 138 of this Act, that compensation shall not cease to be payable, on account of age, until the close of the 30th day of June 1997, or at the age at which it would have ceased to be payable under the Accident Compensation Act 1972 or the Accident Compensation Act 1982, whichever first occurs.

“(2) No compensation shall be payable under this section to any person—

“(a) After the 30th day of June 1994, where the person attains the national superannuation qualification age before the 1st day of July 1993, unless that person has made an election not to receive national superannuation in respect of any period commencing after the 30th day of June 1994; or

“(b) Where that person attains the national superannuation qualification age on or after the 1st day of July 1993, unless that person has made an election not to receive national superannuation in respect of any period commencing after the expiry of 12 months

from the date of attaining the national superannuation qualification age.

“(3) Any election under subsection (2) of this section must be made—

“(a) Before the 1st day of October 1993; or

“(b) Within 13 months after the commencement of the incapacity in respect of which the compensation is payable; or

“(c) At any time not later than 1 month before the attainment by the person of the national superannuation qualification age,—

whichever last occurs.

“(4) Any election under subsection (2) of this section may be exercised or reversed outside the period specified in subsection (3) of this section only if the Corporation is satisfied that the circumstances of the person have changed significantly since the expiry of that period.

“(5) Nothing in subsection (2) of this section shall entitle any person to compensation under this section in respect of any period for which that person is not otherwise entitled by virtue of this Act.”

44. Compensation payable to surviving spouses and dependants—Section 145 (4) (b) of the principal Act is hereby amended by adding the words “, whichever occurs first”.

45. Compensation for non-economic loss—Section 147 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) For the avoidance of doubt, it is hereby declared that, for the purposes of subsections (1) and (2) of this section, no person has an entitlement to compensation under section 119 or section 120 of the Accident Compensation Act 1972 or section 78 or section 79 of the Accident Compensation Act 1982 unless a claim in respect of the personal injury by accident had been lodged with the Corporation before the 1st day of October 1992.”

46. Compensation for pecuniary loss not related to earnings—Section 149 of the principal Act (as amended by section 2 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1992) is hereby amended by adding the following subsections:

“(3) Notwithstanding subsections (1) and (2) of this section, where any person was receiving compensation under section 121 of the Accident Compensation Act 1972 or section 80 of the Accident Compensation Act 1982 in respect of attendant care (being personal care and mobility assistance necessary for the injured person) at a weekly rate of \$350 or more immediately before the 1st day of July 1992, those sections shall continue to apply in respect of that person as if those sections had not been repealed and the entitlements in respect of the person may be reassessed from time to time under those sections.

“(4) Where any person who qualifies under subsection (3) of this section was receiving compensation under section 121 of the Accident Compensation Act 1972 or section 80 of the Accident Compensation Act 1982 in respect of household help (being provision of assistance in respect of domestic activities that would be performed by the injured person if not injured and is necessary to enable the person to remain in or take up suitable residence) immediately before the 1st day of July 1992, that entitlement is deemed to be an entitlement to compensation in respect of attendant care and subsection (3) of this section shall apply accordingly.

“(5) Where subsection (3) of this section applies, the person concerned—

“(a) Shall not be entitled to receive compensation in respect of attendant care or household help under regulations made under this Act; but

“(b) Shall be entitled, not more than once in any 12-month period, to elect to be assessed for entitlement for compensation for attendant care and household help under regulations made under this Act.

“(6) Following the assessment referred to in subsection (5) (b) of this section, the person concerned may irrevocably elect—

“(a) That subsection (3) of this section shall no longer apply in respect of the person; and

“(b) That the entitlements of the person to compensation for attendant care and household help shall thereafter be determined in accordance with regulations made under this Act.

“(7) Notwithstanding subsections (1) and (2) of this section, where any person was receiving compensation under section 121 of the Accident Compensation Act 1972 or section 80 of the Accident Compensation Act 1982 in respect of child care (where the child care was previously provided on a regular basis

by a deceased person for a family or household of which the deceased person was a member), immediately before the 1st day of July 1992, those sections shall continue to apply in respect of that person, in relation to child care but not other loss of quantifiable service, as if those sections had not been repealed; and the entitlements in respect of the person may be reassessed from time to time under those sections.

