

ACCIDENT COMPENSATION AMENDMENT BILL (NO. 3)

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Accident Compensation Act 1972.

Clause 1 relates to the Short Title to the Bill.

Clause 2 amends the definitions in the principal Act of the terms “earner”, “employee”, and “self-employed person” so as to bring in relevant cross references. *Subclause (2)* revises the definition of the term “employer” so as to cover the case specified in *paragraph (b)* of the new definition. *Subclause (4)* adds definitions of the terms “general wage order”, “Industrial Commission”, and “relevant general wage order”. *Subclause (5)* amends subsection (8) of section 2 of the principal Act by adding a proviso declaring that, for the purposes of that Act, personal injury by accident suffered by an employee while on leave in paid employment shall not be deemed to arise in the course of his employment, unless it would have so arisen apart from the preceding provisions of the subsection.

Clause 3 extends the scope of the matters upon which the Commission is required to make annual recommendations to the Minister.

Clause 4 amends section 48 of the principal Act so as to clarify the liability of the Commission to provide rehabilitation assistance outside New Zealand for persons who suffer personal injury by accident outside New Zealand in cases where they have cover under that Act in respect of the injury.

Clause 5 amends section 49 of the principal Act so as to make it clear that the functions of the Commission under subsection (2) of that section, in relation to the promotion of rehabilitation, are restricted to cases where the persons are for the time being in New Zealand.

Clause 6 amends section 63 of the principal Act so as to provide that members of the Armed Forces of New Zealand serving outside New Zealand, otherwise than in a war or emergency, shall have cover under Part III of that Act in respect of personal injury by accident outside New Zealand, if the accident occurred on or after 1 April 1974; also that members of the Armed Forces of New Zealand who are entitled to compensation under subsection (2) of the said section 63 are also entitled to rehabilitation assistance.

Clause 7 amends section 66 of the principal Act so as to provide that a person shall forfeit the right to rehabilitation assistance, as well as compensation, under the section if the Commission so orders in a case where he refuses to undergo a surgical operation for a cure for hernia. Subsection (5) of the section is revised so as to make it clear that the section does not affect the right

of any person to recover compensation or to receive rehabilitation assistance where the Commission is satisfied that he has suffered hernia, and that the hernia so suffered is (apart from the section) personal injury by accident in respect of which the person has cover under the Act.

Clause 8 amends the principal Act as from its enactment by repealing section 68, which relates to compensation for industrial deafness, and substituting a new section dealing more precisely with that subject.

Clause 9 amends section 75 of the principal Act by repealing subsection (6). The amendment is consequential on the omission of subsection (5) of section 103 of that Act when the last-mentioned section was amended by section 39 (3) of the Accident Compensation Amendment Act (No. 2) 1973.

Clause 10 transfers to section 78 of the principal Act the definition of the term "prescribed amount" which at present appears in section 76 (1) of the Act. The definition has relevance to section 78 only, and is amended and amplified accordingly. Sections 74, 76, 181 (2) (a) and the First Schedule are consequentially amended. The power to vary the prescribed amount by Order in Council is to be unrestricted. At present the amount prescribed by Order in Council must not differ from the amount for the time being prescribed by the Act by more than 20 percent.

Clause 11 amends paragraph (c) of section 83 (1) of the principal Act so as to make it clear that the cover and levy referred to in the paragraph are those arising under Part III of the Act, which relates to the earners' scheme.

Clause 12 rewrites section 104 of the principal Act so as to provide a simplified and more flexible process for determining relevant earnings. It also introduces new provisions enabling the Commission to fix a minimum rate of relevant earnings, and providing for the adjustment of relevant earnings from time to time by reference to such factors as cost of living and communal wage standards.

Clause 13 inserts in the principal Act a new section 104A setting out the manner in which the earnings as an employee of any person during any period shall be determined for the purposes of sections 104 and 113 of the principal Act.

Clause 14 amends section 105 of the principal Act so as to provide that the clarification contemplated shall be to the satisfaction of the Commission.

Clause 15 amends section 109 (1) of the principal Act (which allows the Commission to meet the costs of transport, meals, and lodging in certain circumstances where medical treatment is required) so as to make the provision more flexible and give the Commission more discretion to allow payments.

Clause 16 provides that, where as a result of an accident a person who has cover in respect of personal injury by the accident suffers damage to a contact lens, or loss of any artificial limb or aid or of a contact lens or clothing, he shall be entitled to compensation therefor to the extent prescribed.

Clause 17 amends section 111 of the principal Act, which relates to the payment of compensation in respect of medical treatment, so as to simplify the machinery for payments in respect of treatment in New Zealand, and make provision for payment for treatment where a person suffers personal injury by accident outside New Zealand in respect of which he has cover under the principal Act.

Clause 18 defines the extent to which compensation for the first week of incapacity is to have priority in a case where an employer becomes bankrupt or goes into liquidation without having paid the compensation.

Clause 19 rewrites section 114 of the principal Act. It provides a revised code for the assessment of earnings related compensation for permanent incapacity.

Clause 20 rewrites section 116 of the principal Act so as to extend the class of cases in which increased compensation is to be paid to full time earners whose earnings related compensation would be below the prescribed minimum if it were determined in the normal way, and so as to give the Commission more discretion in relation to the administration of the section. The power to vary the prescribed amount by Order in Council is to be unrestricted.

Clause 21 amends section 117 of the principal Act, which deals with the assessment of relevant earnings where the injured person is under 21 or an apprentice, etc. *Subclause (1)* gives the injured person in these cases the benefit of certain cost of living adjustments. *Subclause (2)* amends subsection (6) of the section so as to give an unrestricted power to vary by Order in Council the amount prescribed for the purposes of the section. *Subclause (3)* provides that section 117 is not to apply to an employee while a higher rate of compensation would be payable to him under section 118. The relationship between sections 117 and 116 is now covered by the new section 116 (6) set out in *clause 20*.

Clause 22 amends section 118 of the principal Act. Subsection (2) is amended so as to include a cross reference to section 114. Subsection (5) is amended so as to give an unrestricted power to vary the amount prescribed for the purposes of the section by Order in Council. Subsection (6) is amended by omitting the cross reference to section 116. The position is being covered by the new section 116 (1) set out in *clause 20*.

Clause 23 revises subsection (1) of section 121 of the principal Act so as to make it clear that the payment of compensation for pecuniary loss not related to earnings is discretionary, and provides that in the exercise of its discretion the Commission shall have regard to any other compensation payable and any rehabilitation assistance provided or to be provided. The list of excluded items of expense or loss is extended by the addition of the items specified in paragraphs (b) and (c) of the new subclause. The section is qualified by the new subsection (1A) in cases where compensation for expense or loss of a similar nature is payable under any other provision of the Act. Subsection (2) of the section is amended so as to fit in with the mention of losses in the earlier provisions of the section.

Clause 24 amends section 132 of the principal Act by repealing subsection (6), and substituting new subsections (6) and (7).

The new subsection (6) provides that, where a person suffers personal injury by accident in respect of which he has cover under the Act or dies as a result of personal injury so suffered, no compensation shall be payable to any person, except so far as the Commission otherwise decides, in respect of or by reason of any loss, expense, incapacity, impairment, pain, or suffering, that results from the injury, or in respect of or by reason of the death, if and so far as the loss, expense, incapacity, impairment, pain, or suffering is caused, continued, or aggravated, or (in the case of death) the death is

caused; by an unreasonable failure by the injured person to act in accordance with medical advice or by his unreasonable refusal to submit to medical treatment, or to any surgical treatment the risk of which is, in the opinion of the Commission, inconsiderable in view of the seriousness of the injury, or by his unreasonable refusal to comply with any requirement of the Commission in relation to his rehabilitation. The Commission is authorised to apply the whole or any part of the compensation that would, apart from the subsection, be payable in respect of or by reason of the incapacity of the person for the maintenance and education of any dependant or dependants of the person.

