

1925.

Legislative Council.

Workers' Compensation Bill 1925.

EXPLANATORY NOTE.

THE object of the measure is to amend the general law relating to Workmen's Compensation.

PART I.—PRELIMINARY.

Additional payments under the Workmen's Compensation Act, 1916, to total dependants, and permanently and totally disabled workmen, are provided for—see clause 2 of the Bill.

The measure will be brought into force by proclamation, and the Workmen's Compensation Act, 1916, is not to apply to accidents happening thereafter. Where proceedings have not been commenced under that Act, they may be instituted under the Bill, but proceedings already commenced may, by consent of the parties, be transferred to the Commission constituted under the Bill.

The Workmen's Compensation (Silicosis) Act, 1920, is also amended, mainly in the direction of restricting its operation to diseases caused by silica dust (clause 4).

The operation of the other Acts relating to compensation for specified diseases is saved by clause 5.

The definition of "worker" in clause 6 has several extended meanings, a list of which is given in the Table of Contents.

PART II.—COMPENSATION.

The liability imposed on employers by clause 7 is to pay compensation to a worker receiving physical injury while—

1. at the place of employment ;
2. on the direct journey to or from such place ;
3. away from the place of employment under the employer's instructions.

Compensation is also to be paid in the case of death or the serious and permanent disablement of a worker, notwithstanding that the worker was acting in contravention of a statutory or other regulation, if the act of the worker was in connection with the employer's trade or business.

The waiting period is fixed at three days.

Serious and wilful misconduct disentitles a worker to compensation, except in case of death or serious and permanent disablement.

If the disablement is caused by industrial disease, the last employer of the worker is liable, but may recover contributions determined by the Commission from other persons who have employed the worker during the year preceding the disablement.

Clause 8 prescribes the minimum and maximum payments to be made to the total and partial dependants upon death, as well as the compensation payable in cases where no dependants are left by a worker.

A rate based on a percentage of earnings is prescribed by clause 9 in the case of total or partial incapacity, subject to an adult minimum of £2, and a maximum of £3 a week. In addition, a married worker is to be entitled to an allowance of £1 a week for his wife, and 8s. and 6d. for each child under 14, when they are totally or mainly dependant on his earnings, but the total amount must not exceed the average weekly earnings of the worker, or £5, whichever is the smaller amount.

The total liability in any one case must not exceed £1,000, except in the case of a worker who is permanently and totally disabled.

The compensation on incapacity may be a weekly payment or a lump sum.

In awarding a lump sum the Commission may have regard to the injury or disfigurement of the worker, his occupation, age, and diminished ability to compete in an open labour market, as well as the ability of the employer to pay a lump sum. Clause 10.

Medical benefits up to £50 are provided for incapacitated workers; they are limited to a period of three months, but the Commission may extend the payment or the period mentioned. Clause 11.

Where a partially incapacitated worker is unable to obtain employment, his incapacity may for a period be treated as total incapacity.

Allowances by the employer during incapacity may be taken into consideration in fixing the weekly compensation payment.

Clause 15 re-enacts the rules contained in the Workmen's Compensation Act, 1916, regarding the computation of average weekly earnings, with certain amendments.

Redemption of weekly payments by a lump sum is provided in clause 16.

A table of lump sum payments for loss of various members of the body is contained in clause 17.

The compensation is payable at the employer's usual place of payment of wages.

PART III.—INSURANCE.

Compulsory insurance of employers against the liability to their workers is provided in clause 19. No insurer may refuse a policy to an employer, except with the consent of the Commission. But an insurer confining his operations to the insurance of one employer, or a group of employers in one industry, will not be required to undertake any other insurance.

The form of the policy will be prescribed by regulations, and will provide that the insurer shall be directly liable to the worker, or his dependants, under the policy.

An employer who is insured by a company transacting insurance business in this State will not be liable within 12 months from the commencement of the Act to the penalty prescribed in the case of an employer who fails to insure with a licensed insurer—clause 19 (5).

Insurers are required, by clause 20, to lodge deposits with the Colonial Treasurer of £6,000 or £10,000, according to their annual premium income.

The deposits are to be invested in New South Wales Stock, and the interest paid to the depositors.

State or Commonwealth securities may be lodged in lieu of cash. The Colonial Treasurer holds the deposits on trust for the payment of final judgments against insurers which are unsatisfied.

Clause 23 provides for the return of deposit when an insurer ceases to transact business in the State.

The issue of licenses to carry on workmen's compensation insurance business is provided in clause 27.

An insurance license may be suspended or terminated if he is unable to meet his liabilities, fails to comply with a material provision of the Act, or is persistently acting in breach of the Act. The insurer must be called upon to show cause why his license should not be terminated or suspended; and may appeal from the Commission's decision to the Supreme Court.

PART IV.—WORKER'S COMPENSATION COMMISSION.

Clause 31 provides for the constitution of a Workers' Compensation Commission of three members appointed by the Governor.

The Chairman must be a barrister of five years standing, who will have the status of a District Court Judge.

The salaries of the other members are to be fixed by the Governor; their appointments are for seven years.

A member of the Commission may be suspended or removed for misbehaviour or incompetence in the manner specified.

The Commission is to be a body corporate with perpetual succession, and having the powers set out in clause 32, which also contains necessary machinery provisions.

The staff will be subject to the provisions of the Public Service Act, 1902.

The Commission will have the powers of a Commissioner under the Royal Commissions Act, 1923, for the purpose of conducting its proceedings. Clause 34.

Exclusive jurisdiction to determine all questions arising under the Act is conferred on the Commission, and its decisions are to be final. Certain of the questions to be determined by the Commission are set out in clause 36 (4). Subclause (5) provides for the enforcing of the Commission's awards or orders.

The Commission's decision is not liable to be challenged in any Court, and no writ of prohibition or certiorari shall lie against its awards or orders; but the Commission may state a case for the decision of the Supreme Court. Clause 37.

The Commission may summon a medical referee to sit with the Commission as an assessor, or submit any matter to a medical referee, or medical board, for report.

Clause 39 requires the Commission to furnish workers and employers with information as to their rights and liabilities under the measure, and make reasonable efforts to conciliate and bring parties to agreement where disputes have arisen.

Where persons have been injured in the course of performing illegal contracts, the Commission may grant compensation as if the contracts had been valid—clause 40.

A fund is constituted out of which the salaries of the members and staff of the Commission will be paid, and all other moneys required for carrying out the provisions of the Act. The Commission must make an estimate of the amount required from the fund each year, and each insurer is required to contribute quarterly to the fund a percentage on the total premiums received during the preceding year in respect of insurance of employers against liability to their workers under the Act, or at common law. Clause 41.

Annual returns of premium income are required from insurers. Clause 42.

PART V.—GENERAL PROVISIONS.

Employers are required to keep posted at every mine, quarry, factory, workshop or shop, and on every ship, a summary of the requirements of the Act regarding the giving of notice of injuries, and the making of claims.

The want of a notice of injury will not bar proceedings for compensation if the employer has not posted the summary as required, or he has knowledge of the injury from any source at or about the time of the occurrence. Clause 43.

The employer is required to notify the Commission when a worker's injury results in death or incapacity over three days, as well as upon the termination of incapacity. The Commission may compile and publish statistics concerning injuries in different industries or occupations from these reports. Clause 44.

Contracting out of the benefits of the Act is prohibited. Clause 45.

The provisions regarding seamen's rights to compensation have been re-enacted from the Workmen's Compensation Act, 1916, with slight modifications. Clause 46.

The Act applies to workers employed by the Crown, but if a worker elected to claim under the Act in case of death or total and permanent disablement, he is entitled, in addition to the compensation benefits, to a refund, of his contribution to any Superannuation Account with interest at 4 per cent. per annum. Clause 47.

The employers must not deduct any money from the wages of a worker in respect of any liability under the Act, and any money so taken may be recovered by the worker. Clause 48.

The provisions in clause 49 regarding the bankruptcy of an employer are similar to those contained in the Workmen's Compensation Act of 1916.

PART VI.—MEDICAL PROVISIONS.

The Commission is empowered to appoint Doctors as medical referees, who shall be paid out of the Fund.

Workers claiming or receiving weekly payments must submit themselves when required by the Commission for examination by a medical referee or medical board consisting of two or more medical referees.

Refusal involves suspension of compensation rights.

The medical referee or medical board must certify as to the condition of the worker, his fitness for employment, the kind of employment for which he is fit, &c.

The certificate of a Medical Board is conclusive as to the matters certified.

The Commission has power to make rules regarding the medical examination of injured workers, and the fees and expenses paid for such examination, and for medical treatment. Clauses 50 and 51.

The Commission is empowered to draw sums from the fund for the vocational re-education and rehabilitation of disabled workers, and the Government departments are to render assistance to the Commission in this respect. Clause 52.

PART VII—PROCEEDINGS.

Notice of injury is required of the worker as soon as practicable after the happening of the accident, and a claim for compensation must be made within six months from the injury or death.

The circumstances under which the want of notice, or the failure to make a claim, shall not bar proceedings, are similar to those contained in the Workmen's Compensation Act, 1916.

The notice of injury may be given orally or may be entered in a book kept for the purpose at every mine, quarry, factory, workshop, or shop. Clause 53.

If a worker receiving a weekly payment ceases to reside in the Commonwealth, he is not entitled to weekly payments unless a medical referee certifies that his incapacity is likely to be permanent. If so, he receives quarterly payments on furnishing proof of his identity and the continuance of incapacity. Clause 54.

A weekly payment or lump sum cannot be assigned or charged. Clause 55.

Provisions for the protection of the compensation payments against claims by solicitors or agents is contained in clause 56.

The payments in the case of death and to persons under legal disability must be made to the Commission, to be paid out as directed, in accordance with clauses 57 and 58.

Questions of dependency and apportionment of compensation between dependants are provided for in clause 59.

Compensation payments may be reviewed and increased or diminished, in accordance with clauses 60 and 61.

The investment of moneys paid into the Commission is provided for in clause 62.

PART VIII.—REMEDIES AT COMMON LAW.

The provisions regarding the workers' rights where injury is caused by an employer's negligence are re-enacted from the Workmen's Compensation Act, 1916.

If a worker obtains judgment against his employer independently of the Act, he is not then entitled to compensation. Clause 63.

The remedies of a worker against a stranger causing injury are similar to those contained in the Workmen's Compensation Act, 1916. Clause 64.

Clause 65 provides for the abolition of the defence of common employment, in cases where a worker is injured by the negligence of a fellow-worker.

PART IX.

Power to make rules and regulations is contained in clause 66, and provision regarding penalties in clauses 67, 68, and 69.

The Commission is empowered to authorise barristers, or other persons, to undertake the examination of witnesses *de bene esse* in cases of inability to attend proceedings.

The Commission may appoint doctors to be medical referees for the purpose of examining workers residing outside the State. Clause 70.

Workers' Compensation Bill, 1925.

TABLE OF CONTENTS.

