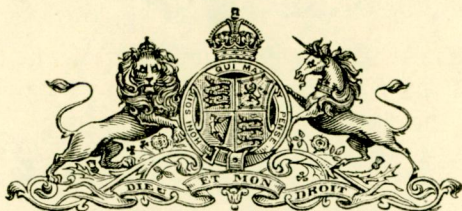


82

# New South Wales.



ANNO SEXTO

## GEORGII VI REGIS.

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### Act No. 13, 1942.

An Act to extend in certain respects the provisions of the Workers' Compensation Act, 1926-1941, and for that purpose to amend that Act; to make provision for the appointment of a deputy chairman of the medical authority under the Workmen's Compensation (Broken Hill) Act, 1920-1940, and for that and certain other purposes to amend that Act; and for purposes connected therewith. [Assented to, 24th June, 1942.]

**B**E 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.

##### PRELIMINARY.

**1.** (1) This Act may be cited as the "Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment) Act, 1942."

Short title, citation, and division into Parts.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(2) The Workers' Compensation Act, 1926-1941, as amended by this Act, may be cited as the Workers' Compensation Act, 1926-1942.

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

(4) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—WORKERS' COMPENSATION.

PART III.—AMENDMENTS TO THE WORKMEN'S COMPENSATION (BROKEN HILL) ACT, 1920-1940.

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PART II.

WORKERS' COMPENSATION.

2. The Workers' Compensation Act, 1926-1941, is amended—

(a) (i) by inserting in subsection one of section six after the definition of "Dependants" the following new definition:—

"Disease caused by silica dust" means disease caused by the inhalation of free silica, SiO<sub>2</sub>;

(ii) by omitting from the same subsection the definition of "Injury" and by inserting in lieu thereof the following definition:—

"Injury" means personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save in the case of a worker employed in or about

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a mine to which the Coal Mines Regulation Act, 1912-1941, applies, include a disease caused by silica dust.

(iii) (a) by omitting from the definition of "Worker" in the same subsection the words "five hundred and fifty pounds per year" and by inserting in lieu thereof the words "seven hundred and fifty pounds per year, exclusive of payments for overtime, bonuses and special allowances";

(b) by inserting in paragraph (d) of the same definition after the word "casual" the brackets and words "(that is for one period only of not more than five working days)";

(b) by inserting after subsection three of section six the following new subsection:—

New subsec.  
(3A).

(3A) Where a contract to perform any work exceeding five pounds in value (not being work incidental to a trade or business regularly carried on by the contractor in his own name, or under a business or firm name) is made with the contractor, who neither sublets the contract, nor employs workers, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the person who made such contract with the contractor.

Contracts  
for labour.

(c) by omitting subsection five of the same section and by inserting in lieu thereof the following new subsection:—

Subst.  
subsec. (5).

(5) (a) Where any person (in this paragraph referred to as "the principal") in the course of, or for the purposes of, his trade or business, enters into a contract, agreement, or arrangement, with any other person or persons (in this paragraph

Rural work.

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paragraph referred to as "the contractor") under which the contractor agrees—

- (i) to supply timber, and such timber is obtained, or to be obtained, from trees felled, or to be felled, by the contractor (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
- (iii) to clear land of stumps or logs; or
- (iv) to cut sugar-cane; or
- (v) to perform any other work or class of work specified by proclamation of the Governor published in the Gazette;

and the contractor does not either sublet any part of the work to be carried out, or employ a worker, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the principal.

Where the principal has given or offered the contractor the option to or the opportunity to so supply timber if he so desires then for the purposes of this paragraph the contractor shall be deemed to have agreed to supply timber.

Timber-  
getters.

(b) Where any person (in this paragraph referred to as "the principal") advertises or otherwise notifies that he will accept timber delivered or supplied 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

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receives injury while engaged in or about the work of cutting, 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 indicate the nature of the actual work to be undertaken. The notice 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. Definitions.

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

- (d) by omitting subsection six of the same section and by inserting in lieu thereof the following new subsections:— Subst. sub-sec. (6) and new subsec. (6A).

(6) A salesman, canvasser, collector, or person paid wholly or partly by commission shall for the purposes of this Act, be deemed to be a worker in the 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 regularly carried on by him or by a firm whereof he is a member. Salesman, etc.

(6A) Every tributer working in connection with any “mine” as defined by the Mining Act, 1906, as amended by subsequent Acts, and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer. Tributer.

(e)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Subst.  
subsec. (11).

- (e) by omitting subsection eleven of the same section and by inserting in lieu thereof the following new subsection:—

Contract of  
bailment.  
cf. 13 and 14  
Geo. V,  
Ch. 42, s. 9  
(2); 1 and 2  
Geo. VI,  
Ch. 27, s. 1;  
N.S.W. Act  
No. 15,  
1926, s. 6  
(11).

(11) A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall for the purposes of this Act be deemed to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

New subsec.  
(15).

- (f) by inserting at the end of the same section the following new subsection:—

School  
leaving age.

(15) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.

Further  
amendment of  
Act No. 15,  
1926, s. 7.

**3.** The Workers' Compensation Act, 1926-1941, is further amended—

- (a) by inserting at the end of subsection one of section seven the following new paragraphs:—

(b) Where a worker has received injury without his own default or wilful act on any of the daily or other periodic journeys referred to in paragraph (c) of this subsection, and the injury be not received—

(i) during or after any substantial interruption of, or substantial deviation from, any such journey, made for a reason unconnected with the worker's employment or unconnected with his attendance at the trade, technical or other school, as the case may be; or

(ii) during or after any other break in any such journey, which the Commission, having regard to all the circumstances,

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circumstances, deems not to have been reasonably incidental to any such journey;

the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act.

(c) The daily or other periodic journeys referred to in paragraph (b) of this subsection shall be

(i) between the worker's place of abode and place of employment; and

(ii) between the worker's place of abode, or place of employment, and any trade, technical or other training school, which he is required by the terms of his employment or is expected by his employer, to attend.

(d) The provisions of paragraphs (b) and (c) of this subsection shall not apply to or in respect of an injury received after the expiration of six months after the termination of the war which commenced on the third day of September, one thousand nine hundred and thirty-nine.

(b) (i) by omitting subsection two of the same section and by inserting in lieu thereof the following new subsection:— Subst. subsec. (2).

(2) Compensation shall be payable in respect 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 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

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orders given by or on behalf of his employer, or 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.

Subsec. (3).

(ii) by omitting from paragraph (a) of subsection three of the same section the word "seven" and by inserting in lieu thereof the word "three";

New subsec. (5A).

(iii) by inserting next after subsection five of the same section the following new subsection:—

cf. N.S.W. Act No. 15, 1926, s. 7 (6).

(5A) 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.

Sec. 8 (1) (b).  
(Dependency of children.)

(c) by omitting from paragraph (b) of subsection one of section eight the word "wholly";

Sec. 9 (1) (a).  
(Total or partial incapacity.)

(d) (i) by inserting at the end of paragraph (a) of subsection one of section nine the following words "and in the case of an adult male worker shall not be less than two pounds per week in the case of total incapacity";

(ii) by omitting from subparagraph (ii) of paragraph (b) of the same subsection the words "age of fourteen years," and by inserting in lieu thereof the words "school leaving age";

(iii)



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- (iii) by omitting from subparagraph (ii) of paragraph (c) of the same subsection the words "age of fourteen years" and by inserting in lieu thereof the words "school leaving age";
- (iv) by inserting at the end of the same subsection the following new paragraph:—
- (d) Any payment made under the Child Endowment Act 1941 of the Parliament of the Commonwealth of Australia, shall not preclude the child from being totally or mainly dependent on the earnings of the worker for the purposes of this Act; Child endowment.
- (v) by inserting in subsection three of the same section after the words "shall not exceed one thousand pounds in any one case" the following words:— Permanent and total disablement.  
N.S.W. Act No. 15, 1926, s. 9 (3).
- "except in the case of a worker whose injury results in his—
- (a) permanent and total disablement for work; or
- (b) permanent and partial disablement for work and such partial disablement is established by the worker to be of a major degree. In such a case the Commission may in its discretion, having regard to the provisions of sections eleven and twelve of this Act, and, if the case is not one in which the worker's disablement should be deemed to be total incapacity for work, make such order as under the circumstances of the case may appear proper." Permanent and partial disablement.  
Discretion.
- (vi) by omitting from subsection six of the same section the words "age of fourteen years" wherever occurring, and by inserting in lieu thereof the words "school leaving age";
- (e)

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**Sec. 10.**  
(Medical  
and  
hospital  
treatment.)

- (e) (i) by inserting at the end of paragraph (c) of subsection three of section ten the words "unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order";
- (ii) by inserting at the end of paragraph (b) of subsection four of the same section the words "unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order";
- (iii) (a) by omitting from paragraph (a) of subsection six of the same section the words "in the manner prescribed";
- (b) by inserting at the end of the same paragraph the following words:—  
The provisions of section fifty-three as to notice of injury shall, mutatis mutandis, apply to notice under this subsection, and to proceedings for the recovery of the cost of any treatment or service under this section.
- (iv) by inserting at the end of the same section the following new subsection:—  
(8) Any application made to the Commission under this section shall be made in the manner prescribed by rules of the Commission and until a rule in that behalf is made the application may be made at a sitting in chambers.

**Sec. 11.**  
(Partial  
incapacity.)

**Re-employ-  
ment of  
partially  
incapaci-  
tated  
workers.**

- (f) by inserting at the end of section eleven the following new subsections:—
- (2) Where the Commission in exercise of its discretion thinks it proper so to do, the Commission may order that an employer shall provide suitable employment for his injured worker

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worker during the worker's partial incapacity for his pre-injury employment for such period and subject to such conditions as may be provided by its order.

Upon any failure by such employer to comply with any order so made, the worker's incapacity for work shall be deemed to be total, and he shall be compensated accordingly. Any order made under this section shall be without prejudice to the right of review conferred by this Act.