The new subsection (7) provides that, except so far as the Commission otherwise decides, no rehabilitation assistance under the Act in respect of or by reason of the incapacity of a person shall be given, if and so far as his incapacity is caused, continued, or aggravated by any unreasonable failure or unreasonable refusal mentioned in the new subsection (6).

Clause 25 amends section 136 (1) of the principal Act by omitting words that are no longer apt in the light of changes to the legislation made in 1973.

Clause 26 substitutes a new section 137 stating the implications of wilfully self-inflicted personal injuries and suicide in relation to entitlement to compensation and rehabilitation assistance.

Clause 27 amends section 151 of the principal Act by omitting words that are incorrect or redundant.

Clause 28 rewrites section 161 of the principal Act so as to simplify its provisions, and define the functions of the Appeal Authority by reference to the cases in which appeals lie under section 162.

Clause 29 authorises the Commission to decide such matters as it considers relevant for the purpose of determining the cover (if any) of any person under the motor vehicle accident scheme or the supplementary scheme and for the purpose of classifying any vehicle for the purpose of determining the rate of any levy to be paid under the motor vehicle accident scheme. Upon notice in writing of any such decision being given to the person concerned, the decision is to be binding on that person subject to his right of appeal.

Hon. Mr Faulkner

ACCIDENT COMPENSATION AMENDMENT (NO. 3)

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A BILL INTITULED

An Act to amend the Accident Compensation Act 1972

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

No. 63—1

1. Short Title—This Act may be cited as the Accident Compensation Amendment Act (No. 3) 1975, and shall be read together with and deemed part of the Accident Compensation Act 1972* (hereinafter referred to as the principal Act).

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2. Interpretation—(1) Subsection (1) of section 2 of the principal Act is hereby amended—

(a) By adding to the definition of the term “earner” the words “and also has the extended meaning assigned to it under subsections (9) and (10) of this section and section 59 of this Act”:

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(b) By omitting from the definition of the term “employee” the expression “and (5) of this section and section 88”, and substituting the expression “(5), and (6) of this section and section 59”.

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(2) Subsection (1) of section 2 of the principal Act is hereby further amended by repealing the definition of the term “employer”, and substituting the following definition:

“‘Employer’ means a person, within or outside New Zealand, who—

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“(a) Pays or is liable to pay to any person (being an employee within the meaning of this subsection); or

“(b) In a case where any such last-mentioned person had engaged to work under a contract mentioned in the definition in this subsection of the term ‘employee’ and had commenced to work under the contract, would be liable to pay—

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any earnings as an employee as defined in section 103 of this Act, whether on his own account, or as an agent, or as a trustee, or as an Assignee within the meaning of the Insolvency Act 1967 of the estate of a bankrupt, or as the liquidator or receiver of a company that is in liquidation or receivership, and includes the administrator of a deceased employer; and also includes the Crown; and also has the extended meaning assigned to it by subsections (2), (3), (4), and (5) of this section and section 88 of this Act.”

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*Reprinted 1973, Vol. 2, p. 1051
Amended: 1974, No. 71

(3) Subsection (1) of section 2 of the principal Act is hereby further amended by adding to the definition of the term “self-employed person” the following paragraph:

5 “(d) Has also the extended meaning assigned to it under section 59 of this Act.”

(4) Section 2 of the principal Act is hereby further amended by inserting in subsection (1), in their appropriate alphabetical order, the following definitions:

10 “‘General wage order’ means any general order made under section 5 of the General Wage Orders Act 1969; and includes any other order made by an Industrial Commission (as defined in this subsection) of like general effect or wider general effect; and also includes any regulation, order, or other instrument
15 of like general effect or wider general effect that is deemed for the purposes of any regulations made pursuant to the Economic Stabilisation Act 1948 to be an order made by an Industrial Commission:

20 “‘Industrial Commission’ means the Industrial Commission constituted under the Industrial Relations Act 1973; and includes any Court, commission, or other authority for the time being having similar jurisdiction:

25 “‘Relevant general wage order’ means any general wage order (as defined in this subsection) that increases all the rates of remuneration to which it applies by a prescribed uniform percentage of the whole of those rates, or by a prescribed uniform percentage of so much of that remuneration as does not exceed a
30 stipulated amount:”.

(5) Section 2 of the principal Act is hereby further amended by adding to subsection (8) the following proviso:

35 “Provided that, for the purposes of this Act, personal injury by accident suffered by an employee while on leave in paid employment shall not be deemed to arise in the course of his employment, unless it would have so arisen apart from the foregoing provisions of this subsection.”

3. Recommendations as to levies and compensation—

40 (1) Section 15 of the principal Act is hereby amended by omitting from paragraph (f) of subsection (2) the words “employee or other person specified in that section with earnings below the prescribed amount”, and substituting the words “worker in certain cases”.

(2) Section 15 of the principal Act is hereby further amended by adding to subsection (2) the following paragraphs:

“(k) The amount prescribed for the purposes of section 78 of this Act, which relates to the minimum amount on which levies are payable by self-employed persons, whether the adjustment (if any) is to be made in relation to all self-employed persons or in relation to any classes or groups of self-employed persons, and the respective amounts (if any) which may from time to time have been prescribed by the Governor-General by Order in Council in relation to any class or group of self-employed persons: 5 10

“(l) The amount of the prescribed domestic allowance for the purposes of subsections (4) to (6) of section 77 of this Act: 15

“(m) Relevant earnings, pursuant to subsection (8) of section 104 of this Act (as substituted by section 12 of the Accident Compensation Amendment Act (No. 3) 1975).” 20

(3) Section 15 of the principal Act is hereby further amended by inserting in subsection (4), after the words “paragraphs (c) to (h)”, the words “and paragraph (m)”.

4. Commission to promote rehabilitation—(1) Subsection (1) of section 48 of the principal Act is hereby amended— 25

(a) By omitting the word “and” where it last appears, and substituting the words “being persons”:

(b) By adding the words “and who are for the time being in New Zealand”. 30

(2) Section 48 of the principal Act is hereby further amended by adding the following subsection:

“(3) Subject to the provisions of section 64 of this Act, where a person suffers personal injury by accident outside New Zealand and the person has cover under this Act in respect of the injury, the Commission, after having regard to all the circumstances, including the physical and mental condition of the injured person, the nature and place of his employment (if any), and the place or places of residence of himself and of his dependants (if any) and of the person or persons (if any) on whom he may be dependent, may, at its discretion, make provision for the rehabilitation outside New Zealand of that person to such extent and on such terms and conditions as it thinks fit.” 35 40

5. Functions of Commission in relation to the promotion of rehabilitation—Section 49 of the principal Act is hereby amended by inserting in subsection (2), after the words “the Commission shall”, the words “in relation to the rehabilitation of persons who are for the time being in New Zealand”.

6. Members of the Armed Forces of New Zealand—(1) Section 63 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

10 “(d) Members of the Armed Forces of New Zealand serving outside New Zealand, otherwise than in a war or emergency, shall have cover under Part III of this Act in respect of personal injury by accident outside New Zealand, if the accident occurred after the commencement of this section.”

15 (2) Section 63 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

20 “(2A) In any case to which subsection (2) of this section applies, rehabilitation assistance determined by the Accident Compensation Commission (subject to Part VII of this Act) shall, where necessary, be given as if the disablement were incapacity resulting from personal injury by accident.”