PART I.—PRELIMINARY...	...	...	...	Clauses 1 to 6
PART II.—COMPENSATION	...	...	...	„ 7 „ 18
PART III.—INSURANCE ...	...	...	...	„ 19 „ 30
PART IV.—WORKERS' COMPENSATION COM- MISSION ...	...	...	...	„ 31 „ 42
PART V.—GENERAL PROVISIONS	...	...	...	„ 43 „ 49
PART VI.—MEDICAL PROVISIONS	...	...	...	„ 50 „ 52
PART VII.—PROCEEDINGS RESPECTING COM- PENSATION ...	...	...	...	„ 53 „ 62
PART VIII.—REMEDIES AT COMMON LAW ...	...	...	...	„ 63 „ 65
PART IX.—MISCELLANEOUS ...	...	...	...	„ 66 „ 70

Workers' Compensation Bill, 1925.

PART I.—PRELIMINARY :—

Clause 1. (1) Short title.

(2) Operation.

Clause 2. Amendment of Workmen's Compensation Act, 1916.

Clause 3. (1) Future operation of 1916 Act.

(2) Proceedings under 1916 Act, not yet commenced.

(3) Proceedings under 1916 Act, commenced.

Clause 4. Amendment of Workmen's Compensation (Silicosis) Act, 1920.

Clause 5. Saving of Acts.

Clause 6. (1) Definitions :—

Commission.

Compensation.

Dependants.

Employer.

Fund.

Injury.

Insurer.

Member of a family.

Outworker.

Place of employment.

Seaman.

Ship.

Vessel.

Worker.

“Worker” definition—provisions as to :—

(2) Worker deceased.

(3) Contracting or subcontracting.

(4) Contracts for labour.

(5) (a) Rural work.

(b) Timber-getters.

(6) Salesman.

(7) Share-farmer.

(8) Tributer.

(9) Mining employees.

(10) Jockey.

(11) Bailee.

(12) Caddies, and others.

(13) Public authority.

(14) Shearers' cooks and others.

PART II.—COMPENSATION :—

- Clause 7. (1) } Liability of employers to workers for injuries.
 (2) }
 (3) (a) Waiting period.
 (b) Serious and wilful misconduct.
 (4) Industrial disease.
 (5) Canvassers.
- Clause 8. (1) Compensation payments (Death.)
 (a) Death following incapacity.
 (2) Death—leaving partial dependants.
 (3) Death of minor leaving no dependants.
 (4) Death—no dependants (burial expenses).
- Clause 9. (1) Total or partial incapacity.
 (a) Weekly payment.
 (b) Married worker.
 (2) Limit of weekly payment.
 (3) Total liability.
 (4) Minors.
- Clause 10. Compensation may be by lump sum or weekly payments.
- Clause 11. Medical benefits.
- Clause 12. Partial incapacity.
- Clause 13. Partial incapacity treated as total.
- Clause 14. Allowances received by worker.
- Clause 15. Computation of average weekly earnings.
 (e) Casuals.
 (f) List of earnings.
- Clause 16. Redemption of weekly payments.
- Clause 17. Compensation for certain injuries and table of lump sum payments.
- Clause 18. Place of payment.

PART III.—INSURANCE :—

- Clause 19. (1) } Compulsory insurance.
 (2) }
 (3) Insurance policy.
 (4) } Penalty.
 (5) }
- Clause 20. (1) Deposits by insurers.
 (2) Extension of Act to certain brokers and agents.
- Clause 21. Investments of deposits.
- Clause 22. Alternative method of giving security.
- Clause 23. Where share capital of a company is acquired by some other company one deposit may suffice.

PART III.—INSURANCE (*continued*) :—

- Clause 24. Application of deposits.
- Clause 25. Return of deposits.
- Clause 26. Evidence.
- Clause 27. Licensing of insurers.
- Clause 28. Termination of licenses.
- Clause 29. Unlicensed insurers.
- Clause 30. Power to refuse license.

PART IV.—WORKERS' COMPENSATION COMMISSION :—

- Clause 31. Appointment of commission.
- Clause 32. (1) and (2) Body corporate.
- (3) Quorum.
- (4) Differences of opinion.
- (5) No action or suit against members of commission.
- (6) Minutes of meetings, &c.
- (7) Appointment of deputy.
- Clause 33. (1) Appointment of officers and employees.
- (2) Staff under Public Service Act, 1902.
- (3) Casual employees.
- (4) Secrecy.
- (5) Members eligible for Public Service.
- Clause 34. Application of Royal Commissions Act, 1923.
- Clause 35. Delegation of powers.
- Clause 36. Jurisdiction and enforcement of orders.
- Clause 37. (1) to (3) Decision of commission to be final.
- (4) to (7) Commission may state case to Supreme Court.
- Clause 38. Proceedings of commission.
- Clause 39. Commission to assist all parties.
- Clause 40. Illegal employment.
- Clause 41. Constitution of fund.
- Clause 42. Returns by insurers.

PART V.—GENERAL PROVISIONS :—

- Clause 43. Posting summary of Act.
- Clause 44. (1) and (2) Reports of injuries.
- (3) Statistics.
- Clause 45. No contracting out.
- Clause 46. Seamen.
- Clause 47. Workers of Crown.
- Clause 48. Deductions from wages.
- Clause 49. Bankruptcy of employer.

PART VI.—MEDICAL PROVISIONS :—

- Clause 50. Medical referees.
- Clause 51. Medical examinations.
- Clause 52. Rehabilitation of disabled worker.

PART VII.—PROCEEDINGS RESPECTING COMPENSATION :—

- Clause 53. Time for taking proceedings.
- Clause 54. Residence outside Commonwealth.
- Clause 55. Non-assignability of compensation.
- Clause 56. Receipt for payment and costs.
- Clause 57. Payment into commission on death.
- Clause 58. Payment into commission—Person under disability.
- Clause 59. Dependency questions and apportionment.
- Clause 60. Review.
- Clause 61. Review—Account neglect—variation of circumstances.
- Clause 62. (1) Investment.
- (2) Withdrawal.

PART VIII.—REMEDIES AT COMMON LAW :—

- Clause 63. Negligence.
- Clause 64. Remedies against both employer and stranger.
- Clause 65. Common employment.

PART IX.—MISCELLANEOUS :—

- Clause 66. Regulations and rules.
- Clause 67. General penalty.
- Clause 68. Recovery of penalties.
- Clause 69. Saving of penalties under other Acts.
- Clause 70. (1) Examination de bene esse.
- (2) Medical examination of workers residing outside the State.

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,
and, having this day passed, is now ready for presentation to the
LEGISLATIVE COUNCIL for its concurrence.*

W. S. MOWLE,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 3 December, 1925.

New South Wales.



ANNO SEXTO DECIMO

GEORGI V REGIS.

Act No. , 1925.

An Act to amend the law relating to Workmen's Compensation; to constitute a Workers' Compensation Commission, and to define its jurisdiction, powers, and duties; to provide for the compulsory insurance by employers against their liabilities in respect of injuries to workers, and also for the regulation and licensing of insurers and the deposit by them with the Colonial Treasurer of certain sums; to establish a fund to meet the costs of the administration of the Commission, and to provide for the contribution thereto by insurers; to amend the Workmen's Compensation Act, 1916, and the Workmen's Compensation (Amendment) Act, 1920, and to limit the future operation of those Acts; to amend the Workmen's Compensation (Silicosis) Act, 1920, and certain other Acts; and for purposes connected therewith.

Workers' Compensation.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

1. (1) This Act may be cited as the "Workers' Compensation Act, 1925."

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Workmen's Compensation Act, 1916, as amended by the Workmen's Compensation (Amendment) Act, 1920, is further amended as follows :—

15 (a) by inserting at the end of paragraph (1) (a) (i) of Schedule One the following further proviso :—

" Provided further that no deduction shall be made in respect of the amount of any weekly payments made under this Act so as to reduce the sum payable in respect of such dependants below two hundred pounds but under no circumstances shall the total of the employers' liability under this paragraph exceed seven hundred and fifty pounds ";

25 (b) by inserting in paragraph 1 (b) of Schedule One after the words "seven hundred and fifty pounds" the words "but this limit shall not apply in the case of any workman entitled to a weekly payment at the commencement of the Workers' Compensation Act, 1925, whose injury has resulted or results in permanent and total disablement."

3. (1) The Workmen's Compensation Act, 1916, as amended by the Workmen's Compensation (Amendment) Act, 1920, and this Act, in this Act referred to as the Workmen's Compensation Act, shall cease to have effect so far as regards any accident which happens after the commencement of this Act.

(2) Proceedings for the recovery of compensation for any accident which happened before the commencement

Amendment
of Act
No. 71, 1916,
Sch. I.
cf. 13 & 14
Geo. V, c. 42.
s. 24 (2).

Future operation of
Workmen's
Compensation Act,
1916, and
pending proceedings.

Workers' Compensation.

commencement of this Act shall, if no proceedings have then been commenced, be commenced under and in accordance with this Act.

(3) Proceedings already commenced at the commencement of this Act shall be continued under the Workmen's Compensation Act or may be by consent of the parties at any stage referred to the commission and continued before the commission.

4. Section two of the Workmen's Compensation (Silicosis) Act, 1920, is amended as follows:—

- (a) by omitting from subsection one the words "or other" wherever occurring;
- (b) by omitting from subsection one paragraph (i) of the proviso;
- 15 (c) by omitting from subsection two the words "disablement due to silicosis unaccompanied by tuberculosis" and by inserting in lieu thereof the words "disablement due to silicosis or to silicosis accompanied by tuberculosis";
- 20 (d) by inserting in paragraph (d) of subsection three after the words "medical officers" the words "medical boards";
- 25 (e) by omitting from paragraph (e) of subsection three the words "and for the suspension from employment of workmen who are found to be suffering from silicosis or from silicosis accompanied by tuberculosis" and by inserting in lieu thereof the words "for the suspension from employment of workmen who are found
- 30 at any time to be suffering from silicosis or tuberculosis, or silicosis accompanied by tuberculosis, or who, when first medically examined in pursuance of the scheme, are found unsuitable for work in the industry or
- 35 process by reason of their failure to satisfy such requirements with respect to physique as may be prescribed by the scheme";
- (f) by inserting in paragraph (f) of subsection three after the words "supplemental matters" the words "including provisions as to the
- 40 determination of disputes arising between employers and the authority administering the fund."

Amendment
of Act No. 13,
1920, s. 2.
cf. 8 & 9
Geo. V, c. 14,
s. 1.

Workers' Compensation.

5. Nothing in this Act shall affect the operation of the Workmen's Compensation (Silicosis) Act, 1920, as amended by this Act, the Workmen's Compensation (Broken Hill) Act, 1920, or the Workmen's Compensation (Lead Poisoning—Broken Hill) Act, 1922, as amended by the Workmen's Compensation (Lead Poisoning—Broken Hill) Amendment Act, 1924.

Saving of
Acts, 1920
No. 13, 1920
No. 36, 1922
No. 31, 1924
No. 26.

6. (1) In this Act, unless the context or subject-matter otherwise indicates or requires :

Definitions.

10 "Commission" means the Worker's Compensation Commission of New South Wales constituted under this Act.