“(8) Where subsection (7) of this section applies, the person concerned—

“(a) Shall not be entitled to receive compensation in respect of child care under regulations made under this Act; but

“(b) Shall be entitled, not more than once in any 12-month period, to elect to be assessed for entitlement for compensation for child care under regulations made under this Act.

“(9) Following the assessment referred to in subsection (8) (b) of this section, the person concerned may irrevocably elect—

“(a) That subsection (7) of this section shall no longer apply in respect of the person; and

“(b) That the entitlements of the person to compensation for child care shall thereafter be determined in accordance with regulations made under this Act.

“(10) For the purposes of subsections (3), (4), and (7) of this section, a person shall be deemed to be receiving compensation immediately before the 1st day of July 1992 if that person has an entitlement to do so by virtue of a decision on review or appeal given after that date, and the application for review was made before the 1st day of October 1992.”

47. Review and appeal proceedings for decisions under former Acts—The principal Act is hereby amended by repealing section 152, and substituting the following section:

“152. Where any decision has been made under the Accident Compensation Act 1972 or the Accident Compensation Act 1982, or under either of those Acts as applied by this Part of this Act, Part IX of the Accident Compensation Act 1982 shall continue in force in respect of that decision, as if that Part and those Acts had not been repealed.”

48. Provision of financial information—The principal Act is hereby amended by inserting, after section 159, the following section:

“159A. The Minister of Finance may from time to time, by written notice, require the Corporation to supply to that Minister or such other person or class of persons as that Minister specifies, such financial forecasts or other financial information in relation to the amount of money that the Corporation expects to receive from the Crown as that Minister specifies in the notice, and the Corporation shall comply with the requirement.”

49. Disclosure of information to Corporation—

(1) Section 164 (2) of the principal Act is hereby amended by inserting, after the words “Customs Department”, the words “, the Ministry of Health, any purchaser, and any Crown health enterprise (in this section each called ‘the Department’)”.

(2) Section 164 (3) of the principal Act is hereby amended by adding the expression “; and” and the following paragraph:

“(c) Such information and details referred to in paragraphs (a) and (b) of this subsection as may be necessary for the purposes of this section in respect of persons who are receiving, have received or have applied to receive any treatment, service, rehabilitation, related transport, or certificate from any such person.”

50. Disclosure of information by Corporation—The principal Act is hereby amended by inserting, after section 165, the following section:

“165A. (1) The purpose of this section is to facilitate the disclosure of information by the Corporation to the Ministry of Health, purchasers, and Crown health enterprises for the purposes of verifying—

“(a) Whether or not any treatment, service, physical rehabilitation, or certificate is a purchased service:

“(b) The amount of any payment to which any person is or was entitled or for which any person is or was eligible.

“(2) For the purpose of this section, the Director-General of Health or the chief executive of the purchaser or Crown health enterprise may from time to time, in accordance with arrangements made from time to time between the Director-General or chief executive and the Corporation, request the Corporation to supply, in respect of persons who are receiving, have received or have applied to receive any purchased service to which section 27B of this Act applies or may apply,—

“(a) Such biographical information as is sufficient to identify those persons, including their addresses; and

“(b) Such details of the entitlement of those persons as are necessary for the purpose of this section.

“(3) On receipt of a request made under subsection (2) of this section, the Corporation may supply the information requested to any officer or employee or agent of the Ministry, purchaser, or Crown health enterprise who is authorised in that behalf by the Director-General or chief executive, as appropriate.

“(4) Information supplied pursuant to a request made under subsection (2) of this section may be supplied in such form as is determined by agreement between the Corporation and the Director-General or chief executive, as appropriate.”

51. Offences—Section 166 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

“(1A) Every—

“(a) Employer or former employer of any claimant; or

“(b) Person who has provided any treatment, service, rehabilitation, related transport, or certificate to any claimant; or

“(c) Person who has received any payment in respect of any claimant—

who, without reasonable excuse, refuses or fails to supply any information or statement for the purposes of this Act to the Corporation when requested by the Corporation to do so commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 and, where the offence is a continuing one, to a further fine not exceeding \$50 for every day during which the offence has continued.

“(1B) Subsection (1A) of this section does not apply unless the claimant has consented to the request being made and notice of that consent has been given to the person of whom the request is made.”

52. Regulations—(1) Section 167 (1) of the principal Act is hereby amended by inserting, after paragraph (l), the following paragraph:

“(la) Prescribing the extent to which the Corporation may make payments in respect of child care as contemplated by section 56A of this Act:”.

