

AUSTRALIAN NATIONAL RAILWAYS AMENDMENT ACT 1978

No. 9 of 1978

An Act to amend the *Australian National Railways Act 1917*, and for other purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

Short title,
&c.

1. (1) This Act may be cited as the *Australian National Railways Amendment Act 1978*.¹

(2) The *Australian National Railways Act 1917*² is in this Act referred to as the Principal Act.

Commence-
ment

2. This Act shall be deemed to have come into operation on 1 March 1978.

Interpret-
ation

3. Section 4 of the Principal Act is amended—

(a) by inserting, after the definition of “Goods”, the following definition:

“ ‘Long Service Leave’ includes long leave, furlough, extended leave and any other leave in the nature of long service leave (howsoever referred to); ”; and

(b) by inserting, after the definition of “Railway Service”, the following definitions:

“ ‘Transferred South Australian Employee’ means a person who is appointed to the Railway Service in pursuance of the *Railways Agreement (South Australia) Act 1975*;

“ ‘Transferred Tasmanian Employee’ means a person who is appointed to the Railway Service in pursuance of the *Railways (Tasmania) Act 1975*; ”.

Super-
annuation

4. Section 51 of the Principal Act is amended by omitting from subsection (5) the definitions of “transferred South Australian employee” and “transferred Tasmanian employee”.

5. After section 51 of the Principal Act the following sections are inserted:

“52. (1) Subject to sub-section (2), the eligibility of a transferred South Australian employee to be granted a period of long service leave, or of such an employee, or of the dependants of such an employee, to be paid an amount of money in lieu of long service leave, shall be determined—

Long Service
leave
entitlements
of
transferred
South
Australian
employees

- (a) by applying the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*; or
- (b) by applying the relevant South Australian long service leave provisions and treating the service of the transferred South Australian employee in the employment of the Commission as service as an Officer for the purposes of those provisions,

whichever has the more favourable effect in relation to that employee or his dependants, and a period of long service leave may be granted, or the payment of an amount of money in lieu of long service leave may be authorized, under the *Long Service Leave (Commonwealth Employees) Act 1976*, accordingly.

“(2) For the purposes of sub-section (1), the period of long service leave which a transferred South Australian employee would, at any time, but for this sub-section, be eligible to be granted under the relevant South Australian long service leave provisions in respect of a period of service is subject to an appropriate reduction in respect of a period of long service leave that has previously been granted to him, or of any amount of money in lieu of long service leave that has previously been paid to him, in respect of any part of that period of service.

“(3) For the purposes of applying the relevant South Australian long service leave provisions to or in respect of a transferred South Australian employee, the Public Service Board and any persons authorized to grant long service leave to that employee, or to authorize a payment of money in lieu of long service leave to or in respect of that employee, under the *Long Service Leave (Commonwealth Employees) Act 1976*, have all the powers conferred by those provisions upon the Public Service Board of the State of South Australia.

“(4) In this section, a reference to the relevant South Australian long service leave provisions shall be read as a reference to those provisions of the *Public Service Act 1967* of the State of South Australia as in force at 1 March 1978 that relate to long service leave.

“52A. (1) Where—

- (a) the provisions of By-law No. 70 for the granting of long service leave or pay in lieu of long service leave applied, immediately before 1 March 1978, to an employee; and
- (b) the employee had been employed under this Act immediately before 7 October 1944,

Long service
leave entitle-
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employees to
whom
By-law 70
was
applicable

this section applies to the employee.

“(2) On and after 1 March 1978—

- (a) an employee to whom this section applies may be granted a period of long service leave under, and in accordance with, By-law No. 70 as if that By-law had not been repealed; and
- (b) a payment of pay in lieu of long service leave may be made to, or in relation to, an employee to whom this section applies under, and in accordance with, By-law No. 70 as if that By-law had not been repealed.

“(3) In this section—

- (a) a reference to By-law No. 70 shall be read as a reference to By-law 70 made under this Act on 24 June 1936; and
- (b) a reference to an employee shall be read as including a reference to an officer.