(3) The onus of proving that an employer is unable to provide suitable employment for his partially incapacitated worker shall be on the employer. Onus of proof.

- (g) (i) by omitting from paragraph (e) of section fourteen the words "who has worked under successive contracts of service with two or more employers" and by inserting in lieu thereof the words "that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than five working days"; Sec. 14.  
(Average weekly earnings of casual worker.)
- (ii) by omitting from the same paragraph the words "such contracts" and by inserting in lieu thereof the words "his contracts of service";
- (h) by omitting from subsection two of section sixteen all words after the words "resulting from that injury" and by inserting in lieu thereof the following words:— Sec. 16.  
(Compensation for certain injuries.)

Where such an election has been made, the weekly compensation payments which the worker has received from his employer in respect of the period of incapacity shall be deducted from the amount payable in accordance with the table.

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Further amendment of Act, No. 15, 1926.  
Sec. 18.  
(Compulsory insurance.)

4. The Workers' Compensation Act, 1926-1941, is further amended—

(a) by inserting in subsection four of section eighteen after the words "one hundred pounds" the words "or imprisonment for a term not exceeding six months";

New sec.  
18c.

(b) by inserting after section 18B the following new section:—

Uninsured liability scheme.

18c. (1) There shall be constituted a Scheme called the Uninsured Liability Scheme, which shall be administered by the Commission.

Claimants.

(2) A claim may be made under the Uninsured Liability Scheme, hereinafter referred to as "the Scheme," by any person who has obtained or obtains an award of compensation from the Commission against an employer and—

(a) the employer had not obtained, or was not maintaining in force, a policy of insurance or indemnity under this Act for the full amount of his liability to the injured worker at the time of the happening of the worker's injury; and

(b) the person who has obtained or obtains the said award satisfies the Commission that he has proceeded under subsection five of section thirty-six of this Act, and that execution upon the judgment entered has not been fully satisfied, or has taken other reasonable steps, but for good and sufficient reason has been unable to obtain the compensation awarded.

Payments.

(3) From the fund constituted in pursuance of section forty-one of this Act the Commission may pay such amounts as it deems reasonable in or towards satisfaction of claims made under the Uninsured Liability Scheme:

Provided

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Provided that—

- (a) the aggregate of the amounts so paid shall not exceed five thousand pounds in any one year, which year shall commence on the first day of each July; and Limit per year.
- (b) subject to paragraph (c) of this proviso weekly allowances only shall be paid during the calendar year after the claim is approved by the Commission; and Weekly amounts.
- (c) as at the thirtieth day of June in each year the Commission shall, after due provision is made for weekly payments to such claimants whose claims have already been approved, determine whether any awards of lump sums can be satisfied either wholly or partly from the moneys then available in the fund for the purposes of the Scheme and may make from the fund payments on account of awards of lump sums on such equitable bases as the Commission may determine; and Lump sums.
- (d) the Commission may make such order as it thinks fit in regard to the application of any amount paid under the Scheme; Application.
- (e) notwithstanding anything to the contrary in the foregoing provisions of this subsection the Commission shall have jurisdiction and power to—
- (i) satisfy any claim made under the Scheme at any time in such manner as in the circumstances of the case it may, in the exercise of its discretion, deem reasonable;
- (ii)

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- (ii) increase, decrease, suspend, or terminate any allowance or lump sum payable, or order or award made under, or connected with, the Scheme.

**Exclusions.**

(4) No amount shall be payable under the Scheme where the award was obtained prior to the tenth day of May in the year one thousand nine hundred and forty-one.

**Proceedings.**

(5) (a) Where an award has been obtained from the Commission in default of appearance by the employer, or by consent of the worker and the employer, or otherwise, and a claim is made in respect thereof under the Scheme, the Commission may cause to be made such inquiries as may be deemed necessary to determine the genuineness of the grounds on which the award was originally based. It may reopen the award, and order its Registrar, or some other fit person, to take and defend the proceedings in substitution for the employer, and to such person for such purposes all the rights of the employer shall be subrogated.

**Corroboration.**

(b) No claim under the Scheme shall be approved unless the relevant award is based on testimony given and corroborated before the Commission on all matters which the Commission deems material.

**Recovery from employer.**

(6) Any employer who is a party to an award upon which a claim under the Scheme is based shall be liable—

(a) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith;

(b) to pay to the claimant under the Scheme any outstanding balance remaining due under the award, after crediting the payments

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payments made to him under subsection three of this section and any costs incurred in connection therewith.

(7) (a) Public notice of the claim shall be given by advertisement in such manner as is prescribed by rules made by the Commission. Publication.

Such notice shall be published at least seven days before the hearing of the claim under the Scheme.

(b) Any insurer who, without reasonable cause, fails to notify the Commission within the time prescribed in the said public notice that it is the insurer of the liability under this Act of an employer whose worker is making a claim under the Scheme, or who fails to furnish the Commission with any information it has which may be material to the matter, shall be liable— Duty of insurer.

- (i) to have the license issued to it by the Commission suspended or terminated; and
- (ii) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith; and
- (iii) to a penalty not exceeding five hundred pounds.

(8) Claims under the Scheme shall be made in the manner prescribed by rules made by the Commission and shall be heard and determined—

- (a) in chambers at meetings of the Commission convened by the Chairman; or
- (b) at public sittings of the Commission arranged by the Chairman.

(9) This section shall come into operation on the first day of July, one thousand nine hundred and forty-two;

(c)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Sec. 41.  
(The Furd.)

- (c) by inserting in subsection one of section forty-one after the word "staff" the words "an amount of five thousand pounds for the purposes of the Uninsured Liability Scheme";

Sec. 44 (1).  
(Reports of injuries to be furnished to the Commission.)

- (d) by omitting from subsection one of section forty-four the word "seven" and by inserting in lieu thereof the word "three";

Sec. 63.  
(Common law actions.)

- (e) (i) by omitting from paragraph (a) of subsection three of section sixty-three the words "six months" wherever occurring and by inserting in lieu thereof the words "twelve months";
- (ii) by inserting at the end of the same paragraph the following words:—

Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court.

Sec. 63A.  
(Notice of election.)

- (f) (i) by inserting at the end of paragraph (a) of subsection three of section 63A the following words:—

The solicitor, agent, clerk of petty sessions or officer—

- (i) shall read over and explain the notice of election or cause the same to be read over and explained in his presence to the applicant; and
- (ii) shall examine the applicant touching his knowledge of the election and the effect of the notice of election; and
- (iii) if he thinks fit may so examine him separately and apart from any other person; and

(iv)



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- (iv) if he is satisfied that the applicant understands the true purport and effect of the notice of election and freely and voluntarily signs the same, shall certify in writing upon the notice of election that the notice of election has been read over and explained, and that he has examined the applicant and is satisfied as hereinbefore required, and that the applicant has executed the notice of election in his presence.
- (ii) by inserting at the end of subsection five of the same section the following words and new paragraph:—
- “where the notice of election was signed by the injured worker himself;
- (c) be a valid defence to any legal proceedings by the person who signed the notice of election against the employer in respect of the injury other than proceedings under this Act, where the notice of election was signed by a dependant of the worker.”
- (g) (i) by omitting from paragraph (a) of section sixty-four the word “recover” where secondly occurring and by inserting in lieu thereof the word “retain”;
- Sec. 64.  
(Remedies against both employer and stranger.)
- (ii) by omitting from the same paragraph the word “and” after the words “both damages and compensation” and by inserting in lieu thereof the following words:—
- If the worker recovers firstly compensation and secondly such damages he shall be liable to repay to his employer out of such damages the amount of compensation which the employer has paid in respect of the
- Employer's indemnity.
- workers'

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worker's injury under this Act, and the worker shall not be entitled to any further compensation.

If the worker firstly recovers such damages he shall not be entitled to recover compensation under this Act.

(iii) by omitting from paragraph (b) of the same section all words after the word "aforesaid" and by inserting in lieu thereof the following new paragraphs:—

(c) if the worker subsequently obtains judgment for damages against the person who has paid under such indemnity, such payment under the indemnity shall be, to the extent of the amount of such payment, a satisfaction of the judgment for damages;

(d) all questions relating to matters arising under this section shall, in default of agreement, be settled by action, or, with the consent of the parties, by the Commission.

(h) by inserting next after section sixty-four the following new section:—

64A. (1) In the course of a jury action to recover damages for injury to a worker, no reference express or implied to any benefit under this Act shall be made by or on behalf of the defendant in the presence of the jury.

(2) Should any such reference be made—

(a) the plaintiff shall be entitled to his costs in the action up to the time such reference is made; and

(b) the action shall, if the plaintiff so requires, be heard before another jury.

**5.** Any policy of insurance against liability under the Workers' Compensation Act, 1926-1941, being maintained in force at the commencement of this Act shall be deemed

to

Third party indemnity.

New sec. 64A.

In actions for damages no reference to be made to compensation.

Subsisting policies.

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to insure the employer against any additional liability to which he may become liable during the currency of the policy under any amendment to the Workers' Compensation Act, 1926-1941, made by this Act.

The employer shall be liable to pay to the insurer additional premium in respect of any such additional liability at rates fixed by the Governor upon the recommendation of the Commission and published in the Gazette.

Any investigation or inquiry which the Commission may deem desirable for the purpose of collecting data upon which to found such recommendation shall be deemed to be an investigation or inquiry under the Workers' Compensation Act, 1926-1941.

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PART III.

AMENDMENTS TO THE WORKMEN'S COMPENSATION  
(BROKEN HILL) ACT, 1920-1940.

**6.** (1) The Workmen's Compensation (Broken Hill) Act, 1920-1940, is amended—

- (a) by inserting after paragraph (c) of subsection one of section eight the following words:—

“The Governor may appoint a legally qualified medical practitioner to be the deputy-chairman of the medical authority, who shall receive such fees as the Governor may fix.