(2) Section 167 (2) of the principal Act is hereby amended by inserting, after the expression “(l)”, the expression “(la)”.

(3) Section 167 (5) of the principal Act is hereby amended by adding, after paragraph (e), the following paragraph:

“(f) Provide that the Corporation shall reduce any amount that would otherwise be payable under the regulations by a specified amount and pay the equivalent of that amount to a Crown Bank Account nominated by the Minister of Finance.”

(4) Section 167 is hereby further amended by inserting, after subsection (5A) (as inserted by section 16 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1993), the following subsection:

“(5B) For the purposes of subsection (5) (f) of this section, the expression ‘specified amount’ means an amount specified in the regulations and appropriate to the claimant concerned whether stated as a specific amount or determinable by reference to criteria or formulae specified in the regulations.”

53. Reporting in respect of money received from the Crown—The Second Schedule to the principal Act is hereby amended by inserting, after clause 29, the following clause:

“29A. The Corporation shall include in its statement of intent prepared under Part V of the Public Finance Act 1989, in respect of any money intended to be received from the Crown for the provision of specified services as defined in section 27 of this Act, the following information:

“(a) Any relevant direction given under section 159 of this Act:

“(b) A summary of the services that the Corporation intends to purchase including—

“(i) The persons for whom the services will be purchased; and

“(ii) The categories of those services; and

“(iii) The standards of those services; and

“(iv) Any limits on the amounts that recipients of those services may be charged for those services:

“(c) The factors and priorities that have been taken into account in deciding the services intended to be purchased:

“(d) The amount of money that the Corporation expects to receive from the Crown:

“(e) The steps that the Corporation intends to take—

“(i) To measure the performance; and

“(ii) To monitor the standards—
of the services to be purchased:

- “(f) The kind of information to be provided in relation to the Corporation’s annual report in respect of the money received from the Crown:
- “(g) A description of the steps that the Corporation intends to take to consult in accordance with this Act:
- “(h) A description of the risk management strategies intended to be implemented:
- “(i) Any other matters that are agreed by the Minister and the Corporation.”

54. Corporation payment to Crown Bank Account for public health care costs in respect of year ending 30 June 1994—(1) In respect of the year ending with the 30th day of June 1994, the Corporation shall, not later than the 30th day of June 1994, pay to a Crown Bank Account nominated by the Minister of Finance the amount of \$156,093,424 (inclusive of goods and services tax) relating to the public health care costs of motor vehicle injuries and work injuries (including subsequent work injuries).

(2) Of the amount specified in subsection (1) of this section, the Corporation shall debit—

- (a) \$41,158,266 (inclusive of goods and services tax) to the Employers’ Account; and
- (b) \$114,935,158 (inclusive of goods and services tax) to the Motor Vehicle Account.

(3) The Accounts referred to in subsection (2) of this section shall be reimbursed—

- (a) From levies paid by employers and self-employed persons under section 38 of the Accident Compensation Act 1982 and from premiums paid by employers and persons who have earnings other than as an employee under sections 101 and 102 of this Act; and
- (b) From levies paid by owners of motor vehicles pursuant to section 47 of the Accident Compensation Act 1982 and from amounts paid under section 109 of this Act and from premiums paid by owners of motor vehicles pursuant to section 110 of this Act—

respectively.

55. Consequential amendments—(1) Section 100 (3) of the principal Act (as amended by section 3 (a) of the Accident Rehabilitation and Compensation Insurance Amendment Act 1992) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Paying public health care costs under section 32A of this Act and section 54 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993; and”.

(2) Section 108 (3) of the principal Act (as amended by section 3 (b) of the Accident Rehabilitation and Compensation Insurance Amendment Act 1992) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Paying public health care costs under section 32A of this Act and section 54 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993; and”.

(3) Section 121 (4) of the principal Act (as amended by section 3 (c) of the Accident Rehabilitation and Compensation Insurance Amendment Act 1992) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Paying public health care costs under section 32A of this Act and section 54 of the Accident Rehabilitation and Compensation Insurance Amendment Act (No. 2) 1993; and”.

56. Repeals—The following enactments are hereby repealed:

(a) Section 32 of the principal Act:

(b) Section 3 of the Accident Rehabilitation and Compensation Insurance Amendment Act 1992.

This Act is administered by the Accident Rehabilitation and Compensation Insurance Corporation.
