

## WORKERS' COMPENSATION AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Workers' Compensation Act 1956.

*Clause 1* relates to the Short Title.

*Clause 2:* By section 23 of the principal Act (as substituted by section 12 of the Workers' Compensation Amendment Act 1962) an employer may be liable to pay the reasonable cost of an artificial limb or aid for an injured worker and of its normal repair or renewal. There is no longer any limit either as to time or amount in respect of the cost of repair or renewal.

The purpose of this clause is to enable employers to discharge their liability for future repair and renewal by paying a lump sum into the Social Security Fund, which will thereafter be liable for the reasonable cost of repair and renewal. The provision is limited to artificial arms, hands, legs, and feet.

The clause makes the following provision:

- (a) Payment of a lump sum to an injured worker for the cost of the future repair or renewal of the artificial limb is prohibited, except in cases where the worker is leaving New Zealand permanently within a year.
- (b) The employer must pay into the Social Security Fund an amount fixed by regulations in respect of the cost of the repair and renewal of the artificial limb.
- (c) The worker will be entitled to have the normal repair and replacement of the artificial limb effected free of charge by the Discharged Servicemen's Re-establishment League Incorporated or by any other body or person specified by the Minister of Labour by notice in the *Gazette*.
- (d) The reasonable cost of that repair and replacement will be a charge on the Social Security Fund.

*Clause 3:* Section 52 of the principal Act provides that no action for compensation shall be maintained unless notice of the accident has been given to the employer as soon as practicable. The failure to give notice or any defect or inaccuracy in any such notice will not be a bar in certain cases, including any case where the Court is of opinion that the failure or defect or inaccuracy is due to mistake. Section 53 of the principal Act bars a claim for compensation unless action is commenced within the time specified in the section, but failure to commence an action within the specified time will not be a bar in certain cases, including any case where the Court is of opinion that the failure was due to mistake.

It has been held that "mistake" in a similar context in the Limitation Act 1950 means a mistake of fact and not a mistake of law. This clause amends sections 52 and 53 so as to provide that a mistake of law (other than mistake as to the provisions of the section applicable) as well as mistake of fact is a ground for waiving the failure to give notice or for allowing an action to be commenced after the expiration of the limitation period.

The existing provision is to continue to apply to causes of action in respect of which an action has been commenced before the passing of the Bill. In other cases where the cause of action accrued before the passing of the Bill, the sections as amended are to apply.

*Clause 4:* Section 114 (5) of the principal Act provides that money in the Workers' Compensation Account which is available for investment may be invested by the Workers' Compensation Board in trustee securities. This clause will enable such money to be invested also in any other manner approved by the Minister of Finance.

*Clause 5* is consequential on *clause 2*, and authorises the making of regulations fixing a scale of the amounts payable by employers into the Social Security Fund. Different amounts may be fixed having regard to the age of the workers concerned and to other relevant factors.

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*Hon. Mr Shand*

## WORKERS' COMPENSATION AMENDMENT

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### ANALYSIS

Title	3. Notice of accident, and limitation of actions
1. Short Title	4. Workers' Compensation Account
2. Repair and replacement of artificial limbs	5. Regulations

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### A BILL INTITULED

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

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

**1. Short Title**—This Act may be cited as the Workers' Compensation Amendment Act 1963, and shall be read together with and deemed part of the Workers' Compensation Act 1956\* (hereinafter referred to as the principal Act).

10 **2. Repair and replacement of artificial limbs**—(1) The principal Act is hereby further amended by inserting, after section 23 (as substituted by section 12 of the Workers Compensation Amendment Act 1962), the following section:

\*1957 Reprint, Vol. 16, p. 799  
Amendments: 1960: No. 111; 1962, No. 123

“23A. (1) Except as provided in subsection (3) of this section, compensation payable pursuant to section 23 of this Act for the reasonable cost of the normal repair or renewal of an artificial arm, hand, leg, or foot shall not be payable to the worker in a lump sum.

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“(2) Where pursuant to section 23 of this Act the employer is liable to pay the reasonable cost of the normal repair and renewal of an artificial arm, hand, leg, or foot—

“(a) Except as provided in subsection (3) of this section,

the employer shall, within three months after the making of an agreement between the employer and the worker for the settlement of the claim for compensation, or, as the case may be, within three months after the award of compensation by the Compensation Court or a Magistrate's Court, pay into the Social Security Fund established by the Social Security Act 1938 the appropriate amount prescribed by regulations made under this Act in respect of the cost of the normal repair and renewal of the artificial arm, hand, leg, or foot, and upon that payment being made the employer shall be completely discharged from any liability to pay compensation in respect of the normal repair or renewal of the artificial arm, hand, leg, or foot:

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“(b) The worker shall be entitled to have the normal repair or renewal of the artificial arm, hand, leg, or foot effected, free of any charge to him, by the Disabled Servicemen's Re-establishment League Incorporated or by any other body or person specified from time to time by the Minister, by notice in the *Gazette*. The reasonable cost of that repair or renewal shall be defrayed from the Social Security Fund in accordance with the provisions of section 106B of the Social Security Act 1938 (as inserted by section 54 of the Social Security Amendment Act 1963).

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“(3) Nothing in subsection (1) of this section or in paragraph (a) of subsection (2) of this section shall apply in any case where, before the expiration of the period of three months specified in that paragraph, the worker makes and delivers to the employer or his insurer a statutory declaration stating that he intends to leave New Zealand permanently within twelve months after the making of the agreement for the settlement of the claim for compensation or, as the case may be, after the award of compensation by the Court.

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“(4) Any amount payable by an employer into the Social Security Fund pursuant to paragraph (a) of subsection (2) of this section shall be recoverable from him as a debt owing to the Crown.

5 “(5) Every person commits an offence, and is liable on summary conviction to a fine not exceeding twenty-five pounds, who—

“(a) Enters into any agreement for payment of a lump sum in breach of the provisions of subsection (1) of this section; or

10 “(b) Being an employer, fails to comply with the provisions of paragraph (a) of subsection (2) of this section.”

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

15 (3) Nothing in this section shall apply with respect to claims for compensation or other rights or liabilities in respect of accidents happening before the commencement of this section.

**3. Notice of accident, and limitation of actions—**(1) Section 20 52 of the principal Act is hereby amended by inserting in subsection (2), after the word “mistake”, the words “of fact or mistake of any matter of law other than the provisions of this section”.

25 (2) Section 53 of the principal Act is hereby amended by inserting in subsection (4), after the word “mistake”, the words “of fact or mistake of any matter of law other than the provisions of this section”.

30 (3) In respect of any cause of action in respect of which an action has been commenced before the passing of this Act, subsection (2) of section 52 and subsection (4) of section 53 of the principal Act shall apply as if this section had not been passed.

35 (4) In respect of any other cause of action which accrued before the passing of this Act, subsection (2) of section 52 and subsection (4) of section 53 of the principal Act shall apply as if this section had come into force before that cause of action accrued.

**4. Workers' Compensation Account—**Section 114 of the principal Act is hereby amended by adding to subsection (5) 40 the words “or in any other manner that may from time to time be authorised by the Minister of Finance”.

**5. Regulations**—Section 136 of the principal Act is hereby amended by adding to subsection (2) the following paragraph:

“(i) Prescribing a scale of amounts payable into the Social Security Fund under section 23A of this Act in respect of the repair or renewal of artificial arms, hands, legs, and feet for injured workers, and prescribing different amounts having regard to the age of the workers concerned and to any other relevant factors.”

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