The chairman of the medical authority may, from time to time, by writing under his hand delegate to the deputy-chairman such powers, authorities, duties and functions, conferred and imposed on the chairman of the medical authority by this Act, and the scheme of compensation set out in the Schedule hereto as the chairman of the medical authority may in and by such writing specify.

c

The

Amendment  
of Act No.  
36, 1920.  
Sec. 8 (1).  
(Medical  
authority.)

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The deputy-chairman when acting within the scope of such delegation shall be deemed to be the chairman of the medical authority.

The chairman of the medical authority may, by writing under his hand, revoke any delegation made under this section.

During the temporary absence from Broken Hill of the chairman of the medical authority, or during any vacancy in the position of Medical Officer-in-Charge of the Bureau of Medical Inspection at Broken Hill, the deputy-chairman shall have and may exercise and perform all the powers, authorities, duties and functions of the chairman of the medical authority."

- (b) by inserting at the end of paragraph (a) of subsection two of the same section the following words: "Provided that in any case where in the opinion of the chairman of the medical authority, a certificate affecting the compensation of any person medically examined under the said subsection might be issued, the Minister may direct that such person shall again present himself for medical examination under the said subsection and that such further medical examination shall be made by the board of three legally qualified medical practitioners who constitute the medical authority."
- (c) by inserting at the end of subsection three of the same section the following words: "At any meeting of the medical authority at which all members are present the decision of the majority on any question shall be the decision of the medical authority."
- (d) (i) by omitting from the definition of "Beneficiary" in paragraph two of Part I of the Schedule the words "fourteen years" wherever occurring and by inserting in lieu thereof the words "the school leaving age";

(ii)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(ii) by inserting after paragraph two of the same Part the following new subparagraph:—

(b) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.

(e) by omitting from paragraph six of Part II of the Schedule the words and figures "under 14 years" wherever occurring and by inserting in lieu thereof the words "under the school leaving age."

Schedule.  
Part II,  
para. (6).

(2) The Workmen's Compensation (Broken Hill) Act, 1920-1940, as amended by this Act, may be cited as the Workmen's Compensation (Broken Hill) Act, 1920-1942.

Citation of  
Act No. 39,  
1920, as  
amended by  
subsequent  
Acts.

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By Authority:

ALFRED HENRY PETTIFER, Acting Government Printer, Sydney, 1942.

[9d.]

(a) The first part of the report is a general statement of the work done during the year.

(b) A section is devoted to a description of the work done during the year.

(c) A section is devoted to a description of the work done during the year.

(d) A section is devoted to a description of the work done during the year.

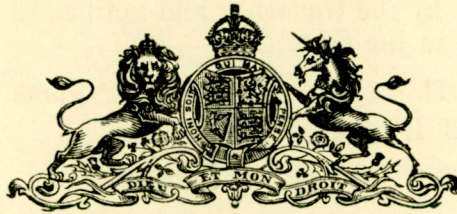
(e) A section is devoted to a description of the work done during the year.

(f) A section is devoted to a description of the work done during the year.

*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, 17 June, 1942.*

## New South Wales.



ANNO SEXTO

# GEORGII VI REGIS.

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## Act No. 13, 1942.

An Act to extend in certain respects the provisions of the Workers' Compensation Act, 1926-1941, and for that purpose to amend that Act; to make provision for the appointment of a deputy chairman of the medical authority under the Workmen's Compensation (Broken Hill) Act, 1920-1940, and for that and certain other purposes to amend that Act; and for purposes connected therewith. [Assented to, 24th June, 1942.]

**B**E 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.

#### PRELIMINARY.

1. (1) This Act may be cited as the "Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment) Act, 1942."

Short title,  
citation,  
and division  
into Parts.

(2)

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

G. BOOTH,  
*Chairman of Committees of the Legislative Assembly.*

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

(2) The Workers' Compensation Act, 1926-1941, as amended by this Act, may be cited as the Workers' Compensation Act, 1926-1942.

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

(4) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—WORKERS' COMPENSATION.

PART III.—AMENDMENTS TO THE WORKMEN'S COMPENSATION (BROKEN HILL) ACT, 1920-1940.

PART II.

WORKERS' COMPENSATION.

Amendment of Act No. 15, 1926. **2.** The Workers' Compensation Act, 1926-1941, is amended—

Sec. 6 (1).  
(Definitions.)

(a) (i) by inserting in subsection one of section six after the definition of "Dependants" the following new definition:—

"Disease caused by silica dust" means disease caused by the inhalation of free silica, SiO<sub>2</sub>;

(ii) by omitting from the same subsection the definition of "Injury" and by inserting in lieu thereof the following definition:—

"Injury" means personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save in the case of a worker employed in or about



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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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a mine to which the Coal Mines Regulation Act, 1912-1941, applies, include a disease caused by silica dust.

(iii) (a) by omitting from the definition of "Worker" in the same subsection the words "five hundred and fifty pounds per year" and by inserting in lieu thereof the words "seven hundred and fifty pounds per year, exclusive of payments for overtime, bonuses and special allowances";

(b) by inserting in paragraph (d) of the same definition after the word "casual" the brackets and words "(that is for one period only of not more than five working days)";

(b) by inserting after subsection three of section six the following new subsection:— New subsec.  
(3A).

(3A) Where a contract to perform any work exceeding five pounds in value (not being work incidental to a trade or business regularly carried on by the contractor in his own name, or under a business or firm name) is made with the contractor, who neither sublets the contract, nor employs workers, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the person who made such contract with the contractor. Contracts  
for labour.

(c) by omitting subsection five of the same section and by inserting in lieu thereof the following new subsection:— Subst.  
subsec. (5).

(5) (a) Where any person (in this paragraph referred to as "the principal") in the course of, or for the purposes of, his trade or business, enters into a contract, agreement, or arrangement, with any other person or persons (in this paragraph Rural work.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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paragraph referred to as "the contractor") under which the contractor agrees—

- (i) to supply timber, and such timber is obtained, or to be obtained, from trees felled, or to be felled, by the contractor (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
- (iii) to clear land of stumps or logs; or
- (iv) to cut sugar-cane; or
- (v) to perform any other work or class of work specified by proclamation of the Governor published in the Gazette;

and the contractor does not either sublet any part of the work to be carried out, or employ a worker, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the principal.

Where the principal has given or offered the contractor the option to or the opportunity to so supply timber if he so desires then for the purposes of this paragraph the contractor shall be deemed to have agreed to supply timber.

Timber-  
getters.

(b) Where any person (in this paragraph referred to as "the principal") advertises or otherwise notifies that he will accept timber delivered or supplied 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

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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receives injury while engaged in or about the work of cutting, 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 indicate the nature of the actual work to be undertaken. The notice 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. Definitions.

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

- (d) by omitting subsection six of the same section and by inserting in lieu thereof the following new subsections:— Subst. sub-sec. (6) and new subsec. (6A).

(6) A salesman, canvasser, collector, or person paid wholly or partly by commission shall for the purposes of this Act, be deemed to be a worker in the 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 regularly carried on by him or by a firm whereof he is a member. Salesman, etc.

(6A) Every tributer working in connection with any “mine” as defined by the Mining Act, 1906, as amended by subsequent Acts, and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer. Tributer.

(e)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

Subst.  
subsec. (11).

(e) by omitting subsection eleven of the same section and by inserting in lieu thereof the following new subsection:—

Contract of  
bailment.  
cf. 13 and 14  
Geo. V,  
Ch. 42, s. 9  
(2); 1 and 2  
Geo. VI,  
Ch. 27, s. 1;  
N.S.W. Act  
No. 15,  
1926, s. 6  
(11).

(11) A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall for the purposes of this Act be deemed to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.

New subsec.  
(15).

(f) by inserting at the end of the same section the following new subsection:—

School  
leaving age.

(15) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.

Further  
amendment of  
Act No. 15,  
1926, s. 7.

3. The Workers' Compensation Act, 1926-1941, is further amended—

(a) by inserting at the end of subsection one of section seven the following new paragraphs:—

(b) Where a worker has received injury without his own default or wilful act on any of the daily or other periodic journeys referred to in paragraph (c) of this subsection, and the injury be not received—

- (i) during or after any substantial interruption of, or substantial deviation from, any such journey, made for a reason unconnected with the worker's employment or unconnected with his attendance at the trade, technical or other school, as the case may be; or
- (ii) during or after any other break in any such journey, which the Commission, having regard to all the circumstances,

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- circumstances, deems not to have been reasonably incidental to any such journey;
- the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act.
- (c) The daily or other periodic journeys referred to in paragraph (b) of this subsection shall be
- (i) between the worker's place of abode and place of employment; and
  - (ii) between the worker's place of abode, or place of employment, and any trade, technical or other training school, which he is required by the terms of his employment or is expected by his employer, to attend.
- (d) The provisions of paragraphs (b) and (c) of this subsection shall not apply to or in respect of an injury received after the expiration of six months after the termination of the war which commenced on the third day of September, one thousand nine hundred and thirty-nine.
- (b) (i) by omitting subsection two of the same section and by inserting in lieu thereof the following new subsection:—
- Subst.  
subsec. (2).
- (2) Compensation shall be payable in respect 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 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

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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orders given by or on behalf of his employer, or 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.

- Subsec. (3). (ii) by omitting from paragraph (a) of subsection three of the same section the word "seven" and by inserting in lieu thereof the word "three";
- New subsec. (5A). (iii) by inserting next after subsection five of the same section the following new subsection:—

cf. N.S.W.  
Act No. 15,  
1926, s. 7  
(6).

(5A) 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.