7. Compensation for hernia—(1) Section 66 of the principal Act is hereby amended—

25 (a) By omitting from subsection (1) the words “(where relevant)”:

(b) By inserting, after the word “compensation” in each place where it appears in subsections (2), (3), and (4), the words “and rehabilitation assistance”.

30 (2) Section 66 of the principal Act is hereby further amended by repealing subsection (5), and substituting the following subsection:

35 “(5) Nothing in this section shall affect the right of any person to recover compensation or to receive rehabilitation assistance where the Commission is satisfied that he has suffered hernia, and that the hernia so suffered is (apart from the foregoing provisions of this section) personal injury by accident in respect of which he has cover under this Act.”

8. Compensation for industrial deafness—The principal Act is hereby amended as from its enactment by repealing section 68, and substituting the following section:

“68. (1) Subject to the provisions of this section, where, on or after the 1st day of April 1974, an earner has been working in employment in which he is exposed to a particular hazard of contracting boilermakers’ deafness or other deafness through the intensity and duration of his exposure to noise, and, within 2 years of any time at which he has been exposed to that hazard, he suffers (whether before or after the commencement of this section) from deafness that is of a permanent nature, he shall, to the extent that that deafness exceeds any demonstrable, pre-existing deafness that can be established by the Commission, be deemed to have suffered ‘industrial deafness’ within the meaning of this section, unless, in the light of the medical and other evidence available, it appears to the Commission—

“ (a) That the deafness is due to some other origin; or 15

“ (b) That the degree of deafness does not significantly exceed that which would normally have resulted from the ageing process.

“ (2) If an earner suffers from industrial deafness, then, to the extent mentioned in subsection (1) of this section,— 20

“ (a) He shall be deemed to have suffered personal injury by accident:

“ (b) The accident shall be deemed to arise out of and in the course of his employment:

“ (c) That injury shall be deemed to involve a permanent loss or impairment of a bodily function: 25

“ (d) Subject to the provisions of this Act, cover shall exist, rehabilitation assistance shall be given, and compensation shall be payable accordingly.

“ (3) Where a person is deemed, in accordance with and to the extent mentioned in subsection (2) of this section, to have suffered personal injury by accident, the accident shall be deemed to have happened on the date on which he first makes a claim for compensation in respect of such personal injury under this Act or the date on which he last leaves employment in which there is a particular hazard of contracting deafness, whichever is the earlier. 30
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“ (4) Where compensation has been paid or is payable under the Workers’ Compensation Act 1956 to any person for any degree of industrial deafness, that degree of deafness in that person shall be deemed not to be ‘industrial deafness’ within the meaning of this section.” 40

9. Agent to whom levies to be paid—Section 75 of the principal Act is hereby amended by repealing subsection (6).

10. Statements by self-employed persons—(1) Section 78 of the principal Act is hereby amended by adding the following subsection:

“(9) In this section the ‘prescribed amount’ means the amount prescribed for the purposes of this section in Part I of the First Schedule to this Act or such other amount as may from time to time be prescribed for those purposes by the Governor-General by Order in Council; or, in relation to any class or group of self-employed persons in respect of whom the Governor-General by Order in Council may from time to time prescribe an amount for those purposes, means the amount so prescribed in respect of that class or group”.

(2) The principal Act is hereby consequentially amended—

(a) By omitting from section 74 (6) (c) the words “section 76 of this Act”, and substituting the words “subsection (9) of that section (as inserted by section 10 (1) of the Accident Compensation Amendment Act (No. 3) 1975),”:

(b) By repealing the definition of the term “prescribed amount” in section 76 (1):

(c) By omitting from section 181 (2) (a) the expression “76 to 80”, and substituting the expression “78”:

(d) By omitting from Part I of the First Schedule the expression “sections 76 to 80 of this Act which relate”, and substituting the expression “section 78 of this Act which relates”.

11. Power to determine nature of earnings and classification and to assess levies, etc.—Paragraph (c) of subsection (1) of section 83 of the principal Act is hereby amended—

(a) By inserting, after the word “under”, the words “this Part of”:

(b) By adding the words “under this Part of this Act”.

12. Relevant earnings—(1) The principal Act is hereby amended by repealing section 104, and substituting the following section:

“104. (1) Subject to sections 117 and 118 of this Act and to the provisions of this section, for the purpose of determining the amount of any earnings related compensation payable during or after the period of short term incapacity (as defined in section 2 (1) of this Act) to an earner who suffers personal injury by accident in respect of which he has cover under this Act, or payable at any time to any dependant of such an earner, the amount of his relevant earnings shall be such amount as, in the opinion of the Commission, would, at the time of the accident, fairly and reasonably represent his normal average weekly earnings, having regard to such information as the Commission may obtain regarding his earnings before the time of the accident and his earnings at the time of the accident, and to his work history and the period of his residence in New Zealand before the time of the accident.

“(2) If the earner was an employee at the date of the accident and was not then also a self-employed person and had not been a self-employed person at any time during the period of 12 months immediately preceding the date of the accident, in fixing his relevant earnings under subsection (1) of this section,—

“(a) The Commission may have regard, in the first place, to the amount of his weekly earnings as an employee at or about the time of the accident, or (if the Commission in its discretion so decides) the amount of his earnings as an employee at or about the time of the accident when converted in such manner as the Commission considers appropriate to a weekly basis; but

“(b) If, in the opinion of the Commission, the amount ascertained under paragraph (a) of this subsection would not, at the time of the accident, properly represent his normal average weekly earnings, the Commission may then have regard to the amount of his average weekly earnings during the period of 28 days immediately preceding the date of the accident; but

“(c) If, in the opinion of the Commission, the amount ascertained under paragraph (b) of this subsection also would not, at the time of the accident, properly represent his normal average weekly earnings, the Commission may then have regard to his average weekly earnings during the period

of 12 months immediately preceding the date of the accident or such part or parts of that period as the Commission may select as appropriate for the purpose:

5 “Provided that nothing in this subsection shall preclude the Commission from having regard also to such other factors as it may consider relevant for the purpose of subsection (1) of this section.

10 “(3) If the earner was a self-employed person at the date of the accident (whether or not he was also an employee at the date of the accident) or if the earner had been a self-employed person at any time during the period of 12 months immediately preceding the date of the accident, the Commission, in fixing his relevant earnings under subsection
15 (1) of this section, may have regard to all or any of the following factors, as it thinks appropriate for the purpose:

20 “(a) His earnings as a self-employed person during his financial year last ended before the day immediately following the date of the accident, or, if the amount of those earnings is not for the time being readily determinable, such sum as may be estimated by the Commission as fairly and reasonably representing those earnings:

25 “(b) His earnings as an employee (if any) during that financial year and his earnings as a self-employed person during that financial year, or, if the amount of those earnings is not for the time being readily determinable, such sum as may be estimated by the Commission as fairly and reasonably representing those earnings:

30 “(c) The average amount of his earnings as a self-employed person during any of the periods of 2 or 3 or 4 consecutive financial years last ended before the day immediately following the date of the accident, or, if the Commission, in the exercise of its discretion, so decides, during any one or more of those financial years which it may select as appropriate for the purpose:

35 “(d) His earnings as an employee (if any) at or about the time of the accident, or during the period of 12 months immediately preceding the date of the accident, or during such part or parts of that period as the Commission may select as appropriate for the purpose:

“(e) His earnings as a self-employed person (as determined or estimated by the Commission) during the period of 12 months immediately preceding the date of the accident, or during such part or parts of that period as the Commission may select as appropriate for the purpose, if sufficient information, including accounts, is furnished to the Commission to enable it to determine or estimate the amount of his earnings as a self-employed person during that period or the said part or parts of that period, as the case may be: 5 10

“Provided that nothing in this subsection shall preclude the Commission from having regard also to such other factors as it may consider relevant for the purpose of subsection (1) of this section. 15

