

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

COMMONWEALTH EMPLOYEES' REHABILITATION AND COMPENSATION
AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Industrial Relations,
Senator the Honourable Peter Cook)



COMMONWEALTH EMPLOYEES' REHABILITATION AND COMPENSATION
AMENDMENT BILL 1990

OUTLINE

This Bill proposes amendments to the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (the Act).

Amendments are proposed to ensure that the Act applies to non-police staff members of the Australian Federal Police appointed since 1 January 1990 when certain new employment arrangements took effect.

Other amendments are proposed to allow the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (the Commission) to have regard to the amount that former employees (that is, persons who were receiving compensation on 1 December 1988 and who were no longer employed by the Commonwealth at that date) are able to earn in suitable employment.

The amount that former employees are able to earn would reduce their entitlement to compensation under the Act.

Provisions of this nature are normal in workers' compensation legislation and the Act currently provides for reductions in the benefits payable to current employees who are capable of earning income from suitable employment.

The non-inclusion of an "able to earn" test in the provisions relating to the calculation of weekly benefits payable to former employees was the result of an omission which occurred in the development of the Act.

FINANCIAL IMPACT STATEMENT

It is estimated that the amendments to the Act that would be made by this Bill will save the Commission approximately \$3m in a full year. Additional savings will be made by the two "administering authorities", Telecom and Australia Post.

NOTES ON CLAUSES

Clause 1 : Short title etc.

The Short Title of the Act is specified in subclause 1(1) of the Bill. Subclause 1(2) defines the term "Principal Act" in the Bill to mean the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (the Act).

Clause 2 : Commencement

Clause 2 makes provision for the dates of commencement of the various clauses.

Subclause 2(1) provides for the commencement of clauses 1 and 2 on the date of Royal Assent.

Subclause 2(2) provides that the amendment which would be made by clause 3 would be taken to have commenced on 1 January 1990.

By subclauses 2(3) and (4), clauses 4, 5, 6 and 7 would come into effect on a day to be proclaimed or six months after the date of Royal Assent, whichever is earlier.

Clause 3 : Employees

Section 5 of the Act defines "employee" to mean a person employed by the Commonwealth or by a Commonwealth authority. Subsection 5(2) provides that certain persons, such as members of the Defence Force and members of the Australian Federal Police, are to be taken to be employees of the Commonwealth for the purposes of the Act.

Clause 3 would amend section 5 of the Act to ensure that the Act would apply to staff members, that is, non-police staff, of the Australian Federal Police who are appointed under the Australian Federal Police Act 1979. These persons were previously employed under the Public Service Act 1922. However, recent amendments to the Australian Federal Police Act provide for the engagement of these persons in future by appointment under that Act. Clause 3 would remove any doubt that staff members so appointed would be covered by the Act.

By subclause 2(2), this amendment would be taken to have commenced on 1 January 1990. The retrospective commencement of this provision would ensure that all staff members of the Australian Federal Police, including those who have been appointed since 1 January under the new arrangements provided for in the Australian Federal Police Act, would be entitled to claim compensation under the Act for any injuries suffered by them from that date.

Clause 4 : Former employees under 65 who are in receipt of superannuation benefits and are unable to engage in any work

The amendments which would be made by this clause and clauses 5, 6 and 7 are designed to enable the Commission to take account of the amount that former employees who have a residual capacity for work are able to earn in suitable employment.

Former employees are defined in section 123 of the Act to mean persons who, immediately before the commencing day, were receiving weekly compensation under the repealed Compensation (Commonwealth Government Employees) Act 1971 and who had ceased to be employees within the meaning of that Act before that day. Special transitional provisions applicable to former

employees were included in the Act to protect them from the full operation of certain provisions, such as the age 65 cut-off of benefits and the dollar for dollar reduction in compensation benefits payable to persons entitled to weekly superannuation benefits. However, a provision which would have enabled the Commission to have regard to the amount that former employees are capable of earning was omitted.

Clauses 4, 5 and 6 would remedy that omission by amending sections 131 and 132 of the Act and inserting a new section 132A, the effect of which would be to enable the Commission to reduce the amount of compensation otherwise payable to former employees by the amount that they are able to earn in suitable employment. Such an "able to earn" test is common to workers' compensation Acts throughout Australia.

Clause 4 would amend section 131 of the Act, which sets out rules for the calculation of benefits payable to former employees who are in receipt of a superannuation pension. The amount payable to a former employee under section 131 is based on the amount that was payable to the former employee under the repealed Compensation (Commonwealth Government Employees) Act 1971 (1971 amount) and the amount of his or her weekly superannuation entitlements. If the former employee's 1971 amount, together with his or her superannuation benefit, exceeded 95% of his or her normal weekly earnings at 1 December 1988, the amount payable under section 131 from that date was an amount which, when added to the superannuation benefit, provided the former employee with 95% of his or her normal weekly earnings. The compensation entitlement is frozen at that rate until the combined benefits equal 70% of the former employee's normal weekly earnings, where it is maintained.

The compensation payable to a former employee whose combined superannuation and compensation benefits were between 70% and 95% of his or her normal weekly earnings at 1 December 1988 was frozen at the rate payable under the 1971 Act until the combined benefits equal 70% of normal weekly earnings. If the combined benefits were less than 70% of the employee's normal weekly earnings at 1 December 1988, the amount of compensation payable was increased to bring the combined benefits up to that rate.