- Sec. 8 (1) (b).  
(Dependency of children.) (c) by omitting from paragraph (b) of subsection one of section eight the word "wholly";
- Sec. 9 (1) (a).  
(Total or partial incapacity.) (d) (i) by inserting at the end of paragraph (a) of subsection one of section nine the following words "and in the case of an adult male worker shall not be less than two pounds per week in the case of total incapacity";
- (ii) by omitting from subparagraph (ii) of paragraph (b) of the same subsection the words "age of fourteen years," and by inserting in lieu thereof the words "school leaving age";

(iii)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(iii) by omitting from subparagraph (ii) of paragraph (c) of the same subsection the words "age of fourteen years" and by inserting in lieu thereof the words "school leaving age";

(iv) by inserting at the end of the same subsection the following new paragraph:—

(d) Any payment made under the Child Endowment Act 1941 of the Parliament of the Commonwealth of Australia, shall not preclude the child from being totally or mainly dependent on the earnings of the worker for the purposes of this Act;

Child  
endowment.

(v) by inserting in subsection three of the same section after the words "shall not exceed one thousand pounds in any one case" the following words:—

Permanent  
and total  
disablement.  
N.S.W. Act  
No. 15, 1926,  
s. 9 (3).

"except in the case of a worker whose injury results in his—

(a) permanent and total disablement for work; or

(b) permanent and partial disablement for work and such partial disablement is established by the worker to be of a major degree. In such a case the Commission may in its discretion, having regard to the provisions of sections eleven and twelve of this Act, and, if the case is not one in which the worker's disablement should be deemed to be total incapacity for work, make such order as under the circumstances of the case may appear proper."

Permanent  
and partial  
disablement.

Discretion.

(vi) by omitting from subsection six of the same section the words "age of fourteen years" wherever occurring, and by inserting in lieu thereof the words "school leaving age";

(e)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Sec. 10.  
(Medical  
and  
hospital  
treatment.)

(e) (i) by inserting at the end of paragraph (c) of subsection three of section ten the words "unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order";

(ii) by inserting at the end of paragraph (b) of subsection four of the same section the words "unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order";

(iii) (a) by omitting from paragraph (a) of subsection six of the same section the words "in the manner prescribed";

(b) by inserting at the end of the same paragraph the following words:—

The provisions of section fifty-three as to notice of injury shall, *mutatis mutandis*, apply to notice under this subsection, and to proceedings for the recovery of the cost of any treatment or service under this section.

(iv) by inserting at the end of the same section the following new subsection:—

(8) Any application made to the Commission under this section shall be made in the manner prescribed by rules of the Commission and until a rule in that behalf is made the application may be made at a sitting in chambers.

Sec. 11.  
(Partial  
incapacity.)

Re-employ-  
ment of  
partially  
incapaci-  
tated  
workers.

(f) by inserting at the end of section eleven the following new subsections:—

(2) Where the Commission in exercise of its discretion thinks it proper so to do, the Commission may order that an employer shall provide suitable employment for his injured  
**worker**



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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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worker during the worker's partial incapacity for his pre-injury employment for such period and subject to such conditions as may be provided by its order.

Upon any failure by such employer to comply with any order so made, the worker's incapacity for work shall be deemed to be total, and he shall be compensated accordingly. Any order made under this section shall be without prejudice to the right of review conferred by this Act.

(3) The onus of proving that an employer is unable to provide suitable employment for his partially incapacitated worker shall be on the employer. Onus of proof.

- (g) (i) by omitting from paragraph (e) of section fourteen the words "who has worked under successive contracts of service with two or more employers" and by inserting in lieu thereof the words "that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than five working days"; Sec. 14.  
(Average weekly earnings of casual worker.)
- (ii) by omitting from the same paragraph the words "such contracts" and by inserting in lieu thereof the words "his contracts of service";
- (h) by omitting from subsection two of section sixteen all words after the words "resulting from that injury" and by inserting in lieu thereof the following words:— Sec. 16.  
(Compensation for certain injuries.)

Where such an election has been made, the weekly compensation payments which the worker has received from his employer in respect of the period of incapacity shall be deducted from the amount payable in accordance with the table.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Further amendment of Act, No. 15, 1926.

Sec. 18.  
(Compulsory insurance.)

New sec. 18c.

Uninsured liability scheme.

Claimants.

Payments.

4. The Workers' Compensation Act, 1926-1941, is further amended—

- (a) by inserting in subsection four of section eighteen after the words "one hundred pounds" the words "or imprisonment for a term not exceeding six months";
- (b) by inserting after section 18B the following new section:—

18c. (1) There shall be constituted a Scheme called the Uninsured Liability Scheme, which shall be administered by the Commission.

(2) A claim may be made under the Uninsured Liability Scheme, hereinafter referred to as "the Scheme," by any person who has obtained or obtains an award of compensation from the Commission against an employer and—

- (a) the employer had not obtained, or was not maintaining in force, a policy of insurance or indemnity under this Act for the full amount of his liability to the injured worker at the time of the happening of the worker's injury; and
- (b) the person who has obtained or obtains the said award satisfies the Commission that he has proceeded under subsection five of section thirty-six of this Act, and that execution upon the judgment entered has not been fully satisfied, or has taken other reasonable steps, but for good and sufficient reason has been unable to obtain the compensation awarded.

(3) From the fund constituted in pursuance of section forty-one of this Act the Commission may pay such amounts as it deems reasonable in or towards satisfaction of claims made under the Uninsured Liability Scheme:

Provided

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Provided that—

- (a) the aggregate of the amounts so paid shall not exceed five thousand pounds in any one year, which year shall commence on the first day of each July; and Limit per year.
- (b) subject to paragraph (c) of this proviso weekly allowances only shall be paid during the calendar year after the claim is approved by the Commission; and Weekly amounts.
- (c) as at the thirtieth day of June in each year the Commission shall, after due provision is made for weekly payments to such claimants whose claims have already been approved, determine whether any awards of lump sums can be satisfied either wholly or partly from the moneys then available in the fund for the purposes of the Scheme and may make from the fund payments on account of awards of lump sums on such equitable bases as the Commission may determine; and Lump sums.
- (d) the Commission may make such order as it thinks fit in regard to the application of any amount paid under the Scheme; Application.
- (e) notwithstanding anything to the contrary in the foregoing provisions of this subsection the Commission shall have jurisdiction and power to—
- (i) satisfy any claim made under the Scheme at any time in such manner as in the circumstances of the case it may, in the exercise of its discretion, deem reasonable;
- (ii)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(ii) increase, decrease, suspend, or terminate any allowance or lump sum payable, or order or award made under, or connected with, the Scheme.

**Exclusions.**

(4) No amount shall be payable under the Scheme where the award was obtained prior to the tenth day of May in the year one thousand nine hundred and forty-one.

**Proceedings.**

(5) (a) Where an award has been obtained from the Commission in default of appearance by the employer, or by consent of the worker and the employer, or otherwise, and a claim is made in respect thereof under the Scheme, the Commission may cause to be made such inquiries as may be deemed necessary to determine the genuineness of the grounds on which the award was originally based. It may reopen the award, and order its Registrar, or some other fit person, to take and defend the proceedings in substitution for the employer, and to such person for such purposes all the rights of the employer shall be subrogated.

**Corroboration.**

(b) No claim under the Scheme shall be approved unless the relevant award is based on testimony given and corroborated before the Commission on all matters which the Commission deems material.

**Recovery from employer.**

(6) Any employer who is a party to an award upon which a claim under the Scheme is based shall be liable—

(a) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith;

(b) to pay to the claimant under the Scheme any outstanding balance remaining due under the award, after crediting the payments

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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payments made to him under subsection three of this section and any costs incurred in connection therewith.

(7) (a) Public notice of the claim shall be given by advertisement in such manner as is prescribed by rules made by the Commission. Publication.

Such notice shall be published at least seven days before the hearing of the claim under the Scheme.

(b) Any insurer who, without reasonable cause, fails to notify the Commission within the time prescribed in the said public notice that it is the insurer of the liability under this Act of an employer whose worker is making a claim under the Scheme, or who fails to furnish the Commission with any information it has which may be material to the matter, shall be liable— Duty of insurer.

- (i) to have the license issued to it by the Commission suspended or terminated; and
- (ii) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith; and
- (iii) to a penalty not exceeding five hundred pounds.

(8) Claims under the Scheme shall be made in the manner prescribed by rules made by the Commission and shall be heard and determined—

- (a) in chambers at meetings of the Commission convened by the Chairman; or
- (b) at public sittings of the Commission arranged by the Chairman.

(9) This section shall come into operation on the first day of July, one thousand nine hundred and forty-two;

(c)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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Sec. 41.  
(The Fund.)

- (c) by inserting in subsection one of section forty-one after the word "staff" the words "an amount of five thousand pounds for the purposes of the Uninsured Liability Scheme";

Sec. 44 (1).  
(Reports of injuries to be furnished to the Commission.)

- (d) by omitting from subsection one of section forty-four the word "seven" and by inserting in lieu thereof the word "three";

Sec. 63.  
(Common law actions.)

- (e) (i) by omitting from paragraph (a) of subsection three of section sixty-three the words "six months" wherever occurring and by inserting in lieu thereof the words "twelve months";
- (ii) by inserting at the end of the same paragraph the following words:—

Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court.

Sec. 63A.  
(Notice of election.)

- (f) (i) by inserting at the end of paragraph (a) of subsection three of section 63A the following words:—

The solicitor, agent, clerk of petty sessions or officer—

- (i) shall read over and explain the notice of election or cause the same to be read over and explained in his presence to the applicant; and
- (ii) shall examine the applicant touching his knowledge of the election and the effect of the notice of election; and
- (iii) if he thinks fit may so examine him separately and apart from any other person; and

(iv)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- (iv) if he is satisfied that the applicant understands the true purport and effect of the notice of election and freely and voluntarily signs the same, shall certify in writing upon the notice of election that the notice of election has been read over and explained, and that he has examined the applicant and is satisfied as hereinbefore required, and that the applicant has executed the notice of election in his presence.
- (ii) by inserting at the end of subsection five of the same section the following words and new paragraph:—
- “where the notice of election was signed by the injured worker himself;
- (c) be a valid defence to any legal proceedings by the person who signed the notice of election against the employer in respect of the injury other than proceedings under this Act, where the notice of election was signed by a dependant of the worker.”
- (g) (i) by omitting from paragraph (a) of section sixty-four the word “recover” where secondly occurring and by inserting in lieu thereof the word “retain”;
- (ii) by omitting from the same paragraph the word “and” after the words “both damages and compensation” and by inserting in lieu thereof the following words:—
- If the worker recovers firstly compensation and secondly such damages he shall be liable to repay to his employer out of such damages the amount of compensation which the employer has paid in respect of the workers’

Sec. 64.  
(Remedies against both employer and stranger.)