“(4) Where for any period an earner has derived earnings as an employee from commission or has otherwise derived earnings as an earner who is deemed to be an employee under any of the provisions of subsections (2), (3), (4), and (5) of section 2 of this Act, if those earnings are not readily determinable, the Commission may, for the purposes of the foregoing provisions of this section, assess his earnings as an employee during that period at such amount as it thinks fit, having regard to such information as it may obtain on his earnings before and at the date of the accident, and to such other factors as it may consider relevant for the purpose, and to the provisions of subsection (2) of section 103 of this Act. 20 25

“(5) If the relevant earnings of an employee as determined in accordance with the foregoing provisions of this section would be significantly more or significantly less than the average weekly amount of the earnings as an employee that he would, in the opinion of the Commission, have derived during the period of short term incapacity if he had not suffered the injury, then, notwithstanding anything to the contrary in the foregoing provisions of this section, the Commission may, if it thinks fit, assess his relevant earnings at that amount. Any assessment made under this subsection shall be for the purpose of determining the amount of any earnings related compensation payable in respect of the period of short term incapacity, and shall be of no effect for the purpose of determining the amount of any earnings related compensation payable in respect of any period after the period of short term incapacity. 30 35 40

“(6) Notwithstanding anything to the contrary in the foregoing provisions of this section, the Commission may, from time to time, insofar as it thinks fit so to do,—

5 “(a) Fix a minimum amount of relevant earnings for any employee who, having engaged to work under a contract of service, has not commenced to work under that contract:

10 “(b) Having regard to the liability imposed on self-employed persons for payment of levy under Part III of this Act, fix a minimum amount of relevant earnings for self-employed persons:

15 “(c) Having regard to that liability, and to such other considerations as the Commission may think relevant, fix a minimum amount of relevant earnings for any class or group of self-employed persons, whether those persons are classified or described by reference to the nature of their employment, or to the hours in which they have normally engaged in that employment before the accident, or
20 to the period of time for which they have been engaged in that employment, or to the amount or rate of levy imposed on them, or by reference to any combination of those factors, or are classified or described in any other manner whatsoever that
25 the Commission thinks fit;

and may from time to time vary, amend, or revoke, in whole or in part, any determination made under this subsection.

30 “(7) Subject to subsection (13) of this section, where the relevant earnings of an earner (whether he is an employee or a self-employed person) are required to be ascertained under the foregoing provisions of this section, and a relevant general wage order (as defined in section 2 (1) of this Act, as amended by section 2 (4) of the Accident Compensation Amendment Act (No. 3) 1975) increasing rates of remuneration
35 comes into effect after the commencement of this subsection and at a date after the date of the accident, his relevant earnings as so ascertained (or those relevant earnings as so ascertained and for the time being increased in accordance with this subsection and subsection (8) of this section or either
40 of those subsections) shall, on and after the date on which the order comes into effect, be increased to the same extent as they would be increased if they were a weekly rate of remuneration subject to that order:

“Provided that where any such order comes into effect at a date earlier than the date on which it is made and the earner has completely recovered from his incapacity due to the accident before the date on which it is made, the Commission shall not be under any obligation to reassess his relevant earnings by reason of the order having come into effect before the incapacity had ceased, but may, at its discretion, make such a reassessment if application in writing for a reassessment is made to the Commission by or on behalf of the earner within 3 months after the date on which the order is made or such extended period as the Commission may allow.

“(8) The Governor-General may, from time to time, by Order in Council, specify a percentage or amount by which (subject to subsection (13) of this section) the amount, for the time being, of any relevant earnings required to be ascertained under the provisions of this section (including the provisions of this subsection and subsection (7) of this section) shall increase. Any such Order in Council may be made in relation to all such relevant earnings or to such only of those relevant earnings as may be specified in the order, and may prescribe any limitation as to its effect, whether by way of reference to any persons or classes of persons or to the time at which an accident has happened or to the purposes for which the increase is to apply, or by way of any other specification, stipulation, condition, inclusion, or exclusion whatsoever. The Order in Council or any part or parts thereof may be made so as to come into effect on a date or dates to be specified therein in that behalf, being either the date of the Order in Council or any other date or dates, whether before or after the date thereof.

“(9) Subject to subsection (13) of this section and to any limitations as to the effect of an Order in Council made under subsection (8) of this section, where the relevant earnings of an injured person are increased pursuant to the provisions of subsection (7) or subsection (8) of this section, the amount of those relevant earnings, as for the time being so increased, shall, on and after the date on which the relevant general wage order or the Order in Council (or the relevant part thereof), as the case may be, comes into effect, be the amount of his relevant earnings ascertained in accordance with this section where that amount is required to be ascertained for the purpose of—

“(a) Determining his loss of earning capacity for the time being in respect of any period of incapacity to which paragraph (a) of subsection (1) of section 113 of this Act applies; and

5 “(b) Assessing the weekly amount of earnings related compensation in respect of permanent loss of earning capacity where the assessment is made under subsection (1) or subsection (5) of section 114 of this Act; and

10 “(c) Determining the minimum rate of compensation for the time being payable to him under the provisions of section 116 of this Act; and

“ (d) Applying the provisions of subsection (4) and the proviso to subsection (5) of section 117, and the
15 second proviso to subsection (5) of section 118, of this Act.

“(10) Notwithstanding the foregoing provisions of this section, in any case where a person suffers personal injury by accident during the period for which his cover is deemed
20 under section 59 of this Act to extend, and his relevant earnings are determined under this section, the amount of his relevant earnings shall be so determined and the provisions of subsections (7) and (8) of this section shall apply as if the accident had happened on the day immediately preceding
25 the first day of that period.

“(11) Notwithstanding anything in the foregoing provisions of this section, the exercise by the Commission of the powers and discretions vested in it by any of those provisions to determine, assess, estimate, or fix the earnings or the
30 relevant earnings of an employee or of a self-employed person shall be subject to such regulations (if any) as may be made under this Act to define the terms on which and the limits within which those powers and discretions may be exercised.

35 “(12) Notwithstanding anything in the foregoing provisions of this section, the Governor-General may, from time to time, by Order in Council, make regulations varying the provisions of this section in relation to the determination of the relevant earnings of a member of the Armed Forces of
40 New Zealand serving in a war or emergency who becomes entitled to compensation under the provisions of section 63 of this Act; and in so doing may prescribe the extent and the

manner (if any) to or in which his earnings as a civilian during any period or periods before he became a member of those Armed Forces serving in that war or emergency may be taken into account in determining those relevant earnings.

“(13) In any case where the relevant earnings for the time being of any person, if determined under the foregoing provisions of this section, would exceed the maximum amount prescribed for the purposes of this section, being the amount specified in Part IV of the First Schedule to this Act or such other amount (not differing therefrom by more than 20 percent) as may from time to time be specified for the purposes of this section by the Governor-General by Order in Council, that prescribed amount shall be the amount of his relevant earnings.”

(2) The following enactments are hereby repealed:

(a) Section 40 of the Accident Compensation Amendment Act (No. 2) 1973:

(b) Section 5 of the Accident Compensation Amendment Act 1974.

13. Period of earnings—The principal Act is hereby amended by inserting, after section 104, the following section:

“104A. (1) Subject to the provisions of this section, the earnings as an employee of any person during any period shall, for the purposes of sections 104 and 113 of this Act, be so much (and only so much) of his earnings as an employee as relates to paid employment during that period, whether payment thereof is received before, during, or after that period, and notwithstanding that any earnings as an employee which relate to paid employment before or after that period may be received during that period.

