Commonwealth Employees Rehabilitation and Compensation Bill 1988

Date Introduced: 27 April 1988
House: House of Representatives
Presented by: The Hon. Brian Howe, Minister for Social Security

Digest of Bill

Purpose
This Bill will replace the Compensation (Commonwealth Government) Employees' Act 1971 (the Principal Act) as the principal legislation governing compensation and rehabilitation for Commonwealth government employees.

Background
The Principal Act contains the workers' compensation scheme that applies to employees of Departments, the Defence Forces, Commonwealth Statutory Authorities and employees of the Northern Territory Government and statutory authorities. Compensation may be payable under the Principal Act for personal injury arising out of, or in the course of, employment, damage to an artificial aid or appliance in the course of employment or for the contraction, aggravation or acceleration of a disease to which employment is a contributing factor. The major class of compensation is that for injury. For example, in 1985–86, 32,096 new cases of injury were dealt with, compared with 6950 new cases relating to disease and 165 for damage to an artificial aid. For permanent compensation cases (i.e. those where the person has left Commonwealth employment and still receives compensation payments) the major causes are back injury and disease (30.9%), internal injuries or disease (18.7%), and sprains and strains (14.7%). RSI injuries account for 7.5% of such cases.

Much concern has been expressed in recent years about the increasing number of cases being handled and the increasing cost of the scheme. This was noted in the introduction to the Commissioner for Employees' Compensation 1985–86 Annual Report (the latest available). The number of new cases reported has increased each year since 1976–77 when 26,885 new cases were reported. In 1985–86 this had risen to 39,211 new cases, an increase of 45.9%. Expenditure on the scheme has increased at a much faster rate. While the total number of cases handled (i.e. new and continuing cases) has increased from 33,781 in 1976–77 to 67,548 in 1985–86 (an increase of 100%), expenditure has risen
from $72.7 million in 1976–77 (in 1986–87 dollar terms) to $215.5 million in 1986–87 (an increase in real terms of 196.4%). Part of the increase in cost can be explained by factors that have affected the entire community, such as the increased payments that must be made due to wage increases, but these factors do not explain the entire size of the increase.

One area of concern in this area is the relationship between compensation payments and superannuation payments. Under the Principal Act, no account is taken of income from other sources when determining the level of compensation payments, which are determined on the basis of the degree of incapacity and loss. Similarly, compensation payments are not taken into account when determining retirement benefits when the retirement occurs due to the person reaching maximum retirement age.

Further problems identified with the present scheme include its funding and the responsibility to take action to reduce compensation claims. The present scheme is not fully funded (i.e. when a liability arises, the payment into the fund is not sufficient to cover the on-going costs of the claim), with agencies contributing to match their share of the year’s payments. Under the proposed scheme, agencies will be required to contribute to the scheme on a fully-funded basis to cover emerging liabilities. Associated with this will be an increased incentive to reduce compensation claims. This will occur as the premiums will be paid from budgets, and savings will be offered to those agencies with good records.

While the introduction of this scheme follows consultations with the appropriate unions, full agreement was not reached and the ACOA, in particular, has been critical of aspects of the new scheme. The major objection centres on the effect of the proposed scheme on those currently receiving payments from both the superannuation and compensation schemes and the removal of the common law right to sue.

Outline

The Bill is divided into ten parts, the most important being Parts I to III which deal with compensation and rehabilitation.

Main features of the scheme are the removal of the right to sue for damages at common law and new formulas for assessing levels of compensation payment. Full earnings will be paid for a period of 45 weeks (26 at present) and after 45 weeks 75% of pre-injury earnings will generally be paid. Maximum lump sum payments for permanent injuries will be increased from $57,780 to $80,000, while that for death will be more than doubled to $120,000.
Main Provisions

‘Employee’ is defined in clause 5. The definition is wide, with employee being taken to mean, unless a contrary intention appears, any person employed by the Commonwealth, including those employed under a contract of service or apprenticeship. This includes members of the Australian Federal Police and Defence Forces and people holding an office established under a law of the Commonwealth or Northern Territory.

Without limiting the circumstances in which injuries may be taken to have arisen out of, or in the course of, employment, clause 6 lists a number of occasions when this will be taken to have occurred. These include injury sustained as a result of a violent act that would not have occurred except for the person’s employment, and injuries that occur while the employee is at work, travelling to or from work, travelling between places of work, or travelling between an education institution except where this occurs while the person is on leave without pay. However, the employee will not be covered while travelling where the route taken substantially increases the risk of injury compared to a more direct route or where the journey is interrupted in a way that substantially increases the risk of injury.