Employer's indemnity.

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

worker's injury under this Act, and the worker shall not be entitled to any further compensation.

If the worker firstly recovers such damages he shall not be entitled to recover compensation under this Act.

(iii) by omitting from paragraph (b) of the same section all words after the word "aforesaid" and by inserting in lieu thereof the following new paragraphs:—

Third party indemnity.

(c) if the worker subsequently obtains judgment for damages against the person who has paid under such indemnity, such payment under the indemnity shall be, to the extent of the amount of such payment, a satisfaction of the judgment for damages;

(d) all questions relating to matters arising under this section shall, in default of agreement, be settled by action, or, with the consent of the parties, by the Commission.

New sec. 64A.

(h) by inserting next after section sixty-four the following new section:—

In actions for damages no reference to be made to compensation.

64A. (1) In the course of a jury action to recover damages for injury to a worker, no reference express or implied to any benefit under this Act shall be made by or on behalf of the defendant in the presence of the jury.

(2) Should any such reference be made—

(a) the plaintiff shall be entitled to his costs in the action up to the time such reference is made; and

(b) the action shall, if the plaintiff so requires, be heard before another jury.

Subsisting policies.

**5.** Any policy of insurance against liability under the Workers' Compensation Act, 1926-1941, being maintained in force at the commencement of this Act shall be deemed

**to**



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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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to insure the employer against any additional liability to which he may become liable during the currency of the policy under any amendment to the Workers' Compensation Act, 1926-1941, made by this Act.

The employer shall be liable to pay to the insurer additional premium in respect of any such additional liability at rates fixed by the Governor upon the recommendation of the Commission and published in the Gazette.

Any investigation or inquiry which the Commission may deem desirable for the purpose of collecting data upon which to found such recommendation shall be deemed to be an investigation or inquiry under the Workers' Compensation Act, 1926-1941.

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PART III.

AMENDMENTS TO THE WORKMEN'S COMPENSATION  
(BROKEN HILL) ACT, 1920-1940.

**6.** (1) The Workmen's Compensation (Broken Hill) Act, 1920-1940, is amended—

- (a) by inserting after paragraph (c) of subsection one of section eight the following words:—

“The Governor may appoint a legally qualified medical practitioner to be the deputy-chairman of the medical authority, who shall receive such fees as the Governor may fix.

The chairman of the medical authority may, from time to time, by writing under his hand delegate to the deputy-chairman such powers, authorities, duties and functions, conferred and imposed on the chairman of the medical authority by this Act, and the scheme of compensation set out in the Schedule hereto as the chairman of the medical authority may in and by such writing specify.

Amendment  
of Act No.  
36, 1920,  
Sec. 8 (1).  
(Medical  
authority.)

The

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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The deputy-chairman when acting within the scope of such delegation shall be deemed to be the chairman of the medical authority.

The chairman of the medical authority may, by writing under his hand, revoke any delegation made under this section.

During the temporary absence from Broken Hill of the chairman of the medical authority, or during any vacancy in the position of Medical Officer-in-Charge of the Bureau of Medical Inspection at Broken Hill, the deputy-chairman shall have and may exercise and perform all the powers, authorities, duties and functions of the chairman of the medical authority."

- (b) by inserting at the end of paragraph (a) of subsection two of the same section the following words: "Provided that in any case where in the opinion of the chairman of the medical authority, a certificate affecting the compensation of any person medically examined under the said subsection might be issued, the Minister may direct that such person shall again present himself for medical examination under the said subsection and that such further medical examination shall be made by the board of three legally qualified medical practitioners who constitute the medical authority."
- (c) by inserting at the end of subsection three of the same section the following words: "At any meeting of the medical authority at which all members are present the decision of the majority on any question shall be the decision of the medical authority."
- (d) (i) by omitting from the definition of "Beneficiary" in paragraph two of Part I of the Schedule the words "fourteen years" wherever occurring and by inserting in lieu thereof the words "the school leaving age";

(ii)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(ii) by inserting after paragraph two of the same Part the following new subparagraph:—

(b) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.

(e) by omitting from paragraph six of Part II of the Schedule the words and figures "under 14 years" wherever occurring and by inserting in lieu thereof the words "under the school leaving age."

Schedule.  
Part II,  
para. (6).

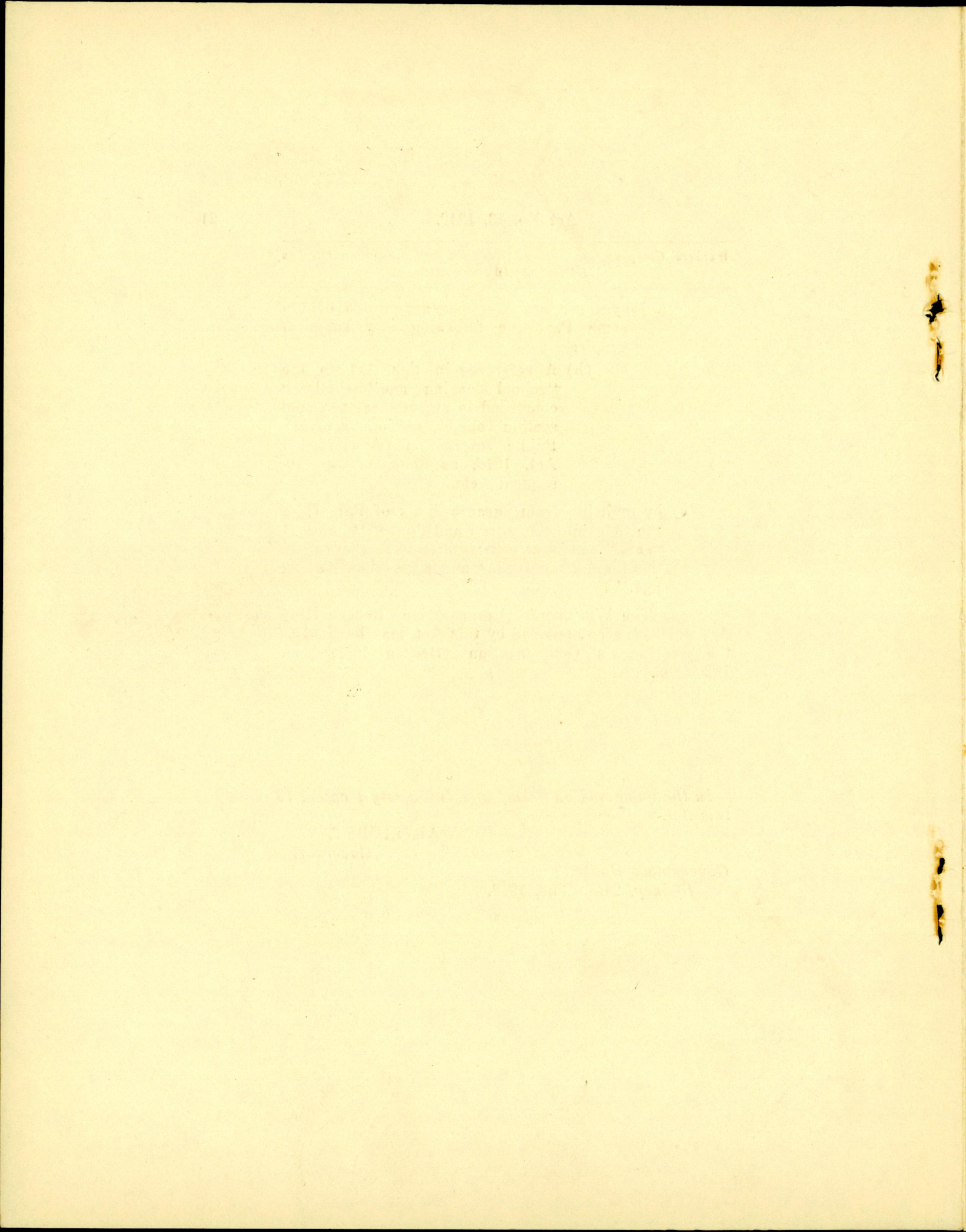
(2) The Workmen's Compensation (Broken Hill) Act, 1920-1940, as amended by this Act, may be cited as the Workmen's Compensation (Broken Hill) Act, 1920-1942.

Citation of  
Act No. 39,  
1920, as  
amended by  
subsequent  
Acts.

*In the name and on behalf of His Majesty I assent to this Act.*

WAKEHURST,  
Governor.

*Government House,  
Sydney, 24th June, 1942.*



WORKERS' COMPENSATION ACT AND WORKMEN'S COMPENSATION  
(BROKEN HILL) ACT (AMENDMENT) BILL.