"Compensation" includes medical and death benefits prescribed by this Act.

15 "Dependants" means such of the members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would but for the incapacity due to the injury have been so dependent, and includes a person so dependent to whom the worker stands in loco parentis or a person so dependent who stands in loco parentis to the worker.

1916 No. 71,
s. 4.
cf. Vic. Act,
No. 2,750,
s. 3.

20 Where the worker, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, "dependants" shall include such an illegitimate child and parent or grandparent respectively.

25 "Employer" includes any body of persons, corporate or unincorporate, and the legal representative of a deceased employer.

1916 No. 71,
s. 4

30 Where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person.

Employer

Workers' Compensation.

- 5 Employer also includes any Government department heretofore or hereafter created, or any Minister, trust, commission, or board exercising executive or administrative func-
10 tions on behalf of the Government of the State as for examples the Railway Commis-
sioners for New South Wales, the Sydney Harbour Trust, the Metropolitan Water, Sewerage, and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Metropolitan Meat Industry Board, or the Hunter District Board of Water Supply and Sewerage.
- 15 "Fund" means the fund established by this Act.
"Injury" includes a disease contracted by a worker at the place of employment, to which the employment was a contributing factor, but does not include a disease caused by silica dust.
- 20 "Insurer" includes any Government department, insurance company, mutual indemnity associa-
tion, or person or persons, corporate or unincor-
25 porate, undertaking to insure or indemnify an employer against liability or any part of liability under this Act for injuries sustained by workers.
- 30 "Member of a family" means wife or husband, ^{1916 No. 71, s. 4.} father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grand-
son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister.
- 35 "Outworker" means a person to whom articles or ^{*Ibid.*} materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.
- 40 "Place of Employment" means the premises, works, ^{Qld., 6 Geo. V, No. 35, s. 3.} plant or place for the time being occupied by or under the control or management of the employer

Workers' Compensation.

employer by whom the worker concerned is employed, and on or at or in connection with which the worker was employed at the time of the injury.

5 "Seaman" includes master, officer, apprentice, 1916 No. 71, pilot, or other person employed or engaged in ^{s. 4.} any capacity on board a ship.

"Ship" includes every vessel used in navigation *Ibid.* not ordinarily propelled by oars.

10 "Vessel" includes any ship or boat, or any other *Ibid.* description of vessel used in navigation.

"Worker" means any person who has entered into ^{cf. Ibid.} or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing, but does not include—

20 (a) any person employed otherwise than by way of manual labour whose remuneration exceeds seven hundred and fifty pounds per year; or

(b) an outworker; or

(c) a member of the police force; or

25 (d) a person whose employment is casual and who is employed otherwise than for the purposes of the employer's trade or business; or

(2) Any reference to a worker who has been ^{Worker—} injured shall, where the worker is dead, include a ^{deceased.} reference to his legal personal representative or to his dependants, or other person to whom or for whose benefit compensation is payable.

35 (3) (a) Where any person (in this subsection ^{Contracting or subcon-} referred to as the principal) in the course of or ^{tracting.} for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, 40 the principal shall be liable to pay to any worker

Workers' Compensation.

5 worker employed in the execution of the work
any compensation under this Act which he
would have been liable to pay if that worker
had been immediately employed by him ; and
where compensation is claimed from or pro-
ceedings are taken against the principal, then,
in the application of this Act, reference to the
principal shall be substituted for reference to
the employer, except that the amount of com-
pensation shall be calculated with reference to
10 the earnings of the worker under the employer
by whom he is immediately employed :

15 Provided that, where the contract relates to
threshing, ploughing, or other agricultural
work, and the contractor provides and uses
machinery driven by mechanical power for the
purposes of such work, he and he alone shall
be liable under this Act to pay compensation to
any worker employed by him on such work.

20 (b) Where the principal is liable to pay compen-
sation under this subsection, he shall be entitled
to be indemnified by any person who would
have been liable to pay compensation to the
worker independently of this subsection, and
25 all questions as to the right to and amount of
any such indemnity shall be in default of agree-
ment to be settled by the Commission under
this Act.

30 (c) Nothing in this subsection shall be construed
as preventing a worker recovering compensa-
tion under this Act from the contractor instead of
the principal.

(4) Where a contract to perform any work
exceeding five pounds in value (not being work
35 incidental to a trade or business regularly carried on
by the contractor in his own name or under a firm
name) is made with such contractor who—

Contracts for
labour.

Qld., 6 Geo.1
V, No. 35,
s. 3 (2). s. 3

[(a) neither sublets the contract nor employs
workers ; or

(b)

Workers' Compensation.

(b) though employing workers actually performs any part of the work himself, such contractor and also such workers so employed shall, for the purposes of this Act, be deemed to be
5 workers employed by the person who made such contract with such contractor.

(5) (a) Where any person (in this subsection referred to as "the principal") in the course of or for
10 the purposes of his trade or business enters into a contract with any other person or persons (in this subsection referred to as "the contractor") under which the contractor agrees—

- 15 (i) to supply timber and such timber is obtained from trees felled by the contractor or his wages-men (whether such trees are the property of the principal or the contractor or any other person); or
- (ii) to fell or ringbark trees or cut scrub or haul or load timber or haul and load timber; or
- 20 (iii) to clear land of stumps or logs; or
- (iv) to thrash or harvest grain, or cut chaff or sugar-cane; or
- (v) to perform any other work or class of work specified by proclamation of the Governor and
25 published in the Gazette;

and the contractor does not either sublet the contract or employ workers, or, though employing workers, actually performs any part of the work himself, the contractor and any worker so employed shall, for the
30 purposes of this Act, be deemed to be workers employed by the principal.

(b) Where any person (in this paragraph referred to as the principal) advertises or otherwise notifies that he will accept timber delivered or supplied
35 to him or his agent or other person in accordance with such advertisement or notification, or advertises or otherwise notifies to the abovementioned effect, any person who gives notice to such principal that he will deliver or supply such timber or any part thereof, and receives
40 injury while engaged in or about the work of cutting, delivering

Workers' Compensation.

delivering, or supplying the said timber or any part thereof shall be deemed to be a worker employed by the principal.

Notice of intention to deliver or supply timber as aforesaid shall be given prior to injury and may be given personally or by letter posted to the principal at his place of business or usual address.

"Timber" includes sleepers, piles, poles, girders, logs, or pit timber.

10 "Cutting" includes felling, sawing, obtaining, preparing, or doing any work in connection with timber, and "cut" has a corresponding meaning.

(6) A salesman, canvasser, collector, or person Salesman.
paid wholly or partly by commission shall, for the Qld., 6 Geo. V,
15 purposes of this Act, be deemed to be a worker in the No. 25, s. 3
(3c).
employment of the person by whom such commission is payable, unless such commission is received by the salesman, canvasser, collector, or person for or in connection with work incidental to a trade or business
20 regularly carried on by him or by a firm whereof he is a member.

(7) Notwithstanding any limitation in paragraph Share-farmer
(e) of the definition of worker contained in subsection cf. *Ibid.* s. 2
one of this section, every share-farmer, and every (3b).
25 worker, whether a member of the share-farmer's family or not, employed by any share-farmer shall, for the purposes of this Act, be deemed to be a worker employed by the owner of the farm.

(8) Every tributer working in connection with Tributer.
30 any mine as defined by the Mining Act, 1906, and also 1916 No. 7,
any workers employed by any such tributer shall, for s. 8 (5).
the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer.

35 (9) Any person usually employed about a mine or Mining
in connection with the operations thereof such as a check- employees.
weighman, check-inspector (whether local or general),
caval scrutineer or a pickman or boy shall, notwithstanding that his remuneration is provided wholly or
partly

Workers' Compensation.

partly by the workers employed at the mine, for the purposes of this Act, be deemed to be a worker employed by the person by or for whom the mine is being worked.

- 5 (10) A jockey engaged to ride for fee or reward in Jockey.
any horse or pony race run under the management of Qld., 6
any racing club or association shall for the purposes Geo. V,
of this Act be deemed to be a worker employed by such No. 35,
club or association. s. 3 (3A).
- 10 (11) A person engaged in plying for hire with any Bailees.
vehicle or vessel the use of which is obtained from the cf. 13 and 14
owner thereof under any contract of bailment, other Geo. V, c. 42,
than a hire purchase agreement, in consideration of the s. 9 (2.)
payment of a fixed sum, or a share in the earnings or
15 otherwise, shall for the purposes of this Act be deemed
to be a worker employed by the owner of the vehicle or
vessel.
- (12) A person whose employment is of a casual Caddies, and
nature, and who is employed otherwise than for the others.
20 purposes of his employer's trade or business, if employed Ibid.
for the purposes of any game or recreation, and engaged
or paid through a club, shall for the purposes of this
Act be deemed to be a worker employed by the club if
the club is a limited company, or if it is not, by the
25 secretary or members of the managing committee thereof.
- (13) The exercise and performance of the powers Public
and duties of a local or other public authority shall, authority.
for the purposes of this Act, be treated as the trade or 1916 No. 71,
business of the authority. s. 4.
- 30 (14) Any person employed in connection with Shearers'
a pastoral or agricultural occupation, as cook, cook's cooks and
help, or hut-keeper, shall, notwithstanding that his others.
remuneration is provided wholly or partly by the
employees in any such occupation, for the purposes of
35 this Act, be deemed to be a worker employed by the
person by or for whom the work in any such occupation
is undertaken.

Workers' Compensation.

PART II.

COMPENSATION.

7. (1) A worker who receives physical injury, Liability of employers to workers for injuries.
 whether at his place of employment or on his direct cf. Qld., 6 Geo. V, No. 35, s. 9.
 5 journey to or from such place or (being in the course of his employment or while under his employer's instructions) away from his place of employment, and in case of the death of the worker, his dependants, shall receive compensation from his employer in accordance with this
 10 Act.

(2) Compensation shall be payable in respect cf. 13 & 14 Geo. V, c. 42, s. 7.
 of any injury resulting in the death or serious and permanent disablement of a worker, notwithstanding that the worker was, at the time when the injury was
 15 received, in a place not directly concerned with his employment, but forming part of the employer's premises, or acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or
 20 that he was acting without instructions from his employer, if such act was done by the worker for the purposes of and in connection with his employer's trade or business.

(3) Provided that—

25 (a) the employer shall not be liable under this Act Waiting period.
 in respect to any injury which does not disable a worker for a period of at least three days from earning full wages at the work at which he was employed. But if he is disabled for that period,
 30 the compensation shall date from his receiving the injury;
 (b) if it is proved that the injury to a worker is Serious and wilful misconduct.
 solely attributable to the serious and wilful misconduct of the worker, any compensation cf. 6 Ed. VII, c. 68, s. 1 (2) (c).
 35 claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(4) Where the injury is a disease which is of Industrial disease.
 such a nature as to be contracted by a gradual process cf. 1916 No. 71, s. 12.
 40 compensation shall be payable by the employer in whose employment the worker is or who last employed the worker.
 Any

Workers' Compensation.