Where an employee is suffering from a disease, the symptoms of which first appeared after the person became employed by the Commonwealth, and the Minister has specified that the disease relates to the kind of employment engaged in, the employment will be taken to have contributed in a material way to the contraction of the disease. This will not apply where a contrary intention is made clear. Similar provisions apply for the aggravation of diseases (clause 7).

The calculation of normal weekly earnings is detailed in clause 8. For a relevant period (see below), this will be calculated in accordance with a formula based on the average weekly hours worked over the relevant period, the average hourly rate of pay received during the period and a weekly average of any allowance payable to the employee. Where the person was required to work regular overtime, an additional component based on the average hours of overtime worked during the period and the average rate of pay, will be added. Where an employee is employed on a part-time, temporary or unpaid basis, any earnings from any other source of employment will be taken to be earnings from the Commonwealth. The clause also has provision for the adjustment of weekly earnings to take account of any pay increase that would occur due to an increase in award wages, a change in age or the receipt of an increment. Also, if the person continues to be employed by the Commonwealth and their weekly earnings increase due to promotion, the pre-injury weekly earnings will be adjusted to reflect the pay increase.

Relevant period is defined in clause 9. This will generally be the latest period of two weeks preceding the injury. The clause also contains provisions to ensure that this period accurately reflects the true situation.
Part II of the Bill (clauses 14 to 33) deals with compensation. Clause 14 will make the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (the Commission), liable to pay compensation for injuries, other than those intentionally self-inflicted. Similarly, compensation will not be payable in respect of injuries caused by the serious and wilful misconduct of the employee. However, in the latter case, compensation will be payable where the injury results in death or serious and permanent impairment. Clause 15 provides for compensation to be paid for the loss of, or damages caused to, property of the employee. Clause 16 provides for compensation to be paid for medical expenses, including some travel to receive medical treatment. Specifically, compensation will be payable for travel that required the use of public transport or an ambulance; or required the person to travel a substantial distance to receive the treatment.

Clause 17 deals with compensation for injuries resulting in death. Subject to the payment of medical and funeral expenses, no compensation will be payable in respect of a person who dies without leaving dependants. Where the person dies and leaves dependants who are wholly dependent on that person, compensation of $120 000 will be payable. Where the dependants are only partially dependent on the deceased, the Commission is to determine the amount payable, to the maximum, based on the degree of loss. Where there is a child of the deceased who is under 16, or between 16 and 25 and a full-time student, who would have been mainly dependent on the deceased had they not died, a weekly benefit of $40 is payable in respect of the child.

Clause 18 provides for the payment of funeral expenses to a maximum of $1500.

Clauses 19 to 23 deal with compensation for injuries resulting in incapacity for work. Clause 19 contains the general provisions that are to apply to employees. For the first 45 weeks of the incapacity to work, the Commission is to pay the employee an amount equal to the employee’s normal weekly earnings less any amount the employee has been able to earn during the week. For other weeks, the amount of compensation payable will depend on the amount of employment during the week. These provisions aim to encourage people to re-enter the workforce. If the person is not employed during the week, they will be paid an amount equal to 75% of their normal weekly earnings. If the person is employed for 25% or less of their normal weekly hours, compensation payments will be added to any earnings so that the person’s income is 80% of their normal weekly earnings. The following apply for greater employment:

- 25–50% of normal hours – 85% of normal weekly earnings;
- 51–75% of normal hours – 90% of normal weekly earnings;
- 76–100% of normal hours – 95% of normal weekly earnings.
weekly earnings; and 100% of normal hours – 100% of normal weekly earnings. Where the person has been offered suitable work after becoming incapacitated and fails to accept that work, the Commission may have regard to the amount the person would have earned if they had accepted the employment when determining the level of compensation payments. Similar provisions apply for people who fail to seek employment. Where the amount received exceeds 150% of average weekly ordinary time earnings, as published by the Australian Statistician, the payments are to be reduced by the level of excess. Similarly, the Bill proposes that injured employees receive at least $202 per week or 90% of normal weekly earnings. This minimum amount will be increased where there are people dependent on the injured employee.

Clause 20 deals with the case of people who receive a superannuation pension. The clause will only apply to people who retire after the commencement of this Bill. Under the clause, the amount of compensation payable will be reduced so that the combined superannuation and compensation payments equal the amount that would be payable under clause 19. Similarly, where the employee has received a superannuation lump sum benefit, this will be apportioned so that weekly income equals the amount that would have been payable under clause 19.