Compensation payable to certain transferred South Australian employees

“52B. (1) If, when a claim for compensation in relation to an injury sustained on or after 1 March 1978 by a transferred South Australian employee is served on the Commissioner by or on behalf of a person under section 54 of the *Compensation (Commonwealth Government Employees) Act 1971*, there is also served on the Commissioner an election, in accordance with a form prescribed by regulations made under that Act, by or on behalf of the person to have the claim dealt with in accordance with the applied South Australian provisions, that Act applies to and in relation to the claim, subject to this section, as if the applied South Australian provisions were substituted for the provisions of Part III of that Act and section 98 of that Act were omitted.

“(2) Where—

- (a) a transferred South Australian employee sustains an injury (in this sub-section referred to as the ‘subsequent injury’) that relates to a previous injury sustained by him on or after 1 March 1978; and
- (b) compensation was paid under the *Compensation (Commonwealth Government Employees) Act 1971* in respect of that previous injury,

that Act applies to and in relation to any claim made by or on behalf of the employee in respect of the subsequent injury—

- (c) if an election was made under sub-section (1) in relation to that previous injury (whether or not an election is made in relation to the subsequent injury)—as if the applied South Australian provisions were substituted for Part III of that Act and section 98 of that Act were omitted; or
- (d) if no election was made under sub-section (1) in relation to the previous injury but an election is made under that sub-section in relation to the subsequent injury—as if that last-mentioned election were of no force or effect.

“(3) For the purposes of sub-section (2), an injury shall be taken to relate to a previous injury if it is an injury by way of—

- (a) the aggravation, acceleration, exacerbation, deterioration or recurrence of that previous injury; or
- (b) the further aggravation, acceleration, exacerbation, deterioration or recurrence of an injury the aggravation, acceleration, exacerbation, deterioration or recurrence of which constituted that previous injury.

“(4) In the application of the modified Compensation (Commonwealth Government Employees) Act to or in relation to a claim for compensation—

- (a) unless the contrary intention appears, expressions used in a provision of that Act included in the applied South Australian provisions have, if they are also used in the corresponding provision of the Workmen’s Compensation Act the same respective meanings as they have in the last-mentioned Act;
- (b) expressions used in the modified Compensation (Commonwealth Government Employees) Act (other than in that part of the modified Compensation (Commonwealth Government Employees) Act that comprises the applied South Australian provisions) that are also used in the applied South Australian provisions have the same respective meanings as they have in the applied South Australian provisions; and
- (c) in that part of the modified Compensation (Commonwealth Government Employees) Act that comprises the applied South Australian provisions—
 - (i) a reference to the Court shall be read as a reference to the Commissioner; and
 - (ii) a reference to a workman shall be read as a reference to a transferred South Australian employee.

“(5) Where—

- (a) claims for compensation in respect of an injury to a transferred South Australian employee that resulted in his death have been served on the Commissioner by or on behalf of 2 or more persons; and
- (b) an election has been made under sub-section (1) in relation to at least one of those claims and no election has been so made in relation to at least one of those claims,

then—

- (c) a claim in relation to which no election has been so made shall be determined under the *Compensation (Commonwealth Government Employees) Act 1971* in its application to that claim as if—
 - (i) no election had been so made in relation to any of the claims referred to in paragraph (a); and

- (ii) any person who is a dependant of the employee for the purposes of the Workmen's Compensation Act were a dependant of the employee for the purposes of that first-mentioned Act in its application to that claim;
- (d) a claim in relation to which an election has been so made shall be determined under the *Compensation (Commonwealth Government Employees) Act 1971* in its application to that claim as if—
 - (i) elections had been so made in relation to all the claims referred to in paragraph (a); and
 - (ii) any person who is a dependant of the employee for the purposes of the *Compensation (Commonwealth Government Employees) Act 1971* in its application to a claim in relation to which no election has been made under subsection (1) were a dependant of the employee for the purposes of that Act in its application to that claim; and
- (e) the Commissioner shall make, under the *Compensation (Commonwealth Government Employees) Act 1971* in its application to the claims referred to in paragraph (a), one determination in respect of all those claims.

“(6) It is the intention of the Parliament that the modified Compensation (Commonwealth Government Employees) Act shall be applied, except where the contrary intention appears in that Act, in such a manner as to impose on the Commission the same liability, as nearly as practicable, to pay compensation in respect of an injury sustained, on or after 1 March 1978, by a transferred South Australian employee (being an injury in relation to which a claim is required to be determined under the modified Compensation (Commonwealth Government Employees) Act) as is imposed by the Workmen's Compensation Act on an employer to whom that Act applies in respect of a similar injury sustained in similar circumstances by a person who is, within the meaning of that Act, a workman employed by such an employer.