“(2) Where a person receives earnings as an employee which—

“(a) Are received instead of leave on pay; or

“(b) Are, or are in the nature of, bonuses, gratuities, directors’ fees, or honoraria; or

“(c) Are not referable to any particular period of paid employment,—

the Commission may, for the purposes of sections 104 and 113 of this Act, determine to what period of paid employment those earnings or any part or parts of those earnings relate, and so much of those earnings as is so determined by the Commission to relate to any period shall (subject to Part VII of this Act) be deemed, for those purposes, to be earnings as an employee during that period.

“(3) In any case where the relevant earnings of any person have been determined by reference to earnings as an employee in accordance with the provisions of section 104 of this Act, and earnings as an employee, which have not been taken
5 into account in determining those relevant earnings, are received after the time of the accident in respect of his paid employment before the time of the accident, the Commission shall not be under any obligation to re-assess the relevant earnings as so determined, but may, at its discretion, make
10 such re-assessment as it thinks fit if the receipt of those earnings as an employee is notified in writing to the Commission by or on behalf of that person within 3 months after the date on which those earnings as an employee are received, or within such extended period as the Commission may allow, and
15 the Commission, having regard to all the circumstances including the factors which it took into account in applying those provisions, considers that a re-assessment should be made.”

14. Working shareholders of companies—Section 105 of the
20 principal Act is hereby amended by omitting from subsection (1) the words “whether by agreement or otherwise”, and substituting the words “to the satisfaction of the Commission”.

15. Subsequent conveyance for treatment—(1) Subsection
25 (1) of section 109 of the principal Act is hereby amended—

(a) By omitting the words “to a place not less than 5 miles from the place where he resides”, and substituting the words “from his place of residence, or his place
30 of employment (if any), or any hospital or other place where he is temporarily accommodated, whichever in the circumstances is the most appropriate point of departure,”:

(b) By omitting the words “nearest place in which that treatment is available”, and substituting the words
35 “place in which that treatment is most conveniently available”:

(c) By omitting the words “away from his place of residence”.

(2) Subsection (1) of section 109 of the principal Act is
40 hereby further amended by adding the following further proviso:

“Provided also that no such expenses for transport, meals, or lodging shall be payable by the Commission if the distance from the most appropriate point of departure to the place at which the medical or surgical treatment is to be given is less than 5 miles, unless and to the extent that the Commission, having regard to the age and condition of the patient and any other circumstances which it may consider relevant, decides that the expenses or some part thereof should be paid under this subsection.” 5

16. Damage to teeth or artificial limbs or aids or clothing, etc.—(1) Section 110 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections: 10

“(1A) Subject to the provisions of subsection (2) of this section and to any regulations made under this Act, where as a result of an accident a person who has cover in respect of personal injury by the accident suffers damage to any contact lens being worn by him at the time of the accident, there shall be payable by the Commission, in addition to the compensation otherwise payable under this Act,— 15

“(a) If a replacement contact lens is supplied by way of a supplementary benefit under section 116 of the Social Security Act 1964, so much (if any) of the cost of the replacement as is, in accordance with that section and the regulations made thereunder, recoverable from the injured person: 20 25

“(b) If a replacement contact lens is not supplied by way of a supplementary benefit under section 116 of that Act, a sum which (in the opinion of the Commission) would represent the reasonable cost of replacing the contact lens by spectacles, or a sum which (in the opinion of the Commission) would represent the reasonable cost of replacing the contact lens by a replacement lens (whichever is the less): 30

“Provided that the Commission may refuse to make any payment under this subsection unless notice of the damage is given by the person, as soon as practicable after the accident, to the employer in any case where the accident arises out of and in the course of the employment of the employee, or in any other case to the agent of the Commission to whom notice of the accident is given under section 142 of this Act. 35 40

“(1B) Subject to any regulations made under this Act, where as a result of an accident a person who has cover in respect of personal injury by the accident loses any artificial limb or aid, or contact lens, or clothing, being used or worn
5 by him at the time of the accident, that loss shall be deemed to be damage for the purposes of this section.”

(2) Section 110 of the principal Act is hereby further amended by inserting in subsection (2), after the expression “subsection (1)”, the words “or subsection (1A)”.

10 (3) Section 110 of the principal Act is hereby further amended by repealing paragraph (b) of subsection (2), and substituting the following paragraph:

“(b) In the case of any other damage so suffered, unless
15 the person also suffers personal injury by the accident in respect of which medical or hospital treatment is required or compensation is payable, and except to the extent that expense in respect of the repair or replacement is incurred in the lifetime of that person.”

20 **17. Medical treatment**—(1) Section 111 of the principal Act is hereby amended—

(a) By inserting in subsection (2), after the words “New Zealand”, the words “(not being treatment in respect of damage to natural teeth to which paragraph (a) of subsection (2) of section 110 of this
25 Act applies), whether or not the person requiring the treatment is a person entitled to claim the benefits provided by Part II of the Social Security Act 1964”:

30 (b) By inserting in paragraph (f) of subsection (2), after the word “appliance”, the words “which is prescribed for the person by a registered medical practitioner”.

(2) Section 111 of the principal Act is hereby further
35 amended by adding the following subsections:

“(5) Subject to any regulations made under this Act, upon receipt by the Commission of a statement by a registered medical practitioner in New Zealand, given in a form approved by the Commission,—

40 “(a) Certifying as to any services afforded by that practitioner to any person and the amount claimed in respect thereof; and

“(b) Certifying that he considers that the services were required as a result of personal injury by accident; and

“(c) Containing the name and address of that person and such other information as may be required by that form to be furnished,— 5

the Commission may, if it thinks fit, notwithstanding anything to the contrary in this Act, pay the amount so claimed for the services or so much thereof as it considers reasonable by New Zealand standards without further inquiry as to whether the services were required as a result of personal injury by accident in respect of which the person had cover under this Act and without further inquiry as to whether he was entitled to compensation under this Act. 10

“(6) Subject to any regulations made under this Act, upon receipt by the Commission of a statement by a person in New Zealand duly qualified to provide radiological or physiotherapy services or other paramedical services, given in a form approved by the Commission— 15

“(a) Certifying as to any such services (being services which he was duly qualified to provide) afforded by him personally or by or under the direct supervision of himself or another person duly qualified to provide the services, and the amount claimed in respect thereof; and 20 25

“(b) Certifying that the person to whom the services were afforded was referred by a registered medical practitioner as a case of personal injury by accident; and

“(c) Containing the name and address of that person and such other information as may be required by that form to be furnished— 30

the Commission may, if it thinks fit, notwithstanding anything to the contrary in this Act, pay the amount so claimed for the services or so much thereof as it considers reasonable by New Zealand standards without further inquiry as to whether the services were required as a result of personal injury by accident in respect of which the person to whom the services were afforded had cover under this Act and without further inquiry as to whether he was entitled to compensation under this Act. 35 40

“(7) A payment made in reliance on a statement given pursuant to subsection (5) or subsection (6) of this section, shall not (either in relation to that payment or in relation to any claim for other compensation or for rehabilitation assistance under this Act) operate as an admission by the Commission, or preclude the Commission from denying, that the person in respect of whom the services were afforded had suffered personal injury by accident in respect of which he had cover under this Act or that he was entitled to compensation under this Act.