Any employers who, during the twelve months preceding a worker's incapacity, employed him in any employment to the nature of which the disease was due, shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by the commission.

The worker, or his dependants, shall furnish to the employer from whom compensation is claimed such information as to the names and addresses of all the other employers who employed the worker during the twelve months preceding the injury as he or they may possess.

(5) Where a salesman or other person referred to in subsection six of section six is entitled to compensation under this Act, all the employers by whom he was engaged at the time of the injury shall be liable to contribute to the compensation payable in such proportion as, in default of agreement, may be determined by the commission.

The worker or his dependants shall furnish to any employer from whom compensation is claimed, such information as to the names and addresses of all the other employers by whom he was engaged at the time of the injury, as he or they may possess.

8. (1) Where death results from the injury, and the worker leaves any dependants wholly dependent upon his earnings, the amount of compensation payable by the employer under this Act shall be—

(a) a sum equal to his earnings in the employment of the same employer during the four years next preceding the injury, or the sum of four hundred pounds, whichever of those sums is the larger, but not exceeding in any case eight hundred pounds.

The amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof or any lump sum paid as compensation under this Act, shall be deducted from such sum, but no such deduction shall be made so as to reduce the amount payable in respect

Compensation payments (Death).

Death f incapacity. cf. 13 & 14 Geo. V, c. 42, s. 24 (2).

Workers' Compensation.

respect of the dependants of the worker under this subsection below two hundred pounds.

5 If the period of the worker's employment by the employer has been less than the said four years, then the amount of his earnings during the said four years, shall be deemed to be two hundred and eight times his average weekly earnings during the period of his actual employment by the employer;

10 (b) in addition there shall be payable by the employer a sum of twenty-five pounds in respect of each child under the age of sixteen years who was dependent on the worker's earnings.

(2) Where death results from the injury and the
15 worker does not leave any dependants wholly dependent upon his earnings, but leaves dependants in part dependent upon his earnings, the compensation payable by the employer under this Act shall be such sum, not exceeding in any case the amount payable under para-
20 graph (a) of subsection one of this section, as may be agreed upon, or in default of agreement, may be determined, by the commission, to be reasonable and proportionate to the injury to the said dependants.

Death—leav-
ing partial
dependants.
cf. 6
Ed. VII,
c. 58, Sch. I
(i) (a) (2).

(3) Where death results from the injury and the
25 worker being a minor leaves no dependants, but during a period of six months preceding the injury has contributed the major portion of his earnings towards the maintenance of the home of the members of his family, such members of his family shall be deemed to be
30 dependants of the worker, and the compensation payable by the employer under this Act shall be a sum not exceeding in any case four hundred pounds, as may be agreed upon, or in default of agreement may be determined by the commission to be reasonable and
35 proportionate to the injury to such members of his family.

Death of
minor
leaving a
dependant.

(4) Where death results from the injury and the
worker leaves no dependants, the compensation payable by the employer under this Act shall be reasonable burial expenses not exceeding thirty pounds.

Death—no
dependants.

Workers' Compensation.

9. (1) Subject to the provisions of this section and of section eleven, where total or partial incapacity for work results from the injury the compensation payable by the employer under this Act shall include :—

- 5 (a) a weekly payment in respect of the worker during the incapacity which shall not exceed sixty-six and two-thirds per centum of his average weekly earnings for the previous twelve months if he has been so long employed by the employer, but if not, then for any less period during which he has been in the employment of the same employer.

10 The compensation payable under this paragraph shall not exceed three pounds per week, and, in the case of an adult worker, shall not be less than two pounds per week ;

- 15 (b) in addition to the compensation payable under the last preceding paragraph, a weekly payment during the incapacity of—

20 (i) one pound per week in respect of the wife of the worker totally or mainly dependent on the earnings of the worker ; and

25 (ii) eight shillings and sixpence per week in respect of each child of the worker under the age of fourteen years totally or mainly dependent on the earnings of the worker.

(2) Where a worker is entitled to payments under both paragraph (a) and paragraph (b) of subsection one of this section, the total weekly payment by the employer under that subsection shall not exceed a sum equal to the average weekly earnings referred to in paragraph (a) of that subsection, or the sum of five pounds, whichever is the smaller amount.

(3) The total liability of an employer in respect of compensation under this section shall not, except in the case of a worker whose injury results in total and permanent disablement, exceed one thousand pounds in any one case.

(4)

Workers' Compensation.

(4) Where the weekly payments during total incapacity of a worker who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than forty shillings, are to be determined, paragraph (a) of subsection one of this section shall be read as if the words one hundred per centum had been substituted for the words sixty-six and two-thirds per centum, but the compensation per week awarded under that paragraph shall in no case exceed thirty shillings. Minors.

10. (1) Subject to this Act where the worker's total or partial incapacity for work or disfigurement results from the injury, the compensation payable shall, in default of agreement be, in the discretion of the commission, either a lump sum or a weekly payment during the period of his incapacity. Compensation may be by lump sum or weekly payment.
Vic. W.
Comp. Act,
1915, s. 7.

(2) In exercising its jurisdiction to award a lump sum the commission may have regard to the nature of the physical injury or disfigurement, the occupation of the injured worker, his age at the time of such injury, and the diminished ability of such injured worker to compete in an open labour market, and may take into consideration the ability of the employer to pay compensation in this form.

(3) A worker shall only be entitled to compensation for disfigurement where it is sufficient to affect his earning capacity, or opportunities for employment.

11. (1) Where total or partial incapacity for work results from the injury the compensation payable by the employer shall also include the cost of such medical, surgical and hospital treatment as may in the opinion of the commission reasonably be required to relieve the worker from the effects of the injury. Medical benefits.

(2) The treatment shall include nursing, medicines, medical and surgical supplies, crutches, artificial members and other curative apparatus, and the treatment shall be continued for three months if required or for such further time as the commission directs.

(3)

Workers' Compensation.

(3) The cost to the employer shall be limited to fifty pounds unless the commission otherwise directs.

(4) If the employer fails to provide promptly the treatment, the worker may do so at the expense of the employer, but he shall not be entitled to recover any amount expended by him for such treatment or services unless he has requested the employer to furnish the same and the employer has refused or neglected to do so.

10 (5) The fees and charges for the treatment shall be limited to such charges as prevail in the same community for similar treatment of injured persons.

(6) The commission may if it thinks fit direct a change of doctor or treatment when in its judgment
15 a change is desirable or necessary.

12. In the case of partial incapacity, the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the worker before the injury, and the average weekly
20 amount he is earning, or is able to earn, in some suitable employment or business, after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

25 **13.** If a worker, who has so far recovered from the injury as to be fit for employment of a certain kind, proves to the satisfaction of the commission that he has taken all reasonable steps to obtain, and has failed to obtain such employment, and that his failure to obtain
30 such employment is a consequence, wholly or mainly, of the injury, the commission shall order that his incapacity shall continue to be treated as total incapacity for such period, and subject to such conditions, as may be provided by the order, without prejudice, however, to the
35 right of review conferred by this Act.

14. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity.

15.

Workers' Compensation.

15. For the purposes of the provisions of this Act relating to "earnings" and "average weekly earnings" of a worker, the following rules shall be observed:—

Computation
of average
weekly
earnings.

Ibid. Sch. I
(2).

- 5 (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated:

10 Provided that where by reason of the shortness of the time during which the worker has been in the employment of his employer, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the
15 twelve months previous to the injury, was being earned by a person in the same grade, employed at the same work, by the same employer; or, if there is no person so employed, by a person in the same grade employed in the
20 same class of employment, and in the same district.

- (b) Where the worker has entered into concurrent
25 contracts of service with two or more employers under which he worked at one time for one such employer, and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the
30 time of the injury.

- (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury, uninterrupted by absence from work due to
35 illness, strikes, lockouts, tempestuous weather, or any other unavoidable cause.

- (d) Where the employer has been accustomed to
40 pay to the worker a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

6 Ed. VII,
c. 58, Sch. I
(2).

(e)

Workers' Compensation.

(e) The average weekly earnings of a casual worker, who has worked under successive contracts of service with two or more employers in the same industry, shall be computed as if his earnings under all such contracts, for a period of twelve months preceding the injury or any less period he may have been engaged in the industry, were earnings in the employment of the employer for whom he was working at the time of the injury. Such average weekly earnings shall be deemed to be not less than the weekly living wages declared by the statutory authority to be payable in the area in which the injury occurs, and the compensation shall be computed and assessed accordingly.

Casuals.
1920 No. 45,
s. 4.

Until a separate declaration is made by the statutory authority as to the living wages to be paid to persons engaged in rural occupations, the living wages for other adult males or females for the time being in force in the area in which the injury occurs, shall, for the purposes of the computation and assessment of compensation, be deemed to be the living wages paid to the male or female workers engaged in such occupations.

(f) Upon request of an injured worker to the employer liable to pay compensation under this Act, the employer shall furnish in writing a list of the earnings of that worker upon which the amount of average weekly earnings may be calculated for the purpose of determining the amount of any weekly payment under this Act.

List of
earnings.
13 and 14,
Geo. V, c. 42,
s. 24 (4).

16. (1) Subject to this section the liability in respect of any weekly payment in respect of a worker may be redeemed either in whole or in part by the payment of a lump sum determined by the commission having regard to the injury, age and occupation of the worker at the time of the occurrence of the injury.

Redemption
of weekly
payments
either in
whole or in
part.

(2)

Workers' Compensation.

(2) An agreement as to the redemption of a weekly payment by a lump sum shall not nor shall the payment of the sum payable under the agreement exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment unless such sum has been determined by the commission in accordance with this Act.

(3) In case of permanent total disablement, or of permanent partial disablement where the impairment of the earning capacity of the worker exceeds ten per centum of his earning capacity at the time of the injury, no redemption of weekly payments shall be made, except upon the application of, and at an amount agreed to by, the worker.

(4) Such lump sum may by agreement or order of the commission be invested or otherwise applied for the benefit of the person entitled thereto.

17. (1) Notwithstanding the foregoing provisions of this Part the compensation payable by the employer for the injuries mentioned in the first column of the table hereunder set forth shall, when the injury results in total or partial incapacity, be the amounts indicated in the second column of that table.

Compensation for certain injuries.
W.A. 1912,
No. 69, s. 10.

(2) Nothing in the table shall limit the amount of compensation payable for any such injury during any period of total incapacity resulting from that injury, but any sum so paid shall be deducted from the compensation payable in accordance with the table.

(3) Section sixteen shall not apply to any payment under this provision save that any such payment may, by agreement or by order of the commission, be invested or otherwise applied for the benefit of the person entitled thereto.

(4) For the purpose of the said table the expression "loss of" includes "permanent loss of the use of."

(5) For the purpose of the said table the expression "loss of" also includes the "permanent loss of the efficient use of" but in such case a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use, may be awarded in lieu of the full amount.

(6)

Workers' Compensation.

(6) No worker shall in any case (including the case of a worker sustaining by the same occurrence more than one of the injuries mentioned in the table) be entitled to receive more than one thousand pounds compensation in addition to payment of such expenses as are provided for in section eleven, which section is hereby made applicable to workers entitled to compensation under this section.