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*Schedule of the Amendments referred to in Message of 27th May, 1942.*

- No. 1.—Page 2, clause 2, line 26. *Omit* “or”, *insert* “and”
- No. 2.—Page 2, clause 2, lines 27 to 31 inclusive. *After* the word “disease” on line 27 *omit* all words down to and including the word “factor” on line 31, *insert* “so arising whether of sudden onset or of such a nature as to be contracted by a gradual process”
- No. 3.—Page 4, clause 2, lines 19 and 20. *Omit* “and actually performs parts of the work himself”
- No. 4.—Page 5, clause 2, lines 7 and 8. *Omit* “and the time within which it will be performed.”
- No. 5.—Pages 6 and 7, clause 3, lines 22 to 37 inclusive on page 6, and lines 1 to 23 inclusive on page 7. *Omit* all words on these lines.
- No. 6.—Page 13, clause 4. *After* line 22, *insert* the following new paragraph:—
- (e) notwithstanding anything to the contrary in the foregoing provisions of this subsection the Commission shall have jurisdiction and power to—
    - (i) satisfy any claim made under the Scheme at any time in such manner as in the circumstances of the case it may, in the exercise of its discretion, deem reasonable;
    - (ii) increase, decrease, suspend, or terminate any allowance or lump sum payable, or order or award made under, or connected with, the Scheme.
- No. 7.—Page 15, clause 4, line 3. *Omit* “said period of seven days”, *insert* “time prescribed in the said public notice”
- No. 8.—Page 16, clause 4, lines 1 to 3 inclusive. *Omit* paragraphs (e) and (f).
- No. 9.—Page 16, clause 4, line 14. *Omit* “the full”, *insert* “out of such damages the”
- No. 10.—Page 18, clause 6. *After* line 34, *insert*—
- (b) by inserting at the end of paragraph (a) of subsection two of the same section the following words: “Provided that in any case where in the opinion of the chairman of the medical authority, a certificate affecting the compensation of any person medically examined under the said subsection might be issued, the Minister may direct that such person shall again present himself for medical examination under the said subsection and that such further medical examination shall be made by the board of three legally qualified medical practitioners who constitute the medical authority.”



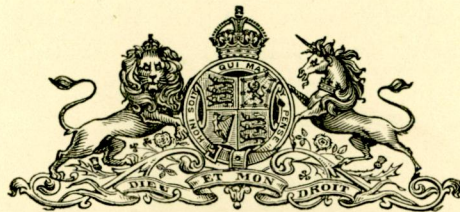
*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, 15 May, 1942.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

W. K. CHARLTON,  
*Clerk of the Parliament.*  
*Legislative Council Chamber,*  
*Sydney, 27th May, 1942.*

## New South Wales.



ANNO SEXTO

# GEORGII VI REGIS.

\*\*\*\*\*

Act No. , 1942.

An Act to extend in certain respects the provisions of the Workers' Compensation Act, 1926-1941, and for that purpose to amend that Act; to make provision for the appointment of a deputy chairman of the medical authority under the Workmen's Compensation (Broken Hill) Act, 1920-1940, and for that and certain other purposes to amend that Act; and for purposes connected therewith.

**B**E 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  
5 the same, as follows:—

### PART I.

#### PRELIMINARY.

1. (1) This Act may be cited as the "Workers' Compensation Act and Workmen's Compensation  
10 (Broken Hill) Act (Amendment) Act, 1942."

Short title,  
citation,  
and division  
into Parts.

1557

143—A

(2)

**NOTE.**—The words to be omitted are ruled through; those to be inserted are printed in black letter.

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

(2) The Workers' Compensation Act, 1926-1941, as amended by this Act, may be cited as the Workers' Compensation Act, 1926-1942.

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

(4) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—WORKERS' COMPENSATION.

10 PART III.—AMENDMENTS TO THE WORKMEN'S COMPENSATION (BROKEN HILL) ACT, 1920-1940.

PART II.

WORKERS' COMPENSATION.

15 2. The Workers' Compensation Act, 1926-1941, is amended—

(a) (i) by inserting in subsection one of section six after the definition of "Dependants" the following new definition:—

20 "Disease caused by silica dust" means disease caused by the inhalation of free silica, SiO<sub>2</sub>;

(ii) by omitting from the same subsection the definition of "Injury" and by inserting in lieu thereof the following definition:—

25 "Injury" means personal injury arising out of ~~or~~ **and** in the course of employment and includes a disease ~~which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor~~ **so arising whether of sudden onset or of such a nature as to be contracted by a gradual process** but does not, save in the case of a worker employed in or about

Amendment of Act No. 15, 1926. Sec. 6 (1). (Definitions.)



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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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a mine to which the Coal Mines Regulation Act, 1912-1941, applies, include a disease caused by silica dust.

- 5 (iii) (a) by omitting from the definition of  
"Worker" in the same subsection the  
words "five hundred and fifty pounds  
per year" and by inserting in lieu  
10 thereof the words "seven hundred and  
fifty pounds per year, exclusive of pay-  
ments for overtime, bonuses and special  
allowances";
- (b) by inserting in paragraph (d) of the  
15 same definition after the word  
"casual" the brackets and words  
"(that is for one period only of not  
more than five working days)";
- (b) by inserting after subsection three of section six  
20 the following new subsection:— New subsec.  
(3A).
- (3A) Where a contract to perform any work  
25 exceeding five pounds in value (not being work  
incidental to a trade or business regularly  
carried on by the contractor in his own name,  
or under a business or firm name) is made with  
the contractor, who neither sublets the contract,  
nor employs workers, the contractor shall, for  
the purposes of this Act, be deemed to be a  
worker employed by the person who made such  
contract with the contractor. Contracts  
for labour.
- (c) by omitting subsection five of the same section  
30 and by inserting in lieu thereof the following  
new subsection:— Subst.  
subsec. (5).
- (5) (a) Where any person (in this paragraph  
35 referred to as "the principal") in the course of,  
or for the purposes of, his trade or business,  
enters into a contract, agreement, or arrange-  
ment, with any other person or persons (in this  
paragraph Rural work.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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paragraph referred to as "the contractor")  
under which the contractor agrees—

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

and the contractor does not either sublet any  
part of the work to be carried out, or employ a  
worker, ~~and actually performs parts of the work~~  
20 ~~himself~~, the contractor shall, for the purposes  
of this Act, be deemed to be a worker employed  
by the principal.

25 Where the principal has given or offered the  
contractor the option to or the opportunity to so  
supply timber if he so desires then for the pur-  
poses of this paragraph the contractor shall be  
deemed to have agreed to supply timber.

30 (b) Where any person (in this paragraph  
referred to as "the principal") advertises or  
otherwise notifies that he will accept timber  
delivered or supplied 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  
35 notice to such principal that he will deliver  
or supply such timber or any part thereof and  
receives

Timber-  
getters.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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5 receives injury while engaged in or about the work of cutting, delivering or supplying the said timber or any part thereof shall be deemed to be a worker employed by the principal. Notice  
 10 of intention to deliver or supply timber as aforesaid shall indicate the nature of the actual work to be undertaken ~~and the time within which it will be performed.~~ The notice 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, Definitions.  
 girders, logs, or pit timber.

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

(d) by omitting subsection six of the same section and by inserting in lieu thereof the following new subsections:— Subst. sub-sec. (6) and new subsec. (6A).

20 (6) A salesman, canvasser, collector, or person paid wholly or partly by commission shall for the purposes of this Act, be deemed to be a worker in the 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 regularly carried on by him or by a firm whereof he is a member. Salesman, etc.

30 (6A) Every tributer working in connection with any “mine” as defined by the Mining Act, 1906, as amended by subsequent Acts, and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer. Tributer.

35

(e)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

- (e) by omitting subsection eleven of the same section and by inserting in lieu thereof the following new subsection:—
- 5 (11) A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall
- 10 for the purposes of this Act be deemed to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.
- (f) by inserting at the end of the same section the following new subsection:—
- 15 (15) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.
- 20 **3.** The Workers' Compensation Act, 1926-1941, is further amended—
- (a) ~~(i)~~ by omitting subsection one of section seven, and by inserting in lieu thereof the following new subsection:—
- 25 (1) Where a worker receives personal injury—
- (a) arising out of or in the course of his employment
- 30 whether at or away from his place of employment; or
- (b) without his own default or wilful act—
- (i) on the daily or other periodic journey between his place of abode and place of employment; or
- 35 (ii)
- Subst. subsec. (11).
- Contract of bailment. cf. 13 and 14 Geo. V, Ch. 42, s. 9 (2); 1 and 2 Geo. VI, Ch. 27, s. 1; N.S.W. Act No. 15, 1926, s. 6 (11).
- New subsec. (15).
- School leaving age.
- Further amendment of Act No. 15, 1926, s. 7.
- Liability of employer to worker for injury.
- Employment cases. N.S.W. Act No. 15, 1926, s. 7 (1).
- Journey cases.

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

5 (ii) on any journey between the worker's place of abode, or place of employment, and any trade, technical or other training school, which by the terms of his employment, - he - is required or expected by his employer to attend,

10 and the injury be not received during any substantial interruption of, or substantial deviation from, any such journey, made for a reason unconnected with the worker's employment,

15 such worker, and in the case of the death of the worker, his dependants, shall receive compensation from his employer in accordance with this Act.

20 (a) (i) by omitting subsection two of section seven and by inserting in lieu thereof the following new subsection:—

Subst. subsec. (2).

25 (2) Compensation shall be payable in respect 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 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 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.