“(8) Subject to any regulations made under this Act, where a person suffers personal injury by accident in respect of which he has cover under this Act, and the Commission, after having regard to all the circumstances, including the physical and mental condition of that person, the nature and place of his employment (if any), and the place or places of residence of himself and of his dependants (if any) and of the person or persons (if any) on whom he may be dependent, considers that it is necessary or reasonable that any medical certificate required for the purposes of this Act should be obtained outside New Zealand or that any treatment required as a result of the personal injury (being hospital treatment, medical treatment, radiological, physiotherapy, or other paramedical treatment, treatment by the provision of any pharmaceutical requirement, or treatment by the provision of any artificial limb or aid or prosthetic appliance and of its normal repair or renewal) should be given outside New Zealand, the Commission may, at its discretion, and subject to such terms and conditions (if any) as it thinks fit to impose, pay the cost thereof, or so much of the cost thereof as it thinks fit:

“Provided that, where a person suffers personal injury by accident in New Zealand, no payment shall be made pursuant to the foregoing provisions of this subsection in respect of any such treatment outside New Zealand, unless the approval of the Commission to the treatment being given outside New Zealand has been obtained before the treatment is given, or there are special circumstances that, in the opinion of the Commission, justify such a payment being made:

“Provided also that nothing in this subsection shall limit or restrict the provisions of subsections (1) and (4) of section 132 of this Act.

“(9) In the exercise of its discretion under subsection (8) of this section, the Commission may have regard to the extent to which the person may be entitled to any benefit or remedy, apart from this Act, in respect of the cost of the certificate or treatment, whether in accordance with the law of the country where the accident occurs or in which the certificate or treatment is given, or by reason of any indemnity or policy of insurance, or for any other reason, and may also have regard to the extent to which the cost of the certificate or treatment would be reasonable by New Zealand standards.”

18. Priority in bankruptcy or winding up for first week's compensation—The principal Act is hereby amended by inserting, after section 112, the following section:

“112A. (1) There shall be included, among the debts which, under section 104 of the Insolvency Act 1967, are to be paid in the fourth priority in the distribution of the property of a bankrupt, and among the debts which, under section 308 of the Companies Act 1955, are to be paid in priority to all other debts in the winding up of a company, any sum that, in accordance with subsection (9) of section 112 of the principal Act, is recoverable in respect of time lost before the relevant date (as defined in this section) by an employee of the bankrupt or of the company:

“Provided that the sum to which priority is to be given in accordance with this section shall not exceed the sum of \$400 in the case of any one claimant:

“Provided also that, for the purposes of this section, where the Commission is a claimant in respect of time lost by more than one employee, its claim in respect of the time lost by each of those employees shall be deemed to be a separate claim made by a separate claimant.

“(2) For the purposes of this section the expression “the relevant date”, in relation to a bankrupt employer, means the date of the adjudication (as defined in section 2 of the Insolvency Act 1967) and, in relation to a company, has the same meaning as is assigned to it for the purposes of section 308 of the Companies Act 1955.”

19. Assessment of permanent incapacity—(1) The principal Act is hereby amended by repealing section 114, and substituting the following section:

“114. (1) In any case where a person who suffers personal injury by accident in respect of which he has cover does not completely recover from his incapacity due to the accident, as soon as the Commission considers that (so far as the consequences of the injury are concerned) his medical condition is stabilised and all practicable steps have been taken towards his retraining and rehabilitation, the Commission shall review his case and make an assessment in writing of—

5 “(a) The nature and extent of his permanent incapacity;
10 and

“ (b) Whether that permanent incapacity has resulted in a permanent loss or diminution of his capacity to earn; and

15 “(c) The percentage which that permanent loss or diminution (if any) bears to permanent total loss of his capacity to earn; and

“ (d) The weekly amount of his permanent loss of earning capacity (if any), which amount shall be the appropriate percentage (being the percentage assessed under paragraph (c) of this subsection) of his relevant earnings for the time being, or such other amount as may be determined by the Commission in accordance with subsection (4B) of section 113 of this Act; and

20 “(e) The weekly amount of earnings related compensation to be paid to him initially under paragraph (b) of subsection (1) of the said section 113 after the making of the assessment in respect of that permanent loss of earning capacity (if any), which amount shall be 80 percent of the weekly amount assessed under paragraph (d) of this subsection, or any greater weekly amount that may for the time being be payable to him in consequence of the injury in accordance with section 116 of this Act.

25 “(2) In making its assessment under paragraphs (b) and (c) of subsection (1) of this section, and in determining the weekly amount of the permanent loss of earning capacity where that amount is determined in accordance with sub-
30 section (4B) of section 113 of this Act,—
40

“(a) The Commission shall have regard to—

“(i) The opportunities for employment (if any) which, in the opinion of the Commission, will reasonably exist for the person (whether as an employee or a self-employed person): 5

“(ii) The degree (if any) to which, having regard to those opportunities, his ability (or, in a case to which section 118 of this Act applies, his potential ability) to derive earnings has, in the opinion of the Commission, been permanently 10 diminished by reason of the incapacity; and

“(b) The Commission may in its discretion have regard (to such extent as it thinks fit) to—

“(i) The degree (if any) to which the ability of the person before the time of the accident to 15 derive earnings as a self-employed person was contributed to by his interest in the capital assets of any business in relation to which he was a self-employed person:

“(ii) Any dealings with his interest in those 20 capital assets or with the proceeds thereof which have taken place between the time of the accident and the time when the assessment is made:

“(iii) The extent (if any) to which the use or acquisition of capital assets would be required in 25 order to enable him to engage or continue to engage in business as a self-employed person after the time of the assessment, and the degree to which his ability to derive earnings from that business would be contributed to by those 30 assets:

“(iv) Such other factors (whether or not of a nature similar to the factors heretofore mentioned in this subsection) as the Commission considers 35 relevant.

“(3) Subject to subsection (10) of this section, if at any time or times after the making of an assessment under paragraph (e) of subsection (1) of this section, it appears to the Commission that the capacity of the person to earn has 40 deteriorated as a result of the injury since the date on which the assessment was made or since the last determination previously made in accordance with this subsection (as the case

may be), the Commission may determine that the weekly amount of compensation for the time being payable under this section shall be increased, as from the date of its determination, by such amount as, having regard to all the circumstances, it considers appropriate.

5 “(4) The earnings related compensation for the time being payable to the person under this section shall not be reduced by reason of any increase in his earning capacity.

10 “(5) In any case where a person dies as a result of personal injury by accident in respect of which he has cover under this Act, if the Commission has not made an assessment or determination under this section of the amount to be paid to him in respect of permanent total loss of earning capacity, and if any earnings related compensation is payable under
15 section 123 of this Act to any dependant of the deceased person, the Commission shall forthwith make an assessment in writing, (which assessment shall be deemed, for the purposes of this section, to have been made at the date of his death) of the weekly amount that would have been payable
20 to him under paragraph (b) of subsection (1) of section 113 of this Act if he had not died but had suffered a permanent total loss of earning capacity and the assessment had been made at the date of his death under subsection (1) of this section.

25 “(6) A copy of an assessment made under subsection (1) of this section shall be given to the injured person and a copy of an assessment made under subsection (5) of this section shall be given to the persons to whom the initial payments of compensation under section 123 of this Act will be made.

30 “(7) Notwithstanding anything to the contrary in this Act, the provisions of this Act whereby relevant earnings may be increased by reason of any relevant general wage order (as defined in section 2 (1) of this Act, as amended by section 2 (4) of the Accident Compensation Amendment Act (No.
35 3) 1975), or by reason of any Order in Council, shall not operate so as to increase any earnings related compensation that is payable in accordance with an assessment or determination that has been made under this section.