“(7) The power to make regulations conferred by section 123 of the *Compensation (Commonwealth Government Employees) Act 1971* extends, by virtue of this sub-section, to the making of regulations for the purposes of this section.

“(8) In this section—

‘applied South Australian provisions’ means the provisions of Parts II, IV and VIII of, and the Second Schedule to, the Workmen's Compensation Act, and of any regulations and Proclamations in force from time to time for the purposes of those Parts and that Schedule, as modified by regulations made under the *Compensation (Commonwealth Government Employees) Act 1971* for the purpose of enabling matters connected with the payment of

compensation in relation to transferred South Australian employees in accordance with those provisions to be dealt with under Parts I, II, IV and V, Part VI (except section 98) and Parts VII and IX of the *Compensation (Commonwealth Government Employees) Act 1971*;

‘Commissioner’ means the Commissioner for Employees’ Compensation under the *Compensation (Commonwealth Government Employees) Act 1971*;

‘modified Compensation (Commonwealth Government Employees) Act’ means the *Compensation (Commonwealth Government Employees) Act 1971* modified by the substitution of the applied South Australian provisions for Part III of that Act and by the omission of section 98 of that Act;

‘Workmen’s Compensation Act’ means the *Workmen’s Compensation Act 1971* of the State of South Australia as amended and in force from time to time.

“52C. (1) In the application of sub-section 45 (7) or 46 (3) of the *Compensation (Commonwealth Government Employees) Act 1971* to and in relation to transferred South Australian employees and transferred Tasmanian employees, references to a superannuation or provident scheme established or maintained by the Commonwealth shall be read as including references to schemes for the payment of benefits contained in the *Superannuation Act 1974* of the State of South Australia and the *Superannuation Act 1938*, the *Retirement Benefits Act 1970*, and the *Public Servants’ Retiring and Death Allowances Act 1925*, of the State of Tasmania.

Application of certain provisions of *Compensation (Commonwealth Government Employees) Act 1971* to transferred employees

“(2) In this section, a reference to an Act of a State shall be read as a reference to that Act as amended and in force from time to time.”

6. (1) Where a claim for compensation in relation to an injury sustained on or after 1 March 1978 by a transferred South Australian employee has been served on the Commissioner for Employees’ Compensation by or on behalf of a person under section 54 of the *Compensation (Commonwealth Government Employees) Act 1971* before the date on which this Act receives the Royal Assent, there may be served on the Commissioner, within 4 weeks after that last-mentioned date, an election by or on behalf of that person, in accordance with the form prescribed by regulations made under that Act, to have the claim dealt with in accordance with the applied South Australian provisions.

Transitional provision

(2) Where an election is served on the Commissioner for Employees’ Compensation in accordance with sub-section (1) in relation to a claim for compensation—

(a) the election has the same force and effect as it would have had if it had been served when the claim for compensation was served on the Commissioner; and

(b) anything done in relation to the claim before the date on which this Act receives the Royal Assent is as valid and effectual as it would have been if this Act had received the Royal Assent on 1 March 1978 and it had been done under, and for the purposes of, the modified Compensation (Commonwealth Government Employees) Act.

(3) The first regulations made for the purposes of section 52B of the *Australian National Railways Act 1917* may be expressed to have taken effect on 1 March 1978.

Con-
sequential
amendment

7. Section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*³ is amended by omitting sub-section (5) and substituting the following sub-section:

“(5) This Act does not apply to a person to whom section 52A of the *Australian National Railways Act 1917* applies.”.

NOTES

1. Act No. 9, 1978; assented to 1 April 1978.
2. Act No. 31, 1917, as amended. For previous amendments *see* Act No. 11, 1925; No. 87, 1936; Nos. 51 and 77, 1950; No. 64, 1954; Nos. 18 and 69, 1955; No. 99, 1956; No. 39, 1957; No. 17, 1960; No. 75, 1964; No. 93, 1966; Nos. 27 and 120, 1968; No. 216, 1973; Nos. 26 and 56, 1975; and No. 38, 1977.
3. Act No. 192, 1976.