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35

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(iii)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- (iii) (ii) by omitting from paragraph (a) of subsection three of the same section the word "seven" and by inserting in lieu thereof the word "three"; Subsec. (3).
- 5 (iv) (iii) by inserting next after subsection five of the same section the following new subsection:— New subsec. (5A).
- 10 (5A) 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. cf. N.S.W. Act No. 15, 1926, s. 7 (6).
- 15 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.
- 20 (b) by omitting from paragraph (b) of subsection one of section eight the word "wholly"; Sec. 8 (1) (b). (Dependency of children.)
- 25 (c) (i) by inserting at the end of paragraph (a) of subsection one of section nine the following words "and in the case of an adult male worker shall not be less than two pounds per week in the case of total incapacity"; Sec. 9 (1) (a). (Total or partial incapacity.)
- 30 (ii) by omitting from subparagraph (ii) of paragraph (b) of the same subsection the words "age of fourteen years," and by inserting in lieu thereof the words "school leaving age";
- 35 (iii) by omitting from subparagraph (ii) of paragraph (c) of the same subsection the words "age of fourteen years" and by inserting in lieu thereof the words "school leaving age";
- (iv)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

- (iv) by inserting at the end of the same subsection the following new paragraph:—
- 5 (d) Any payment made under the Child Endowment Act 1941 of the Parliament of the Commonwealth of Australia, shall not preclude the child from being totally or mainly dependent on the earnings of the worker for the purposes of this Act; Child endowment.
- 10 (v) by inserting in subsection three of the same section after the words "shall not exceed one thousand pounds in any one case" the following words:— Permanent and total disablement. N.S.W. Act No. 15, 1926, s. 9 (3).
- 15 "except in the case of a worker whose injury results in his—
- (a) permanent and total disablement for work; or
- 20 (b) permanent and partial disablement for work and such partial disablement is established by the worker to be of a major degree. In such a case the Commission may in its discretion, having regard to the provisions of sections eleven and twelve of this Act, and, if the case is not one in which the worker's disablement should be deemed to be total incapacity for work, make such order as under the circumstances of the case may appear proper." Permanent and partial disablement. Discretion.
- 25
- 30
- (vi) by omitting from subsection six of the same section the words "age of fourteen years" wherever occurring, and by inserting in lieu thereof the words "school leaving age";
- 35 (d) (i) by inserting at the end of paragraph (c) of subsection three of section ten the words "unless the Commission upon application made from time to time by or on behalf of the Sec. 10. (Medical and hospital treatment.)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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the worker directs that the employer shall be liable for a further sum to be specified in the order”;

5 (ii) by inserting at the end of paragraph (b) of subsection four of the same section the words “unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order”;

10 (iii) (a) by omitting from paragraph (a) of subsection six of the same section the words “in the manner prescribed”;

15 (b) by inserting at the end of the same paragraph the following words:—

20 The provisions of section fifty-three as to notice of injury shall, mutatis mutandis, apply to notice under this subsection, and to proceedings for the recovery of the cost of any treatment or service under this section.

(iv) by inserting at the end of the same section the following new subsection:—

25 (8) Any application made to the Commission under this section shall be made in the manner prescribed by rules of the Commission and until a rule in that behalf is made the application may be made at a sitting in chambers.

30 (e) by inserting at the end of section eleven the following new subsections:—

35 (2) Where the Commission in exercise of its discretion thinks it proper so to do, the Commission may order that an employer shall provide suitable employment for his injured worker during the worker's partial incapacity for his pre-injury employment for such period and subject to such conditions as may be provided by its order. Upon

Sec. 11.  
(Partial incapacity.)

Re-employment of partially incapacitated workers.



*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

5 Upon any failure by such employer to comply with any order so made, the worker's incapacity for work shall be deemed to be total, and he shall be compensated accordingly. Any order made under this section shall be without prejudice to the right of review conferred by this Act.

10 (3) The onus of proving that an employer is unable to provide suitable employment for his partially incapacitated worker shall be on the employer. Onus of proof.

15 (f) (i) by omitting from paragraph (e) of section fourteen the words "who has worked under successive contracts of service with two or more employers" and by inserting in lieu thereof the words "that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than five working days"; Sec. 14.  
(Average weekly earnings of casual worker.)

20 (ii) by omitting from the same paragraph the words "such contracts" and by inserting in lieu thereof the words "his contracts of service";

25 (g) by omitting from subsection two of section sixteen all words after the words "resulting from that injury" and by inserting in lieu thereof the following words:— Sec. 16.  
(Compensation for certain injuries.)

30 Where such an election has been made, the weekly compensation payments which the worker has received from his employer in respect of the period of incapacity shall be deducted from the amount payable in accordance with the table.

35 4. The Workers' Compensation Act, 1926-1941, is further amended— Further amendment of Act, No. 15, 1926.

(a) by inserting in subsection four of section eighteen after the words "one hundred pounds" the words "or imprisonment for a term not exceeding six months"; Sec. 18.  
(Compulsory insurance.)

(b)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(b) by inserting after section 18B the following new section:— New sec.  
18c.

5           18c. (1) There shall be constituted a Scheme called the Uninsured Liability Scheme, which shall be administered by the Commission. Uninsured  
liability  
scheme.

10           (2) A claim may be made under the Uninsured Liability Scheme, hereinafter referred to as "the Scheme," by any person who has obtained or obtains an award of compensation from the Commission against an employer and— Claimants.

15           (a) the employer had not obtained, or was not maintaining in force, a policy of insurance or indemnity under this Act for the full amount of his liability to the injured worker at the time of the happening of the worker's injury; and

20           (b) the person who has obtained or obtains the said award satisfies the Commission that he has proceeded under subsection five of section thirty-six of this Act, and that execution upon the judgment entered has not been fully satisfied, or has taken other reasonable steps, but for good and sufficient reason has been unable to obtain the compensation awarded.

25

30           (3) From the fund constituted in pursuance of section forty-one of this Act the Commission may pay such amounts as it deems reasonable in or towards satisfaction of claims made under the Uninsured Liability Scheme: Payments.

Provided that—

35           (a) the aggregate of the amounts so paid shall not exceed five thousand pounds in any one year, which year shall commence on the first day of each July; and Limit per  
year.

(b)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- 5 (b) subject to paragraph (c) of this proviso weekly allowances only shall be paid during the calendar year after the claim is approved by the Commission; and Weekly amounts.
- 10 (c) as at the thirtieth day of June in each year the Commission shall, after due provision is made for weekly payments to such claimants whose claims have already been approved, determine whether any awards of lump sums can be satisfied either wholly or partly from the moneys then available in the fund for the purposes of the Scheme and may make from the fund payments on account of awards of lump sums on such equitable bases as the Commission may determine; and Lump sums.
- 15 (d) the Commission may make such order as it thinks fit in regard to the application of any amount paid under the Scheme; Application.
- 20 (e) **notwithstanding anything to the contrary in the foregoing provisions of this subsection the Commission shall have jurisdiction and power to—**
- 25 (i) **satisfy any claim made under the Scheme at any time in such manner as in the circumstances of the case it may, in the exercise of its discretion, deem reasonable;**
- 30 (ii) **increase, decrease, suspend, or terminate any allowance or lump sum payable, or order or award made under, or connected with, the Scheme.**
- 35 (4) No amount shall be payable under the Scheme where the award was obtained prior to the tenth day of May in the year one thousand nine hundred and forty-one. Exclusions.
- 40

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- 5 (5) (a) Where an award has been Proceedings.  
obtained from the Commission in default of  
appearance by the employer, or by consent of  
the worker and the employer, or otherwise, and  
a claim is made in respect thereof under the  
Scheme, the Commission may cause to be made  
such inquiries as may be deemed necessary to  
determine the genuineness of the grounds on  
which the award was originally based. It may  
10 reopen the award, and order its Registrar, or  
some other fit person, to take and defend the  
proceedings in substitution for the employer, and  
to such person for such purposes all the rights  
of the employer shall be subrogated.
- 15 (b) No claim under the Scheme shall be Corroborati-  
approved unless the relevant award is based on tion.  
testimony given and corroborated before the  
Commission on all matters which the Commis-  
sion deems material.
- 20 (6) Any employer who is a party to an Recovery  
award upon which a claim under the Scheme is from  
based shall be liable— employer.
- 25 (a) to reimburse the Commission such  
amount as it has paid out in respect of  
the claim under subsection three of this  
section and any costs incurred in con-  
nection therewith;
- 30 (b) to pay to the claimant under the Scheme  
any outstanding balance remaining due  
under the award, after crediting the  
payments made to him under subsection  
three of this section and any costs in-  
curred in connection therewith.
- 35 (7) (a) Public notice of the claim shall be Publication.  
given by advertisement in such manner as is  
prescribed by rules made by the Commission.  
Such notice shall be published at least seven  
days before the hearing of the claim under the  
Scheme.
- (b)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- 5 (b) Any insurer who, without reasonable cause, fails to notify the Commission within the ~~said period of seven days~~ **time prescribed in the said public notice** that it is the insurer of the liability under this Act of an employer whose worker is making a claim under the Scheme, or who fails to furnish the Commission with any information it has which may be material to the matter, shall be liable—
- 10 (i) to have the license issued to it by the Commission suspended or terminated; and
- 15 (ii) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith; and
- (iii) to a penalty not exceeding five hundred pounds.
- 20 (8) Claims under the Scheme shall be made in the manner prescribed by rules made by the Commission and shall be heard and determined—
- 25 (a) in chambers at meetings of the Commission convened by the Chairman; or
- (b) at public sittings of the Commission arranged by the Chairman.
- 30 (9) This section shall come into operation on the first day of July, one thousand nine hundred and forty-two;
- (c) by inserting in subsection one of section forty-one after the word "staff" the words "an amount of five thousand pounds for the purposes of the Uninsured Liability Scheme";
- 35 (d) by omitting from subsection one of section forty-four the word "seven" and by inserting in lieu thereof the word "three";

Duty of insurer.

Sec. 41.  
(The Fund.)

Sec. 44 (1).  
(Reports of injuries to be furnished to the Commission.)

(e)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

(e) by omitting subsections three and four of section ~~sixty three~~; Sec. 63.  
(Common Law actions.)

(f) by omitting subsection five of section ~~63A~~; Sec. 63A.  
(Proceedings before the Commission. Notice of election.)

5 ~~(g)~~ (e) (i) by omitting from paragraph (a) of section sixty-four the word "recover" where secondly occurring and by inserting in lieu thereof the word "retain"; Sec. 64.  
(Remedies against both employer and stranger.)

10 (ii) by omitting from the same paragraph the word "and" after the words "both damages and compensation" and by inserting in lieu thereof the following words:—

15 If the worker recovers firstly compensation and secondly such damages he shall be liable to repay to his employer ~~the full~~ **out of such damages the** amount of compensation which the employer has paid in respect of the worker's injury under this Act, and the worker shall not be entitled to any further compensation. Employer's indemnity.