40 “(8) Subject to subsection (10) of this section, where the Commission has made an assessment in accordance with subsection (1) or subsection (5) of this section and a relevant general wage order (as defined as aforesaid) increasing rates of remuneration comes into effect after the commencement of

this subsection and at a date after the date at which the assessment has been made or (in the case of an assessment made under subsection (5) of this section) is deemed to have been made, the amount of weekly compensation payable under that assessment (or that amount as for the time being increased under any of the provisions of subsections (3) and (9) of this section and this subsection) shall, on and after the date on which the order comes into effect, be increased to the same extent as it would be increased if it were a weekly rate of remuneration subject to that order. 5
10

“(9) The Governor-General may from time to time, by Order in Council, specify a percentage or amount by which (subject to subsection (10) of this section) the weekly amount for the time being of any earnings related compensation assessed or determined in accordance with this section (or of that compensation as for the time being increased in accordance with this subsection and subsection (8) of this section or either of those subsections) shall increase. Any such Order in Council may be made in relation to all such compensation or to such class or classes thereof as may be specified in the order, and may prescribe any limitation as to its effect, whether by way of reference to any persons or classes of persons, or to the time at which an accident has happened, or the date at which an assessment or determination under this section has been made, or (in the case of an assessment made under subsection (5) of this section) is deemed to have been made, or to the purposes for which the increase is to apply, or by way of any other specification, stipulation, condition, inclusion, or exclusion whatsoever. The Order in Council or any part or parts thereof may be made so as to come into effect on a date or dates to be specified therein in that behalf, being either the date of the Order in Council or any other date or dates, whether before or after the date thereof. 15
20
25
30

“(10) Notwithstanding anything to the contrary in the foregoing provisions of this section, the weekly amount of earnings related compensation for the time being payable to any person in accordance with the provisions of this section shall not exceed 80 percent of the amount which, for the time being, is the maximum amount prescribed for the purposes of subsection (13) of section 104 of this Act.” 35
40

(2) Section 113 of the principal Act is hereby consequentially amended by repealing paragraph (b) of subsection (1), and substituting the following paragraph:

5 “(b) After such an assessment has been made, at the rate specified in that assessment, or fixed by any determination made under subsection (3) of section 114 of this Act that is for the time being in force, as adjusted from time to time under subsections (8) and (9) of that section or either of those subsections.”

(3) Section 113 of the principal Act is hereby further
10 consequentially amended—

(a) By inserting in subsection (1), after the words “the provisions of this section”, the words “or section 114 of this Act”:

15 (b) By omitting from subsection (2), the words “For the purposes of this section and of section 114 of this Act”, and substituting the words “For the purposes of paragraph (a) of subsection (1) of this section”:

(c) By inserting in subsection (4), after the words “for any period”, the words “before an assessment has been made under section 114 of this Act”:

20 (d) By inserting in the proviso to subsection (4A), after the words “Provided that”, the words “for the purposes of paragraph (a) of subsection (1) of this section”:

25 (e) By inserting in subsection (4B), after the words “for any period of his incapacity”, the words “(whether that period is before or after the time at which an assessment is made under section 114 of this Act)”:

30 (f) By omitting from subsection (8) the words “paragraph (b) of subsection (1) or subsection (2)”, and substituting the words “subsection (1) or subsection (5)”.

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

35 (a) By omitting from paragraph (d) of section 115 of this Act the words “paragraph (b) of subsection (1) of section 114”, and substituting the words “subsection (1) or subsection (5) of section 114”:

(b) By omitting from paragraph (b) of subsection (2) of section 117 of this Act the words “paragraph (b) of”:

40 (c) By omitting from subsection (3) of section 117 of this Act the expression “subsection (2)”, and substituting the expression “subsection (5)”:

- (d) By omitting from subsection (1D) of section 151 of this Act the expression “114 (5)”, and substituting the expression “114 (4)”.

20. Increased compensation for full time earner in certain cases—(1) The principal Act is hereby amended by repealing section 116, and substituting the following section: 5

“116. (1) Where an earner, being an earner who is deemed to be a full time worker for the purposes of this section, suffers personal injury by accident in respect of which he has cover under this Act, and, as a result of that injury, suffers any loss of earning capacity during any period in respect of which earnings related compensation is payable to him under section 113 of this Act, if the rate of that compensation, calculated by reference to relevant earnings ascertained in accordance with section 104 or section 118 or subparagraph (ii) of paragraph (a) of section 117 (2) of this Act, would, apart from the provisions of this section, be less than the minimum rate provided for under subsection (2) of this section, the rate of his earnings related compensation for the period shall be increased to that minimum rate: 10 15 20

“Provided that, if the period is one to which subsection (4) of section 113 of this Act applies, the weekly rate of earnings related compensation payable to an employee for the period shall not, by reason of this section, exceed the amount (if any) by which the weekly rate of his relevant earnings in relation to that period is in excess of the weekly rate of the earnings as an employee paid to him by his employer for that period. 25

“(2) The minimum weekly rate of earnings related compensation payable to any person in the circumstances specified in subsection (1) of this section shall,— 30

“(a) In relation to complete loss of earning capacity, be the amount prescribed for the purposes of this section, being the amount specified in Part IV of the First Schedule to this Act or such other amount as may from time to time be specified for the purposes of this section by the Governor-General by Order in Council: 35

“Provided that, where the amount so prescribed would exceed 90 percent of the amount of the weekly rate of his relevant earnings, the weekly rate of earnings related compensation payable to the person shall be 90 percent of the amount of the weekly rate of his relevant earnings: 40

“(b) In relation to partial loss of earning capacity, be calculated in accordance with the following formula:

5
$$\frac{a}{b} \times c$$

where—

10 “(i) a is the amount of the weekly rate of his loss of earning capacity as determined under section 113 or section 114 of this Act; and

“(ii) b is the amount of the weekly rate of his relevant earnings; and

15 “(iii) c is the minimum weekly rate of earnings related compensation that would be payable to him under paragraph (a) of this subsection for complete loss of earning capacity.

“(3) For the purposes of the item in Part IV of the First Schedule to this Act that deals with the amount prescribed for the purposes of this section, a spouse or child of the injured person shall be deemed to be totally dependent on him only if that spouse or child was totally dependent on him at the time of the accident and only while such a spouse or child would, in the opinion of the Commission, have been continuously totally dependent on him if he had not suffered the injury.

25 “(4) In making an assessment under subsection (1) or subsection (5) of section 114 of this Act of the amount to be paid or that would have been paid to any injured person in respect of permanent loss of earning capacity in the circumstances specified in subsection (1) of this section, the Commission shall have regard to whether, at the date at which the assessment is made or (in the case of an assessment made under the said subsection (5)) is deemed for the purposes of the said section 35 114 to be made, the spouse (if any) and any child or children of the injured person would, in the opinion of the Commission, have been totally dependent on the injured person if he had not suffered the injury, and shall specify the extent (if any) by which that amount is to be reduced if and when any 40 such spouse or child would thereafter, in the opinion of the Commission, have ceased to be totally dependent on the injured person had he not suffered the injury.

“(5) For the purposes of this section, an earner shall be deemed to be a full time worker only if—

- “(a) He has, throughout such period before the date of the accident as the Commission may determine, worked as an earner in paid employment for an average of at least 35 hours a week; or
- “(b) The Commission is satisfied that he was, at the time of the accident, working in employment which would have required him to work in paid employment for an average of at least 35 hours a week, and that he would have continued in such employment if the accident had not occurred; or
- “(c) The Commission, after having regard to the work history of the earner and to any special circumstances which may exist at or about the time of the accident, determines that the earner shall be regarded as a full time worker for the purposes of this section.

“(6) Notwithstanding anything in the foregoing provisions of this section, where relevant earnings are ascertained under section 117 of this Act (whether under subparagraph (i) of paragraph (a) of subsection (2) or subsection (4) or subsection (5) of that section) for the purpose of assessing the amount of earnings related compensation for the time being payable at any stage mentioned in subparagraph (i) of paragraph (a) of subsection (2) of that section, the foregoing provisions of this section shall not apply.”