TABLE.

10	Nature of injury.	Amount payable.		
		£	s.	d.
	Loss of either arm, or of the greater part thereof ...	675	0	0
15	Loss of lower part of either arm, either hand, or five fingers of either hand ...	600	0	0
	Loss of a leg ...	600	0	0
	Loss of the lower part of a leg ...	562	10	0
	Loss of a foot ...	525	0	0
	Loss of sight of one eye, with serious diminution of the sight of the other ...	675	0	0
20	*Loss of sight of one eye ...	375	0	0
	Loss of hearing ...	600	0	0
	Complete deafness of one ear ...	200	0	0
	Loss of a thumb ...	225	0	0
25	Loss of a forefinger ...	150	0	0
	Loss of joint of a thumb ...	112	10	0
	Loss of little finger, middle finger, or ring finger ...	112	10	0
	Loss of a toe or the joint of a finger ...	90	0	0
	Loss of a joint of a toe ...	75	0	0

30 * For the partial loss of the sight of one eye there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

18. Unless otherwise authorised by the commis- Place of
sion, compensation shall be paid by the employer to the payment.
35 worker at the employer's usual place of payment of
wages, or be delivered or sent by registered post to the
worker's address.

PART

Workers' Compensation.

PART III.

INSURANCE.

19. (1) Every employer shall obtain from an insurer licensed under this Act to carry on business in the State, a policy of insurance or indemnity for the full amount of his liability under this Act to all workers employed by him and shall maintain such policy in force.

Compulsory
insurance.

(2) No insurer shall, except with the consent of the commission, given after due inquiry into the circumstances, refuse to issue such a policy of insurance or indemnity to any employer who has complied with the prescribed conditions.

Provided that an insurer who confines his operations to indemnifying one employer, or a group of employers engaged in one industry, trade or business, in respect of the liability to workers under this Act or at common law, shall not be required to issue a policy in respect of the liability or any other employer whatever, even if engaged in the same industry, trade, or business.

Insurance
policy.
cf. Vict. Act,
No. 2,750,
s. 31.

The operations of a racing or recreation club shall, for the purposes of this subsection, be deemed to be its trade or business.

(3) Every policy of insurance or indemnity indemnifying an employer against his liability under this Act shall contain only such provisions relating thereto as are prescribed, but may contain such other provisions relating to liability under any other Act or Commonwealth Act or at common law as are appropriate to any particular case.

Any contravention of this provision shall not annul such policy or diminish or affect the liability of the insurer to the person insured under such policy.

Every such policy shall provide that the insurer shall as well as the employer be directly liable to any worker insured under such policy and in the event of his death, to his dependants, to pay the compensation for which an employer is liable, and that the insurer shall be bound by and subject to any order, decision, or award made against the employer of such worker under the provisions of this Act.

Workers' Compensation.

(4) Every employer or insurer who fails to comply with any provision of this section shall be liable to a penalty not exceeding one hundred pounds, and after the date of conviction of any such failure to comply he shall from time to time be liable to further penalties not exceeding twenty pounds for every week during which he continues to make default in compliance with any such provision. Penalty.

(5) It shall be sufficient defence on any prosecution under this section instituted within twelve months from the commencement of this Act, if the person charged proves that he is insured by an insurance company carrying on business in the State against the full amount of his liability to pay compensation under this Act to all workers employed by him.

20. (1) Within six months of the commencement of this Act every insurer carrying on the business of workmen's compensation insurance in the State at the time of the commencement of this Act, or who after the said commencement commences to carry on the business of insurance of employers against their liability to their workers under this Act or at common law, shall deposit with the Colonial Treasurer a sum of money which shall be determined as follows:— Deposits by insurers.

Where the premium income of the insurer from such business in the State, during the twelve months next preceding the commencement of this Act, after deducting local reinsurances— cf. Qld. Act, 7 Geo. V, No. 27, s. 11 (2).

did not exceed ten thousand pounds—
the deposit shall be ... £6,000
exceeded ten thousand pounds—
the deposit shall be ... £10,000

In a case where a first deposit of six thousand pounds has been made, the insurer shall make a return to the Colonial Treasurer, in each year on such day to be appointed by the Colonial Treasurer, of his premium income from the business of insuring employers against their liability under this Act or at common law during the twelve months preceding, after deducting local reinsurances, and if and when such premium income after such deductions has increased

Workers' Compensation.

increased so as to exceed ten thousand pounds, the insurer shall increase his deposit with the Colonial Treasurer to the sum of ten thousand pounds.

5 In the case of an insurer commencing to carry on business in the State after the commencement of this Act, the initial deposit to be made by him shall be six thousand pounds.

(2) If any such insurance is effected by an insurer established elsewhere than in the State, and the contract is negotiated on behalf of such insurer by a broker, agent, or other person in the State, such broker, agent, or other person shall be deemed to be a person who carries on insurance business within the State, and an "insurer" within the meaning of this Act, unless the insurer on whose behalf the contract is negotiated has complied with the requirements of this section.

(3) If any insurer carries on any such business in contravention of the provisions of this section the insurer or his attorney shall be severally liable to a penalty not exceeding one hundred pounds for every day during which such business is carried on.

21. (1) Every sum of money deposited with the Colonial Treasurer by an insurer pursuant to this Act shall be invested and re-invested from time to time as occasion requires in New South Wales stock of such currency and bearing interest at such rate as are in force for the time being in respect of such stock issued to ordinary investors.

(2) The interest on all such stock shall be paid to the insurer depositing the sum of money.

(3) The investment and redemption shall be at par.

22. (1) Notwithstanding anything in this Act, the obligation imposed by this Act upon an insurer to deposit with the Colonial Treasurer any specific sum of money may be satisfied in whole or in part by the deposit by the insurer of securities of equal value issued by the State or the Commonwealth.

(2) The value of any such securities shall, for the purposes of this section, be deemed to be the face value thereof: Provided that, if the market value of any

Extension of Act to certain brokers and agents.

cf. W.A. Act, 1923, No. 34, s. 2.

Investments of deposits. S.A., 15 Geo. V, No. 1,659, s. 4.

Alternative method of giving security. Ibid. s. 5.

Workers' Compensation.

any securities deposited by an insurer under this section is at any time below par, the Colonial Treasurer may, at his discretion, and from time to time, require the insurer to deposit further securities to such an amount
 5 that the total market value of all the securities deposited by the insurer equals the amount of the deposit required to be made by the insurer.

(3) Every security so deposited with the Colonial Treasurer shall (unless it is negotiable) bear
 10 or be accompanied by an assignment in blank executed by the insurer making the deposit.

(4) Every reference in this Act to the sum of money required to be deposited with the Colonial Treasurer shall be deemed to include, mutatis mutandis,
 15 a reference to any securities substituted in whole or in part therefor under the authority of this section, and the Colonial Treasurer may, if he thinks fit, convert any such securities into money by sale, hypothecation or otherwise, for the purpose of satisfying any such final
 20 judgment against the insurer making the deposit as is mentioned in section twenty-four of this Act.

23. (1) If it is proved to the satisfaction of the Colonial Treasurer that any insurer, if a company, has acquired the share capital of any other insurer, being a
 25 company, and that such companies are under a common management in Australia, a deposit as required by this Act by the acquiring insurer shall, if the Colonial Treasurer so certifies, be a sufficient compliance with the requirements of this Act.

Where share capital of a company is acquired by some other company one deposit may suffice.

S.A. Act,
 15 Geo. V,
 No. 1,659,
 s. 6.

30 (2) For the purpose of computing the sum of money required by this Act to be deposited by the acquiring insurer, the premium income of that insurer shall be deemed to be the sum of the premium incomes of the acquiring insurer and of the company whose share
 35 capital was acquired.

24. (1) Subject to this Act, the Colonial Treasurer shall hold every sum of money deposited under this Act upon trust for the payment and satisfaction of all final
 judgments given against the insurer making the deposit
 40 in respect of all insurance policies and contracts issued and entered into by the insurer in the State relating to the

Application of deposits.
Ibid. s. 7.

Workers' Compensation.

the liability of employers to their workers under this Act or at common law, which judgments are not otherwise satisfied.

(2) No sum of money deposited with the Colonial Treasurer under this Act shall be liable to be attached or levied upon or made subject to any debts of or claims against the insurer making the deposit, except as mentioned in the next preceding subsection.

25. (1) If any insurer who has deposited with the Treasurer a sum of money under this Act ceases to carry on business of insurance of employers against the liability to their workers under this Act in the State, the insurer may withdraw the sum so deposited :—

Return of
deposits.
S. A. Act,
15 Geo. V,
No. 1,659,
s. 8.

(a) on the expiration of three months after service on the Colonial Treasurer of a notice in writing duly signed by or on behalf of the insurer stating that the insurer has ceased to carry on such insurance business in the State; and

(b) on satisfying the Colonial Treasurer that the insurer has not from the date of the service of the notice carried on such insurance business in the State; and

(c) on satisfying the Colonial Treasurer that all the liabilities of the insurer in the State in respect of such insurance are fully liquidated or provided for.

(2) The Colonial Treasurer shall cause every notice served on him under this section, and also his decision with regard to the proposed withdrawal to be published at the cost of the insurer in such manner as he thinks fit.

26. The allegation in any complaint under this Act that any body or association therein named is an incorporated body under any Act shall be prima facie evidence of the fact alleged.

Evidence.
Ibid. s. 10.

27. Upon application in the prescribed form accompanied by evidence that the deposit required by this Act has been made, the commission may grant to the applicant a license to carry on in New South Wales the business of insurance of employers against their liability to

Licensing of
insurers.

Workers' Compensation.

to their workers under this Act and at common law. Such license shall remain in force until terminated under this Act.

With the application shall also be lodged a return of
5 the premium income of the applicant from workmen's compensation business during the twelve months preceding the commencement of this Act, verified by statutory declaration.

28. (1) If it is at any time alleged in a complaint
10 in the prescribed form to the commission, that the insurer is unable to meet his liabilities or that a person licensed as an insurer has failed to comply with any material provision of this Act, or is persistently acting in breach of any provision of this Act, the commission
15 may give notice in the prescribed form to the insurer calling upon him to show cause why his license should not be terminated or suspended.

Termination
of licenses.

(2) The commission shall hear evidence in support and in answer to the complaint, and after due
20 inquiry shall decide whether or not the license should be terminated or suspended giving reasons for the decision.

(3) The decision of the commission to terminate or suspend any license granted under this Act, shall not
25 be carried into effect until the time for lodging an appeal against the decision has expired, nor while any appeal against the decision is pending.

(4) Notwithstanding the provisions of sections thirty-six and thirty-seven of this Act, an appeal from
30 any decision given by the commission relating to insurers under any of the provisions of this Act shall lie to the Supreme Court.

Such appeal shall be instituted by notice of appeal filed within thirty days after receipt of written notice of
35 the decision from the commission, and shall be by way of special case as prescribed by rules of court.

(5) Any party to the proceedings before the commission may appeal from its decision.