Compensation for incapacity will not be payable to a person who has reached 65, nor to a person in prison (clause 23).

Injuries resulting in permanent impairment are dealt with in clause 24. The Commission is to determine the degree of impairment as a percentage (in accordance with the approved guide – see clause 28) and the same percentage of the maximum benefit will be payable to the employee. The maximum benefit will be $80,000, though no compensation will be payable where the degree of permanent impairment is less than 10%. In addition, an amount is to be paid for non-economic loss which is defined as loss or damage of a non-economic kind suffered by the employee including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life. The amount will be calculated in accordance with the formula contained in the clause. The formula is ($15,000 x A) + ($15,000 x B), where A is the percentage degree of permanent impairment as determined in clause 24, and B is the degree of non-economic loss determined by reference to the guide.

Clause 29 provides for the Commission to pay for certain household and attendant care services. Where, due to the injury, an employee obtains household services that are reasonable in the circumstances, the Commission is to pay to the employee an amount that it considers reasonable, being not less than 50% of the cost of the services and not more than $200 per week. Where the employee reasonably requires attendant care, the Commission is to pay compensation of $200 per week or the amount paid for those services, whichever is the lesser.
Where the amount of compensation payable is $50 per week or less and the Commission is satisfied that the degree of incapacity is unlikely to change, the Commission may determine that the liability may be redeemed by the payment of a lump sum calculated in accordance with the formula contained in clause 30.

Part III of the Bill deals with rehabilitation. Clause 34 provides for the Commission to approve rehabilitation providers. Clause 36 provides for qualified persons to assess the capability of an employee to undertake a rehabilitation program. If the employee refuses to undergo such an examination, their compensation payments may be suspended. Clause 37 provides for rehabilitation authorities (i.e. generally the employing Department or Authority) to make arrangements with an approved provider to provide a rehabilitation plan for an employee. Clause 38 provides for the Commission to review certain decisions of rehabilitation authorities. Where an employee has been impaired and has undertaken a rehabilitation plan, or is assessed as incapable of undertaking such a program, the relevant authority will be liable to pay the reasonable costs of home or car alterations and the cost of any aids needed. Also, where the employee has undertaken a rehabilitation plan, the relevant employer will have a duty to take all reasonable steps to provide, or find, suitable employment for the person (clause 40).

Clause 44 provides that actions for damages for injury or death of an employee (i.e. civil suits) will not lie against the Commonwealth after the commencement of the Bill. This will occur whether the injury or death occurred before or after the commencement of this Bill unless the action has been instituted before the Bill comes into force.

Clause 48 will allow the Commission to commence action against third parties to recover amounts paid as compensation when the third party may be liable for the loss.

Clause 50 will make it clear that people cannot recover benefits both under this Bill and an award.

Part V of the Bill deals with claims. Claims must be made as soon as practicable after the employee becomes aware of the injury (clause 51). Medical examinations (clause 55) and the provision of information by the employee (clause 56) may be required.

Part VI provides for review of most decisions made under this Bill by the Administrative Appeals Tribunal.
Part VII will establish the Commission for the Safety, Rehabilitation and Compensation of Commonwealth employees. The Commission’s main function will be to enforce this Bill and to minimise the duration and severity of injuries by quickly arranging for rehabilitation (clause 67). The Commission will consist of a Chief Executive Officer, a Commissioner representing employees and a Commissioner representing the Commonwealth (clause 73). The remainder of the part largely deals with standard matters such as appointment, conflict of interests, removal, remuneration etc.

Part VIII enables the Minister to declare by notice in writing that a Commonwealth Authority will be administering authority to determine claims, encourage rehabilitation and to ensure uniformity of administrative procedures with the Commission.

The Commission’s funds will be appropriated by Parliament (clause 89), and the Commission will be exempt from all taxes (clause 91). Clause 94 will require the Commission to prepare estimates of the amount to be contributed from each agency and any bonus or penalty amount. The calculation of the amount to be contributed (other than the bonus or penalty amount) will be determined in accordance with the formula contained in clause 94. This is based on the liability of claims made from employees of the agency and administrative costs. The bonus amount will be the amount the Commission determines should be deducted from the agency’s contribution due to its good record. Similarly, a penalty amount may be imposed for a bad record, these aim to give agencies an incentive to improve their records.

Part X deals with transitional provisions, consequential amendments and repeals.

For further information, if required, contact the Law and Government Group.

25 May 1988

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Commonwealth of Australia 1988
Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.