(2) The First Schedule to the principal Act is hereby amended—

- (a) By omitting from the item in Part IV relating to section 116 of the principal Act the words “employee or other person specified in that section with earnings below the prescribed amount”, and substituting in each case the words “worker in certain cases”;
- (b) By omitting the word “employee”, in each other place where it appears in that item, and substituting the word “worker”;
- (c) By inserting, before the word “dependent” wherever it appears in that item, the word “totally”.

21. Earnings related compensation where employee under 21, etc.—(1) Section 117 of the principal Act is hereby amended by adding to subparagraph (ii) of paragraph (a) of subsection (2) the following provisos—

“Provided that, for the purpose of determining his loss of earning capacity for the time being in respect of any period of incapacity after the commencement of that stage, being a period to which paragraph (a) of subsection (1) of section 5 113 of this Act applies, and for the purpose of assessing the weekly amount of earnings related compensation for permanent loss of earning capacity in respect of any period of incapacity after the commencement of that stage where such an assessment is made under subsection (1) or subsection (5) of 10 section 114 of this Act, the provisions of subsections (7) and (8) of section 104 of this Act shall apply as if that weekly sum were his relevant earnings ascertained in accordance with that section and as if the reference in the said sub- 15 section (7) to the date of the accident were a reference to the date at which that stage commenced:

“Provided also that the weekly sum shall not be affected by any relevant general wage order or Order in Council which may have come into effect before the commencement of that stage.”

20 (2) Section 117 of the principal Act is hereby further amended by omitting from subsection (6) the words “(not differing therefrom by more than 20 percent)”.

(3) Section 117 of the principal Act is hereby further amended by repealing subsection (7), and substituting the 25 following subsection:

“(7) This section shall not apply to an employee while a higher rate of compensation would be payable to him under section 118 of this Act.”

22. Compensation for loss of potential earning capacity in
30 **certain cases**—Section 118 of the principal Act is hereby amended—

(a) By inserting in subsection (2), after the expression “section 113”, the expression “or section 114”:

35 (b) By omitting from subsection (5) the words “(not differing therefrom by more than 20 percent)”:

(c) By omitting from subsection (6) the expression “section 116 or”.

23. Compensation for pecuniary loss not related to earn-
40 **ings**—(1) Section 121 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Where a person suffers personal injury by accident in respect of which he has cover under this Act, or where a person dies as a result of personal injury so suffered, the Commission, having regard to any other compensation payable and any rehabilitation assistance provided or to be provided, may, under this subsection, pay to him, or in the event of his death to his administrator, in addition to any other compensation and rehabilitation assistance to which he is entitled under this Act, compensation of such amount (if any) as it thinks fit for actual and reasonable expenses and proved losses necessarily and directly resulting from the injury or death, not being—

“(a) Any expense or loss in respect of damage to property; or

“(b) Any expense or loss incurred after the death of that person in respect of the administration of his estate; or

“(c) Any expense or loss arising from damage in respect of which, or to the extent to which, no payment is to be made under subsection (1) or subsection (1A) of section 110 of this Act, by reason of subsection (2) of that section; or

“(d) The loss of an opportunity to make a profit; or

“(e) Any loss arising from inability to perform a business contract; or

“(f) Any loss that has not for the time being actually occurred, whether or not the amount thereof is ascertainable before it occurs; or

“(g) Any expense or loss in respect of or towards payment of which compensation is otherwise payable under this Act.

“(1A) Notwithstanding anything in subsection (1) of this section, unless (in the opinion of the Commission) there are special circumstances that justify a payment being made under that subsection, no payment shall be so made in respect of any expense or loss if the Commission considers that the expense or loss is similar in nature to an expense or loss for which compensation is payable under any other provision of this Act.”

(2) Section 121 of the principal Act is hereby further amended by inserting in paragraph (b) of subsection (2), after the words “reasonable expenses”, the words “or losses”.

24. Duty to submit to medical examination and medical or surgical treatment—Section 132 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:

5 “(6) Where a person suffers personal injury by accident in respect of which he has cover under this Act or dies as a result of personal injury so suffered, no compensation shall be payable to any person, except so far as the Commission otherwise decides, in respect of or by reason of any loss,
10 expense, incapacity, impairment, pain, or suffering, that results from the injury, or in respect of or by reason of the death, if and so far as the loss, expense, incapacity, impairment, pain, or suffering is caused, continued, or aggravated, or (in the case of death) the death is caused, by an unreasonable
15 failure by the injured person to act in accordance with medical advice or by his unreasonable refusal to submit to medical treatment, or to any surgical treatment the risk of which is, in the opinion of the Commission, inconsiderable in view of the seriousness of the injury, or by his unreasonable refusal
20 to comply with any requirement of the Commission in relation to his rehabilitation:

“Provided that the Commission may pay or apply the whole or any part of the compensation that would, apart from this subsection, be payable in respect of or by reason of the
25 incapacity of the person for the maintenance and education of any dependant or dependants of the person.

“(7) Except so far as the Commission otherwise decides, no rehabilitation assistance under this Act in respect of or by reason of the incapacity of a person shall be given, if and so
30 far as his incapacity is caused, continued, or aggravated by any unreasonable failure or unreasonable refusal mentioned in subsection (6) of this section.”

25. Injured person to advise of subsequent increase of earnings before assessment of permanent incapacity—Section 136
35 of the principal Act is hereby amended by omitting from subsection (1) the words “directly from his personal exertions”.

26. Wilfully self-inflicted personal injuries and suicide—The principal Act is hereby amended by repealing section
40 137, and substituting the following section:

“137. (1) No compensation shall be payable under this Act in respect of—

“(a) Any personal injury that a person wilfully inflicts on himself or, with intent to injure himself, causes to be inflicted upon himself, or death resulting therefrom; or 5

“(b) The death of any person where the death was due to suicide, not being suicide that was the result of a state of mind that itself was the result of personal injury by accident in respect of which the person had cover under this Act: 10

“Provided that, in any case where a dependant of the injured or deceased person is in special need of assistance, and compensation would have been payable under this Act if the person had otherwise suffered personal injury or died as a result thereof, the Commission may, in its discretion and in such manner as it thinks fit, pay or apply the whole or such part as it thinks fit of the compensation that would have been so payable for the maintenance and education of the dependant or dependants of the injured or deceased person in special need of assistance or of such of them as the Commission thinks fit. 15 20

“(2) It shall be presumed, in the absence of proof to the contrary, that the death of any person was not due to suicide.

“(3) Except so far as the Commission otherwise decides, no rehabilitation assistance under this Act in respect of or by reason of the incapacity of a person shall be given, if and so far as his incapacity is caused, continued, or aggravated, by any physical injury that he wilfully inflicts on himself, or, with intent to injure himself, causes to be inflicted upon himself.” 25 30

27. Decisions and payments—Section 151 of the principal Act is hereby amended—

(a) By omitting from the proviso to subsection (1D) the words “subsection (1) of”: 35

(b) By omitting from subsection (3) the words “and compensation for loss of potential earning capacity”.

28. Functions of Appeal Authority—The principal Act is hereby amended by repealing section 161, and substituting the following section: 40

“161. The functions of the Appeal Authority shall be to sit as a judicial authority for the determination of any appeal that lies to that Authority in accordance with the provisions of section 162 of this Act.”

- 5 **29. Powers to decide matters relevant to determination of cover and classifying vehicles**—The principal Act is hereby amended by inserting, after section 170, the following section:
- 10 “170A. (1) The Commission may decide such matters as it considers relevant for the purpose of determining the cover (if any) under Part IV or Part IV_A of this Act of any person, and for the purpose of classifying any vehicles for the purpose of determining the rate of any levy to be paid under Part IV of this Act.
- 15 “(2) Upon notice in writing of any such decision being given to the person concerned, the decision shall be binding on that person, subject to the provisions of Part VII of this Act.”