(6) On the hearing of the case the court shall
40 be at liberty to draw from the facts and documents stated

Workers' Compensation.

stated in the case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

(7) If it appears to the court that the facts
5 necessary to enable the question submitted to be determined are not sufficiently set forth in the case or that such facts are in dispute, the court may direct all such inquiries to be made or issues to be tried as it deems necessary in order to ascertain such necessary
10 facts, and, if it deems fit, may amend the case. Any such inquiry may be made before a judge of the court or the Master in Equity.

(8) In every appeal under this section the costs of the appeal, including the costs of any issue therein,
15 shall be in the discretion of the court.

(9) For the purposes of this section the court may be holden before one judge only.

(10) Any notification of the cancellation of any license under this Act shall be published by the
20 commission in the Gazette, and any notification so published shall be prima facie evidence that the license has been cancelled.

29. (1) No person shall carry on the business of insurance of employers against their liability to their
25 workers under this Act or at common law after his license in that behalf has been cancelled, unless or until a fresh license as an insurer under this Act has been granted to him.

(2) No person whose license has been cancelled
30 shall thereafter, unless or until a fresh license so to do has been granted to him under this Act, do any act or perform any function whatsoever for which a license is required under this Act.

30. The commission may refuse to license under
35 this Act any insurer whose license issued under this Act has been at any time cancelled, or may issue the license subject to such conditions as it thinks fit, subject to a right of appeal in either case in such insurer in manner provided in section twenty-eight.

Unlicensed
insurers.

Power to
refuse
license.

Workers' Compensation.

PART IV.

WORKERS' COMPENSATION COMMISSION.

31. (1) There shall be a Workers' Compensation Commission which shall consist of a chairman and two other members appointed from time to time by the Governor. Appointment
of com-
mission.
cf. 1924
No 24, s. 5.

The provisions of the Public Service Act, 1902, shall not apply to the appointments.

(2) (a) The chairman shall be a barrister-at-law of five years' standing, and shall have the same rank, title, status, and precedence, and the same salary and rights as a judge of the district court.

(b) The chairman shall be the "permanent head" within the meaning of the Public Service Act, 1902, and any Act amending the same.

(3) The salaries of the members, other than the chairman, shall be fixed by the Governor.

(4) The members of the commission, other than the Chairman, shall be appointed for a term of seven years, and shall be eligible for reappointment.

On the occurrence of a vacancy an appointment shall be made for the remainder of the unexpired term of the vacant office.

(5) A member of the commission may be suspended or removed for misbehaviour or incompetence, as follows:—

(a) A member of the commission may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided.

The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven days after such suspension if Parliament be in session and actually sitting, and when Parliament is not in session or not actually sitting, within seven days after the commencement of the next session or sitting.

(b)

Workers' Compensation.

- (b) A member of the commission suspended under this section shall be restored to office unless each House of Parliament within twenty-one days from the time when such statement has been laid before it, declares by resolution that the said member ought to be removed from office, and if each House of Parliament within the said time does so declare, the said member shall be removed by the Governor accordingly.
- 5
- 10 (6) A member of the commission shall be deemed to have vacated his office if he—
- (a) engages in New South Wales during his term of office in any paid employment outside the duties of his office;
- 15 (b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary for their benefit;
- (c) absents himself from duty for a period of fourteen consecutive days, except on leave granted by the Governor, or becomes incapable of performing his duties;
- 20 (d) resigns his office, by writing under his hand, addressed to the Governor.
- (7) No act or proceeding of the commission shall be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done, or commenced, there was a vacancy in the office of any one member.

32. (1) The commission shall be a body corporate, ^{Body} with perpetual succession and a common seal, and may ^{corporate.} sue and be sued in its corporate name; and shall, for the ^{cf. 1924} purposes and subject to the provisions of this Act, be ^{No. 24, s. 5.} capable of purchasing, holding, granting, demising, disposing of, or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer. The corporate name of the commission shall be "The Workers' Compensation Commission of New South Wales."

- 40 (2) At any meeting of the commission at which all three members are present, the decision of a majority of the members shall be the decision of the commission

Workers' Compensation.

commission: Provided that in the event of the chairman disagreeing with the two other members on a question of law, the matter shall be referred for decision to the Supreme Court in accordance with the provisions of clause thirty-seven.

(3) Any two members of the commission shall be a quorum, and, subject to the next following provision, shall have all the powers and authority by this Act conferred upon the commission.

(4) If at any meeting of the commission, at which two members only are present, such members differ in opinion upon any matter, the determination of such matter shall be postponed until all the members are present.

(5) No action or suit shall be brought or maintained against any person who is, or at any time has been a member of the commission for anything done or omitted by him pursuant to the duties imposed upon him by this Act, nor shall any action, suit, or other proceeding lie against him, nor any costs be payable by him in respect of any proceeding before the commission.

(6) The commission shall cause minutes of its decisions to be kept upon the official papers, and cause minutes to be kept of the proceedings at formal meetings, and an annual report of its work and a statement of accounts to be prepared and presented to Parliament through the Minister.

(7) In case of the illness, suspension, or absence of any member of the commission, a deputy may be appointed by the Governor to act for such member during his illness, suspension, or absence; and every such deputy shall have the immunities and shall, during the time he acts as deputy, have all the powers and authority of such member.

33. (1) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the commission by this or any other Act, the commission, with the approval of the Minister of the department concerned, may make use of the services of any of the officers and employees of the public service.

(2) The staff of the commission shall be appointed under and be subject to the provisions of the Public Service Act, 1902.

Differences of opinion.

No action or suit against members of commission.

Minutes of meetings, &c.

Appointment of deputy.

Appointment of officers and employees.
cf. 1924 No. 24, s. 5.

Staff under Public Service Act, 1902.

Workers' Compensation.

No such appointment shall be made without the concurrence of the commission.

(3) The commission may appoint, employ, and dismiss such casual employees as it deems necessary for the purposes of this Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

(4) Every person appointed under this Act who without lawful excuse reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

(5) Any member of the commission who at the date of his appointment was, or is, an officer of the public service shall, in the event of his office on the commission being discontinued, or in the event of the dissolution of the commission, be eligible on the recommendation of the Public Service Board to be appointed to some office in the public service not lower in classification and salary than that which he held at the date of his appointment to the commission.

34. The commission, for the purpose of conducting any inquiry, investigation or hearing under this Act, shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon a Commissioner appointed under Division 1 of Part II of the Royal Commissions Act, 1923; and the said Act, section thirteen and Division 2 of Part II excepted shall, mutatis mutandis, apply to any witness or person summoned by or appearing before the commission or any member or person to whom the powers of the commission have been delegated under this Act.

35. For the purpose of conducting an inquiry, investigation or hearing under the authority of this Act, at which it may be inconvenient for all or any of the members of the commission to be present, the commission may delegate any of its powers or functions to any one member of the commission, or to any fit person, but the decision of any matter in dispute shall be determined by the commission.

36.

Workers' Compensation.

- 36.** (1) The commission shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Act, and the action or decision of the commission shall be final.
- 5 (2) Nothing in subsection one of this section shall prevent the commission from reconsidering any matter which has been dealt with by it, or from rescinding, altering or amending any decision or order previously made, all of which the commission shall have
- 10 authority to do.
- (3) The decisions of the commission shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent.
- 15 (4) Without limiting the generality of the provisions of subsection one of this section, the jurisdiction of the commission shall extend to determining—
- (a) the question whether an injury received by a worker entitles him to compensation under this Act ;
- 20 (b) the existence and degree of incapacity for work by reason of an injury ;
- (c) the permanence of disablement by reason of an injury ;
- 25 (d) the degree of diminution of earning capacity by reason of an injury ;
- (e) the amount of average earnings of a worker ;
- (f) the existence, for the purpose of this Act, of the relationship of any member of the family of a worker as defined by this Act ;
- 30 (g) the existence and extent of dependency.
- (5) (a) Where an award or order of the commission for the payment of money has been entered up or made in favour of any person, the registrar of the commission, upon the application of such person or of
- 35 his solicitor or agent, shall issue and deliver to such person, solicitor, or agent a certificate in the prescribed form or to the like effect, and shall make a minute or memorandum thereof against the entry of the award or order.
- 40 (b) Such person may file, or cause to be filed, the said certificate in any district court having jurisdiction

Jurisdiction.

Certificate may issue in respect of unsatisfied award or order.

Certificate may be filed in district court.

Workers' Compensation.

jurisdiction within the district where the debtor resides, when the registrar shall enter judgment for such person for the amount of the certificate together with the fees paid for such certificate to the registrar of the
5 commission and the fees paid for filing such certificate and entering judgment.

37. (1) No award, order, or proceeding of the commission shall be vitiated by reason of any informality or want of form, or be liable to be
10 challenged, appealed against, reviewed, quashed, or called in question by any court of judicature, on any account whatsoever.

Decision of
Commission to
be final.

(2) No writ of prohibition or certiorari shall lie in respect of any award, order, proceeding, or direction
15 of the commission relating to, or on the face of the proceedings appearing to relate to any matter arising out of this Act.

(3) The validity of any proceeding or decision of the commission shall not be challenged in any manner
20 howsoever.

(4) When any question of law arises in any proceeding before the commission, the commission
may of its own motion, state a case for the decision of the Supreme Court thereon.

Commission
may state
case.

25 (5) The Supreme Court for the purpose of hearing any such case shall consist of three judges, and shall have power to make such order as it thinks fit in regard to the costs of and incidental to any case so stated.

30 (6) The judges of the Supreme Court, or any two of them, may also make rules with regard to the setting down of any case for argument, and the hearing and decision of the same, and its return with the decision of the Supreme Court thereon.

35 (7) The decision of the Supreme Court upon the hearing of any such case shall be binding upon the commission and upon all the parties to such proceeding.

38. The commission may—

40 (a) conduct its proceedings in public or private as it may think fit;

(b) adjourn the proceedings to any time or place;

63—C

(c)

Proceedings
of commis-
sion.

Workers' Compensation.

- (c) summon a medical referee to sit with the commission as an assessor ;
- (d) submit to a medical referee or medical board for report any matter which seems material to any question arising in an arbitration ; and
- (e) make rules regarding all matters of procedure and practice, and prescribe forms to be used, scales of fees and costs to be paid to barristers and attorneys ; expenses to be paid to witnesses, and the fees payable in any proceedings.

39. The commission shall—

- (a) furnish workers and employers with information as to their rights and liabilities in respect of injuries sustained by workers in connection with their employment ;
- (b) make all reasonable efforts to conciliate and bring parties to agreement where dispute has arisen concerning compensation claims of injured workers.

40. If on any proceedings for the recovery under this Act of compensation for an injury, it appears to the commission that the contract of service or apprenticeship under which the injured person was engaged at the time when the injury happened was illegal, the commission may, if, having regard to all the circumstances of the case, the commission thinks it proper so to do, deal with the matter as if the injured person had at the time aforesaid been a worker under a valid contract of service or apprenticeship.

41. (1) There shall be a fund belonging to and vested in the commission, in this Act called "the fund," from which shall be paid all moneys required for the salaries of the members of the commission and its staff and all other moneys required for carrying out the provisions of this Act.