Clause 4 would omit subsection 131(1) and substitute a new subsection which would make the section apply only to those former employees who were under 65 years of age and in receipt of a Commonwealth-funded superannuation pension on the commencing day (1 December 1988) and who are totally incapacitated for work.

By subclause 2(3), this amendment would take effect on a date to be proclaimed.

Clause 5 : Former employees under 65 who are not in receipt of superannuation benefits and are unable to engage in any work

This clause would amend section 132 in a manner similar to the amendment to section 131 which would be made by clause 4.

Section 132 sets out rules for the calculation of benefits payable to former employees who do not receive weekly superannuation benefits.

The amount of compensation payable under section 132 is based on the amount that the former employee was receiving under the repealed 1971 Act immediately before the commencing day. If

the 1971 amount was greater than 95% of the former employee's normal weekly earnings, the amount payable under section 132 was reduced to 95% of normal weekly earnings. It is frozen at that rate until the benefit equals 70% of normal weekly earnings, where it is maintained until the employee reaches 65 years of age. If the 1971 amount was between 70% and 95% of the former employee's normal weekly earnings, the amount payable under section 132 was the 1971 amount. When that amount equals 70% of normal weekly earnings, the benefit is indexed to maintain it at that rate. If the 1971 amount was less than 70% of normal weekly earnings, the amount payable under section 132 was increased to bring his or her benefit up to that rate, where it is maintained.

Clause 5 would amend section 132 by omitting subsection 132(1) and substituting a new subsection which would make the section apply only to those former employees who were under 65 years of age and not in receipt of a Commonwealth-funded superannuation pension at 1 December 1988 and who are totally incapacitated for work.

By subclause 2(3), this amendment would take effect on a date to be proclaimed.

Clause 6 : New section : Former employees under 65 who are capable of earning an amount in suitable employment

This clause would insert a new section 132A into the Act to provide rules for the calculation of weekly compensation benefits payable to former employees who are not totally incapacitated for work.

New subsection 132A(1) would provide that the section applies to former employees who were under 65 at 1 December 1988 and who are capable of earning weekly income from suitable employment.

New subsection 132A(2) would provide that the amount of compensation payable to a former employee who is in receipt of a superannuation pension is:

- (a) the amount that would have been payable under section 131 of the Act, less the amount that he or she is able to earn in suitable employment; or
- (b) the amount that would have been payable to him or her under section 20 of the Act if that section had applied;

whichever is the greater.

(Section 20 of the Act sets out the method of calculating the amount of compensation payable to employees who have been invalided out of Commonwealth employment since the commencement of the Act. The amount payable to these persons is the amount that they would have received under section 19 if they had not been invalided out of Commonwealth employment, less the amount of their superannuation benefit attributable to Commonwealth contributions and the amount that they would have contributed to the superannuation scheme if they had remained employed.)

New subsection 132A(3) would apply to former employees who are not totally incapacitated and were not in receipt of a Commonwealth funded superannuation benefit on 1 December 1988. The amount of compensation payable to these persons would be:

- (a) the amount that would have been payable under section 132, less the amount that they are able to earn in suitable employment; or

- (b) the amount that would have been payable to them under section 19 of the Act, less an amount equal to five per cent of their normal weekly earnings;

whichever is the greater.

(Section 19 of the Act contains formulae for calculating the amount of compensation payable to employees who are incapacitated for work. After the first 45 weeks of incapacity, the amount of compensation payable to an employee who is totally incapacitated for work is 75% of his or her normal weekly earnings (that is, his or her pre-injury earnings plus certain allowances and regular overtime payments). Section 19 also provides "make-up" compensation on a sliding scale depending on the number of hours the employee works. For example, an injured employee who works for 5 hours per week would be entitled to an amount of compensation which, when added to the wages for that employment, would provide an income equal to 80% of his or her normal weekly earnings. An employee who can work 22 hours per week would be entitled to combined compensation and earnings equal to 90% of his or her normal weekly earnings.)

New paragraph 132A(3)(b) would reduce the amount payable to former employees by five per cent. This would take account of the fact that former employees are no longer contributing to a Commonwealth superannuation scheme.

New subsection 132A(4) would provide that, in determining the amount that a former employee is able to earn in suitable employment, the Commission must have regard to the same factors as it would have regard to in determining the amount that a current employee is able to earn. These factors are set out in subsection 19(4) of the Act and include such matters as -

- . the amount that the employee is actually earning;
- . the amount that the employee would be earning if he or she had remained in, or accepted an offer of, suitable employment; and
- . if the employee failed to seek suitable employment, the amount that, having regard to the state of the labour market, the employee could reasonably expect to earn if he or she had sought work.

By subclause 2(3), this amendment would come into effect on a date to be proclaimed.

Clause 7 : Reduction of compensation on reaching 65

This clause would make an amendment to section 134 of the Act which is consequential upon the amendments which would be made by clauses 4, 5 and 6.

Section 134 of the Act provides that the amount of compensation which would otherwise have been payable to a former employee under section 131 or 132 shall be reduced when the employee turns 65 by five per cent for each year that the Act had been in operation. For example, the weekly benefit payable to a former employee who was 60 years old at 1 December 1988 would be reduced by 25 per cent on his or her 65th birthday.

Clause 7 would insert a reference to new section 132A in section 134.

By subclause 2(3), this amendment would come into effect on a date to be proclaimed.

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