(2) The commission shall in each year make an estimate of the amount to be expended out of the fund for the next following year commencing the first day of January: Provided that for the year one thousand nine hundred and twenty-six the commission may make such estimate at any time during that year.

(3)

Commission to assist all parties.

Illegal employment.
8 & 9 Geo. V,
c. 8, s. 1.

Constitution of fund.
cf. 1909
No. 9,
ss. 33-37.

Workers' Compensation.

(3) Such estimate when sealed with the seal of the commission shall in any proceeding for the recovery of any contribution to the fund be deemed to have been duly made.

5 (4) Each insurer shall contribute annually to the fund, a sum amounting to a percentage to be fixed by the commission on the total amount of the premiums received by or due to the insurer during the year ending the thirty-first day of December then last past, in respect
10 of insurance to employers against their liability to their workers under this Act or at common law, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act. Such percentage shall be uniform for all
15 insurers.

(5) The amount of any such annual contribution shall be paid in quarterly instalments on the first day of January, April, July and October in each year or on such other days as the commission may fix.

20 If any such instalment payable by an insurer is not paid within thirty days after any day prescribed or fixed, the insurer shall be liable to a penalty not exceeding fifty pounds.

(6) For the year one thousand nine hundred
25 and twenty-six the contribution under this section shall be based upon the premium income of the insurer in respect of insurance against liability under the Workmen's Compensation Act, 1916, as subsequently amended, as shown in the returns furnished by insurers
30 lodged with applications for licenses.

42. (1) Every insurer shall, in the month of July in each year, or at such other time as the commission may notify, send to the commission a return showing the total amount of the premium income received by or due
35 to such insurer in respect of insurance of employers against their liability to their workers under this Act and at common law during the year ending the thirty-first day of December then last past, less any part of such premium income actually paid by way of re-
40 insurance to any other insurers contributing under this Act, together with a statutory declaration by the insurer

Returns by
insurers.
cf. 1909 No.
9, s. 39.

Workers' Compensation.

insurer, or his manager, secretary, or agent in this State that, to the best of his knowledge, information, and belief, such return is a true return of such amount.

(2) If any such insurer fails to send such return
5 within the time so prescribed or notified, such insurer shall be liable to a penalty not exceeding five pounds for every day during which such default continues.

(3) If any such return is false in any material
10 particular, such insurer shall be liable to a penalty not exceeding one hundred pounds.

PART V.

GENERAL PROVISIONS.

43. (1) There shall be kept constantly posted up in some conspicuous place at or near every mine, quarry,
15 factory, workshop, or shop, and on every ship to which this Act applies, where it may be conveniently read by a person employed, a summary of the requirements of this Act, with regard to the giving of notice of injuries and the making of claims.

Posting
summary of
Act.
13 and 14
Geo. V, c. 42,
s. 10.

20 (2) The summary shall be in or to the effect of the prescribed form, and in the event of the summary becoming effaced, obliterated, or destroyed, it shall be renewed with all reasonable dispatch.

(3) In the event of any non-compliance with the
25 provisions of this section, the owner, agent, or manager of the mine or quarry, or the occupier of the factory workshop, or shop, or the master of the ship, shall be guilty of an offence against this Act. Proceedings to recover a penalty for a contravention of this section
30 shall be instituted only by an official authorised by the commission.

(4) The want of, or any defect or inaccuracy in the notice of an injury required by section fifty-three, shall not be a bar to the maintenance of proceedings for
35 the recovery of compensation if the employer is proved to have had knowledge of the injury from any source at
or

Workers' Compensation.

or about the time of the occurrence, or, where the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, or shop—

- 5 (a) if such summary as aforesaid has not been posted up in accordance with the provisions of this section ;
- (b) if the injury has been reported by or on behalf of the employer to an inspector of mines or factories ;
- 10 (c) if the injury has been entered in any register of accidents kept by or on behalf of the employer at the mine, quarry, factory, workshop, or shop ;
- 15 (d) if the injury has been treated in an ambulance room at the mine, quarry, factory, workshop, or shop.

44. (1) The employer of any worker who sustains physical injury in the course of his employment, or on his journey to or from the place of employment, shall, Reports of injuries.
 20 when the injury results in death, or incapacity for work for a period of three days, notify the commission in writing as soon as practicable and furnish full particulars regarding the cause, nature and extent of the injury, name and address of the worker, including his
 25 dependants in case of death, also his average weekly earnings, the name of the insurer concerned, and such other information as may be prescribed.

(2) The employer of any such worker shall upon the return to employment, termination of
 30 incapacity of such worker, or from time to time if requested, furnish such further particulars as the commission may require.

(3) The commission may compile and publish Statistics.
 statistics concerning injuries in different industries or
 35 occupations from the reports received from employers.

45. (1) This Act applies, notwithstanding any contract to the contrary made after the commencement of this Act. No contract-
ing out.
Qld., 6 Geo. V,
No. 35, s. 12.

(2) Any contract existing at the commencement
 40 of this Act containing a provision whereby a worker relinquishes any right to compensation under this Act shall,

Workers' Compensation.

shall, to the extent of such provision on the commencement of this Act, be determined.

46. (1) This Act applies in respect of an injury ^{Seamen.} to a worker who is a seaman employed on a New South ^{1916 No. 71,} Wales ship or a ship whose first port of clearance and ^{s. 11.} whose destination are in New South Wales.

(2) In this section the term " New South Wales ship " means any ship which is—

- (a) registered in this State ; or
- 10 (b) owned by a body corporate established under the laws of this State or having its principal office or place of business in this State, or is in the possession of any such body corporate by virtue of a charter ; or
- 15 (c) owned by any person or body corporate whose chief office or place of business in respect of the management of such ship is in this State, or is in the possession of any such person or body corporate by virtue of a charter ; or
- 20 (d) owned by the Crown in respect of the Government of this State, or is in the possession of the Crown in that respect by virtue of a charter.

(3) The application of this Act in respect of ^{injuries} to seamen, as provided by this section, shall be ²⁵ subject to the following modifications :—

- (a) the notice of injury and the claim for compensation may, except where the person injured is a master, be served on the master of the ship as if he were the employer ; but ³⁰ where the injury happened, or the incapacity commenced on board the ship, it shall not be necessary to give any notice of the injury ;
- (b) in the case of the death of the seaman, the claim for compensation shall be made within ³⁵ six months after the news of the death has been received by the claimant ;
- (c) where an injured seaman is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury taken by a ⁴⁰ judge

Workers' Compensation.

5 judge or magistrate in the British possession, or by any British consular officer in the foreign country shall, in any proceedings for enforcing the claim, be admissible in evidence if authenticated by the signature of such judge, magistrate, or consular official, without proof of the signature or official character of the person appearing to have signed such depositions ;

10 (d) in the case of the death of the seaman, leaving no dependants, no compensation shall be payable if the owner of the ship is, under any law in force in this State, liable to pay the expenses of burial ;

15 (e) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force in this State, liable to defray the expenses of maintenance of the injured seaman ;

20 (f) any sum payable by way of compensation shall be paid in full notwithstanding any limitation of liability in any other law ;

25 (g) in any proceeding for the recovery of compensation if it is shown that the ship has, twelve months or upwards before the institution of the proceeding, left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board, either immediately after the time when she was last heard of, or at
30 such later time as the commission may think probable.

35 Any duplicate agreement or list of the crew made out, or statement of change of the crew delivered to a public officer at the time of the last departure of the ship from a port, or a certificate purporting to be a certificate from a consular or other public officer at any port, stating that certain seamen
40 were shipped in the ship from such port shall, if produced or purporting to be produced from
the

Workers' Compensation.

the proper custody be in the absence of proof to the contrary, sufficient proof that the seamen therein named as belonging to the ship were on board at the time of the loss.

5 Proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands;

10 (h) where a claim is made for compensation under this Act in respect of any injury to a seaman, and it appears that the claimant is or may be entitled to claim compensation in respect of such injury under the Seamen's
15 Compensation Act, 1911, of the Commonwealth, or any Act amending it, proceedings for compensation under this Act shall be stayed until the claimant has given to the person from whom he claims such compensation
20 a sufficient undertaking not to institute or continue any proceedings under the said Act or Acts of the Commonwealth.

25 The sufficiency of such undertaking may be as agreed upon between the parties and, in default of such agreement, it shall be determined by the commission.

(4) This Act shall not apply to such members ^{cf. 13 & 14} of the crew of a fishing vessel as are remunerated ^{Geo. V, c. 42,} wholly or mainly by shares in the profits of the gross ^{s. 8 (2).}
30 earnings of the working of such vessel, except in such cases and subject to such modifications as are prescribed.

47. (1) This Act shall apply to workers employed ^{Workers of} by or under the Crown or any Government department ^{Crown.} to whom this Act would apply if the employer were a
35 private person.

(2) If a worker elects to make his claim under this Act he shall, in the case of death or total and permanent disablement, in addition to any benefits to which he is entitled under this Act, be entitled only to
40 a refund of the amount of any contributions made by him or deductions from his salary or emoluments and
paid

Workers' Compensation.

paid to any superannuation account under any other Act, with interest thereon at the rate of four per centum per annum from the respective dates when such contributions or deductions were made.

5 **48.** (1) No employer shall directly or indirectly take or receive any money from a worker whether by way of deduction from wages or otherwise in respect of any liability under this Act. Deductions from wages. Qld., 6 Geo. V, No. 35, s. 17.

(2) Any money so taken or received as aforesaid
10 from a worker, whether with the consent of such worker, or not, may by him be recovered as a debt from the employer, or person who took or received it.

49. (1) Where any employer has entered into a contract with any insurer in respect of any liability
15 under this Act to any worker, then, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer
20 against the insurer as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vested in the worker. Bankruptcy of employer. 1916 No. 71, s. 9.

Upon any such transfer the insurer shall have the same
25 rights and remedies and be subject to the same liabilities as if such insurer were the employer, so however that the insurer shall not be under any greater liability to the worker than the insurer would have been under to the employer.

30 (2) If the liability of the insurer to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts
35 which, under the Bankruptcy Act, 1898, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor
40 accrued before the date of the sequestration order or the date of the commencement of the winding-up, and that Act shall have effect accordingly. Where

Workers' Compensation.

Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment should in the opinion of the commission be redeemed.

(4) The provisions of this section with respect to preferences and priorities, shall not apply where the bankrupt or the company being wound up has entered into such contract with an insurer as aforesaid.

10 (5) This section shall not apply where a company is wound up voluntarily, merely for the purposes of reconstruction or of amalgamation with another company.

PART VI.

MEDICAL PROVISIONS.

15 **50.** (1) The commission may appoint legally qualified medical practitioners to be medical referees for the purposes of this Act and the remuneration of, and other expenses incurred by, such medical referees shall, subject to rules made under this Part, be paid by the commission out of the fund.

Medical referees.
cf. 1916 No. 71, s. 14.

20 (2) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman, or by any insurer interested, he shall not act as medical referee in that case.

25 **51.** (1) Where notice has been given of an injury to a worker, or any worker is receiving weekly payments under this Act, any such worker shall, if so required by the commission, submit himself for examination by a medical referee or a medical board consisting of two or more medical referees, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute

Medical examinations.
Ibid. Sch. I, pars. 4-14.

Workers' Compensation.

prosecute any proceedings under this Act in relation to compensation shall be suspended until such examination has taken place.

(2) A worker shall not be required to submit
5 himself for medical examination otherwise than in accordance with this Act and rules made by the commission, or at more frequent intervals than may be prescribed by those rules.

(3) The medical referee or medical board to
10 whom any matter is referred shall, in accordance with rules made by the commission, give a certificate as to the condition of the worker, and his fitness for employment, specifying, where necessary the kind of employment for which he is fit, and such other information
15 as the commission may require.

Any such certificate given by a medical board shall be conclusive evidence as to the matters so certified.

(4) Rules may be made, amended, varied or
rescinded by the commission respecting the procedure
20 in regard to the medical examination of injured workers, the manner in which documents are to be furnished or served, and applications made, and the forms to be used for those purposes and as to fees and expenses to be paid for medical examinations and medical
25 treatment.

52. (1) The commission may draw from the fund such sums as may be necessary for the purposes of the vocational re-education and rehabilitation of disabled
workers. Rehabilitation of disabled workers.

(2) All Government departments shall as far
30 as practicable, render assistance to the commission in giving effect to the purposes specified in this section.

Workers' Compensation.

PART VII.

PROCEEDINGS RESPECTING COMPENSATION.

53. (1) Proceedings for the recovery, under this Act, of compensation for an injury shall not be maintainable unless notice of the injury has been given to the employer as soon as practicable after the happening thereof, and before the worker has voluntarily left the employment in which he was at the time of the injury, and unless the claim for compensation with respect to such injury has been made within six months from the occurrence of the injury, or in case of death, within six months from the time of death:

Time for
taking
proceedings.
1916 No. 71,
s. 6.

Provided always that—

15 (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not or would not if a notice or an amended notice was then given, and the hearing postponed be prejudiced in his defence by the want, defect, or inaccuracy or that such want, defect, or inaccuracy, was occasioned by mistake, absence from the State, or other reasonable cause; and

20 (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings, if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

25 (2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and date on which the injury happened.

30 (3) The notice may be given orally, or in writing, to the employer, or any person designated for the purpose by the employer, or any foreman or other official under whose supervision the worker is employed. If there is more than one employer, the notice may be given to any one of such employers.

(4)

Workers' Compensation.

(4) For facilitating the giving of notice of ^{13 and 14} injuries, a book in the prescribed form shall be kept at ^{Geo. V, c. 42,} every mine, quarry, factory, workshop or shop, in which ^{s. 10 (1).} the prescribed particulars of injuries happening to 5 persons employed at the mine, quarry, factory, workshop or shop may be entered by the injured worker, or some other person acting on his behalf.

An entry in such book, if made as soon as practicable after the happening of the injury, shall be sufficient 10 notice of the injury for the purposes of this Act.

The book shall be kept at such place as to be readily accessible at all reasonable times to any injured worker who was employed at the mine, quarry, factory, workshop or shop, and any person bona fide acting on 15 his behalf.

(5) Notice in writing may be served by ^{1916 No. 71,} delivering the same at, or sending it by post in a ^{s. 5 (3).} registered letter addressed to the residence or place of business of the person on whom it is to be served.

(6) Where the employer is a body of persons, ^{*Ibid.* (4).} corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or if there be more than one office, any of the 20 offices of such body.

54. If a worker receiving a weekly payment ceases ^{Residence} to reside in the Commonwealth of Australia, he shall ^{outside Com-} thereupon cease to be entitled to receive any weekly ^{monwealth.} payment, unless a medical referee certifies that the ^{*Ibid.* Sch. I,} incapacity resulting from the injury is likely to be of a ^{par. 18.} permanent nature. 30

If the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so 35 long as he proves, in such manner and at such intervals as may be prescribed by rules made by the commission, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

Workers' Compensation.

55. A weekly payment, or a sum paid by way of redemption thereof, or a lump sum payable under this Act, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same. Non-assign-ability of compensa-
tion.
1916 No. 71,
Sch. I,
par. 19.

56. (1) Any sum awarded as compensation shall, unless paid into the commission under this Act, be paid on the receipt of the person to whom it is payable under any agreement, award, or order. Receipt for
payment.
Ibid. Sch. II,
par. 13.

(2) The solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded, ordered or agreed as compensation, except such sum as may be awarded by the commission. Costs.

(3) The award may be made on the application either of the person claiming compensation, or of his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent.

(4) Any sum so awarded shall be subject to taxation by the registrar of the commission and to the scale of costs prescribed by rules made by the commission.

57. (1) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the office of the commission. Payment into
commission
on death.
cf. Ibid.
Sch. I, par. 5.

(2) Any sum so paid shall, subject to rules made by the commission, be invested, applied, or otherwise dealt with by the commission, in such manner as the commission in its discretion thinks fit for the benefit of the persons entitled thereto under this Act.

(3) The receipt of the registrar of the commission shall be a sufficient discharge in respect of the amount paid in.

(4) The payment in case of death may, if the worker leaves no dependants, be made to his legal personal representative, or if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

58.

Workers' Compensation.

58. Where a weekly payment is payable under this Act to a person under any legal disability, the commission may, on application being made in accordance with the rules made by the commission, order that the weekly payment be paid during the disability into the office of the commission and the provisions of this Act with respect to sums required to be paid into the office of the commission shall apply to sums so paid in pursuance of any such order.

Payment into commission.
Person under disability.
1916 No. 71,
Sch. I, par. 7.

59. (1) The amount payable to each dependant shall be settled by the commission.

Dependency questions and apportionment.

(2) Where there are both total and partial dependants the commission may apportion the compensation partly to the total and partly to the partial dependants.

cf. *Ibid.*
Sch. I, par. 8.

(3) Where a dependant dies before a claim under this Act is made, or if a claim has been made before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the worker.

13 and 14
Geo. V, c. 42,
s. 24 (1).

60. (1) Any weekly payment may be reviewed by the commission at the request of either the employer or the worker, and on such review may be ended, diminished, or increased subject to the maximum provided by this Act, and the amount of payment shall, in default of agreement, be settled by the commission.

Review.
1916 No. 71,
Sch. I, par. 16.

(2) Where the worker was at the date of the injury under twenty-one years of age, and the review takes place more than six months after the injury, and before the worker attains the age of twenty-one years, the amount of the weekly payment may be increased to such an amount as would have been awarded if the worker had at the time of the injury been earning the weekly sum which he would probably have been earning at the date of the review, if he had remained uninjured.

13 and 14
Geo. V, c. 42,
s. 24 (6).

Workers' Compensation.

61. Where it appears to the commission, that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the commission or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the commission may make such order for the variation of the former order or the award, as in the circumstances of the case the commission may think just.

Review—account neglect by widow—variation of dependants' circumstances.
1916 No. 71, Sch. I, par. 9.

62. (1) Any sum which under this Act is ordered to be invested may be invested in whole or in part in the Government Savings Bank of New South Wales. The provisions of any statute or regulations respecting the limit of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

Investment.
Ibid. pars. 10, 11, 12.

(2) No part of any money invested in the Government Savings Bank of New South Wales under this Act shall be paid out, except under the authority of the commission or the order of some officer of the commission authorised in that behalf.

Withdrawals.

PART VIII.

25 REMEDIES AT COMMON LAW.

63. (1) Nothing in this Act shall affect any civil liability of the employer where the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible.

Negligence.
Ibid. s. 52 (c).

(2) In such case the worker may, at his option, proceed under this Act or independently of this Act, but he shall not be entitled to compensation under this Act, if he has obtained judgment against his employer independently of this Act.

64.

Workers' Compensation.

64. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

Remedies
against both
employer and
stranger.
1916 No. 71,
s. 10.

5 (a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation ; and

10 (b) if the worker has recovered compensation under this Act, the person by whom the compensation was paid shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions relating thereto shall, in default of agreement, be settled by action, or, with the consent of the parties, by the commission.

65. (1) Where any injury or damage is suffered by a worker by reason of the negligence of a fellow worker, the employer of those workers shall be liable in damages in respect to that injury or damage in the same manner and in the same cases as if those workers had not been engaged in a common employment.

Common
employment.
cf. N.Z., 13
Geo. V, s. 67.

25 (2) This section applies to every case in which the relation of employer and worker exists, whether the contract of employment is made before or after the passing of this Act, and whether or not the employment is one to which the other provisions of this Act apply.

30 (3) "Employer" in this section includes any Government department or any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of New South Wales but does not refer to any person who by any

35 provision of section six is deemed to be an employer.

Workers' Compensation.

PART IX.

MISCELLANEOUS.

66. (1) The Governor may make regulations for carrying out the provisions of this Act, and may in such Regulations and rules.
5 regulations impose any penalty not exceeding fifty pounds for any breach thereof.

(2) Such regulations and any rules made by the commission shall—

- (a) be published in the Gazette;
- 10 (b) take effect from the date of publication, or from a later date to be specified in such regulations or rules; and
- (c) be laid before both Houses of Parliament
15 within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session. If either House of Parliament passes a resolution at
20 any time within fifteen sitting days after such regulations or rules have been laid before such House disallowing any regulation or rule or part thereof, such regulation, rule or part shall thereupon cease to have effect.

67. Every person who is guilty of an offence against
25 this Act for which a penalty is not expressly prescribed shall be liable to a fine not exceeding five pounds for each offence or where the offence is a continuing one to a fine not exceeding five pounds for each day during which the offence continues.

68. All penalties under this Act or the regulations
30 may be recovered in a summary way before a stipendiary or police magistrate, or any two justices in petty sessions.

69. Nothing in this Act shall affect any proceeding
for a fine or penalty under the enactments relating to
35 mines, factories, or shops, or the application of any such fine or penalty.

70. (1) The commission may, on the application of
either party, authorise any barrister, attorney, com-
missioner for taking affidavits, or justice of the peace,
40 whether of New South Wales or elsewhere in His Majesty's

Regulations and rules.

General penalty.

Recovery of penalties.

Saving of penalties under other Acts.
1916 No. 71,
s. 54.

Examination de bene esse.
1912 No. 23,
s. 83.
1901 No. 24,
s. 66.

Workers' Compensation.

Majesty's dominions, or any British consul or vice-consul in any place out of His Majesty's dominions, to take at some convenient place, the examination of a witness de bene esse, if such witness is absent from New
5 South Wales, is expected to die, or to be unable from sickness or infirmity to attend at the hearing of any proceeding.

(2) The commission may appoint a medical practitioner residing outside the State to be a medical
10 referee for the purposes of this Act, and may require any worker who is in receipt of weekly payments, or claims compensation, under this Act, to submit himself for examination by any such medical referee, at such times as the commission may require, and if he refuses
15 to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceedings under this Act in relation to compensation, shall be suspended until the commission otherwise orders.