20 If the worker firstly recovers such damages he shall not be entitled to recover compensation under this Act.

25 (iii) by omitting from paragraph (b) of the same section all words after the word "aforesaid" and by inserting in lieu thereof the following new paragraphs:—

30 (c) if the worker subsequently obtains judgment for damages against the person who has paid under such indemnity, such payment under the indemnity shall be, to the extent of the amount of such payment, a satisfaction of the judgment for damages; Third party indemnity.

35 (d) all questions relating to matters arising under this section shall, in default of agreement

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

agreement, be settled by action, or, with the consent of the parties, by the Commission.

5 ~~(h)~~ (f) by inserting next after section sixty-four the following new section:— New sec. 64A.

64A. (1) In the course of a jury action to recover damages for injury to a worker, no reference express or implied to any benefit under this Act shall be made by or on behalf of the defendant in the presence of the jury. In actions for damages no reference to be made to compensation.

10 (2) Should any such reference be made—

15 (a) the plaintiff shall be entitled to his costs in the action up to the time such reference is made; and

(b) the action shall, if the plaintiff so requires, be heard before another jury.

20 5. Any policy of insurance against liability under the Workers' Compensation Act, 1926-1941, being maintained in force at the commencement of this Act shall be deemed to insure the employer against any additional liability to which he may become liable during the currency of the policy under any amendment to the Workers' Compensation Act, 1926-1941, made by this Act. Subsisting policies.

25 The employer shall be liable to pay to the insurer additional premium in respect of any such additional liability at rates fixed by the Governor upon the recommendation of the Commission and published in the Gazette.

30 Any investigation or inquiry which the Commission may deem desirable for the purpose of collecting data upon which to found such recommendation shall be deemed to be an investigation or inquiry under the Workers' Compensation Act, 1926-1941.

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## PART III.

AMENDMENTS TO THE WORKMEN'S COMPENSATION  
(BROKEN HILL) ACT, 1920-1940.

5 **6.** (1) The Workmen's Compensation (Broken Hill) Act, 1920-1940, is amended—

Amendment  
of Act No.  
36, 1920,  
Sec. 8 (1).  
(Medical  
authority.)

(a) by inserting after paragraph (c) of subsection one of section eight the following words:—

10 "The Governor may appoint a legally qualified medical practitioner to be the deputy-chairman of the medical authority, who shall receive such fees as the Governor may fix.

15 The chairman of the medical authority may, from time to time, by writing under his hand delegate to the deputy-chairman such powers, authorities, duties and functions, conferred and imposed on the chairman of the medical authority by this Act, and the scheme of compensation set out in the Schedule hereto as the chairman of the medical authority may in and by such writing specify.

20 The deputy-chairman when acting within the scope of such delegation shall be deemed to be the chairman of the medical authority.

25 The chairman of the medical authority may, by writing under his hand, revoke any delegation made under this section.

30 During the temporary absence from Broken Hill of the chairman of the medical authority, or during any vacancy in the position of Medical Officer-in-Charge of the Bureau of Medical Inspection at Broken Hill, the deputy-chairman shall have and may exercise and perform all the powers, authorities, duties and functions of the chairman of the medical authority."

35 **(b) by inserting at the end of paragraph (a) of subsection two of the same section the following words: "Provided that in any case where in the opinion of the chairman of the medical authority, a certificate affecting**



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- 5 affecting the compensation of any person medically examined under the said subsection might be issued, the Minister may direct that such person shall again present himself for medical examination under the said subsection and that such further medical examination shall be made by the board of three legally qualified medical practitioners who constitute the medical authority."
- 10 ~~(b)~~ (c) (i) by omitting from the definition of "Beneficiary" in paragraph two of Part I of the Schedule the words "fourteen years" wherever occurring and by inserting in lieu thereof the words "the school leaving age";
- 15 (ii) by inserting after paragraph two of the same Part the following new subparagraph:—
- 20 (b) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.
- 25 ~~(e)~~ (d) by omitting from paragraph six of Part II of the Schedule the words and figures "under 14 years" wherever occurring and by inserting in lieu thereof the words "under the school leaving age."
- 30 (2) The Workmen's Compensation (Broken Hill) Act, 1920-1940, as amended by this Act, may be cited as the Workmen's Compensation (Broken Hill) Act, 1920-1942.

Schedule  
Part I,  
para. (2).

Schedule.  
Part II,  
para. (6).

Citation of  
Act No. 39,  
1920, as  
amended by  
subsequent  
Acts.

...the compensation of any person medically examined under the said subsection might be issued, the Minister may direct that such person shall again present himself for medical examination under the said subsection and that such further medical examination shall be made by the board of three legally qualified medical practitioners who constitute the medical authority."

(c) (i) by omitting from the definition of "Board" in paragraph (a) of Part I of the Schedule the words "fourteen or more persons" and by inserting in lieu thereof the words "the school-leaving certificate";

(ii) by inserting after paragraph (a) of Part I of the Schedule the following new paragraph:

(b) "A reference in this Act to the school-leaving certificate shall be construed in accordance with sub-section (1) of section 10 of the Education Act, 1944."

(d) by substituting in section 10 of the Act the following new subsection:

No. , 1942

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## A BILL

To extend in certain respects the provisions of the Workers' Compensation Act, 1926-1941, and for that purpose to amend that Act; to make provision for the appointment of a deputy chairman of the medical authority under the Workmen's Compensation (Broken Hill) Act, 1920-1940, and for that and certain other purposes to amend that Act; and for purposes connected therewith.

[MR. KNIGHT;—13 *May*, 1942.]

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**B**E 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  
5 the same, as follows :—

### PART I.

#### PRELIMINARY.

**1.** (1) This Act may be cited as the "Workers' Compensation Act and Workmen's Compensation  
10 (Broken Hill) Act (Amendment) Act, 1942."

Short title,  
citation,  
and division  
into Parts.

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

(2) The Workers' Compensation Act, 1926-1941, as amended by this Act, may be cited as the Workers' Compensation Act, 1926-1942.

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

(4) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—WORKERS' COMPENSATION.

10 PART III.—AMENDMENTS TO THE WORKMEN'S COMPENSATION (BROKEN HILL) ACT, 1920-1940.

PART II.

WORKERS' COMPENSATION.

15 2. The Workers' Compensation Act, 1926-1941, is amended— Amendment of Act No. 15, 1926.

(a) (i) by inserting in subsection one of section six after the definition of "Dependants" the following new definition:— Sec. 6 (1). (Definitions.)

20 "Disease caused by silica dust" means disease caused by the inhalation of free silica, SiO<sub>2</sub>;

(ii) by omitting from the same subsection the definition of "Injury" and by inserting in lieu thereof the following definition:—

25 "Injury" means personal injury by accident in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save   
 30 in the case of a worker employed in or about

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

a mine to which the Coal Mines Regulation Act, 1912-1941, applies, include a disease caused by silica dust.

5 (iii) (a) by omitting from the definition of "Worker" in the same subsection the words "five hundred and fifty pounds per year" and by inserting in lieu thereof the words "seven hundred and  
10 fifty pounds per year, exclusive of payments for overtime, bonuses and special allowances";

15 (b) by inserting in paragraph (d) of the same definition after the word "casual" the brackets and words "(that is for one period only of not more than five working days)";

(b) by inserting after subsection three of section six the following new subsection:— New subsec. (3A).

20 (3A) Where a contract to perform any work exceeding five pounds in value (not being work incidental to a trade or business regularly carried on by the contractor in his own name, or under a business or firm name) is made with the contractor, who neither sublets the contract,  
25 nor employs workers, the contractor shall, for the purposes of this Act, be deemed to be a worker employed by the person who made such contract with the contractor. Contracts for labour.

30 (c) by omitting subsection five of the same section and by inserting in lieu thereof the following new subsection:— Subst. subsec. (5).

35 (5) (a) Where any person (in this paragraph referred to as "the principal") in the course of, or for the purposes of, his trade or business, enters into a contract, agreement, or arrangement, with any other person or persons (in this paragraph Rural work.

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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paragraph referred to as "the contractor")  
under which the contractor agrees—

- 5 (i) to supply timber, and such timber is  
obtained, or to be obtained, from trees  
felled, or to be felled, by the contractor  
(whether such trees are the property  
of the principal or the contractor or  
any other person); or
- 10 (ii) to fell or ringbark trees, or cut scrub,  
or haul or load timber, or haul and load  
timber; or
- (iii) to clear land of stumps or logs; or
- (iv) to cut sugar-cane; or
- 15 (v) to perform any other work or class of  
work specified by proclamation of the  
Governor published in the Gazette;
- 20 and the contractor does not either sublet any  
part of the work to be carried out, or employ a  
worker, and actually performs parts of the work  
himself, the contractor shall, for the purposes  
of this Act, be deemed to be a worker employed  
by the principal.

25 Where the principal has given or offered the  
contractor the option to or the opportunity to so  
supply timber if he so desires then for the pur-  
poses of this paragraph the contractor shall be  
deemed to have agreed to supply timber.

30 (b) Where any person (in this paragraph  
referred to as "the principal") advertises or  
otherwise notifies that he will accept timber  
delivered or supplied 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  
35 notice to such principal that he will deliver  
or supply such timber or any part thereof and  
receives

Timber-  
getters.

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

5 receives injury while engaged in or about the work of cutting, 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 indicate the nature of the actual work to be undertaken and the time within which it will be performed. The notice 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.

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

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

(d) by omitting subsection six of the same section and by inserting in lieu thereof the following new subsections:— Subst. subsec. (6) and new subsec. (6A).

20 (6) A salesman, canvasser, collector, or person paid wholly or partly by commission shall for the purposes of this Act, be deemed to be a worker in the 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 regularly carried on by him or by a firm whereof he is a member. Salesman, etc.

30 (6A) Every tributer working in connection with any "mine" as defined by the Mining Act, 1906, as amended by subsequent Acts, and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer. Tributer.

35

(e)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

- (e) by omitting subsection eleven of the same section and by inserting in lieu thereof the following new subsection:—
- 5 (11) A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall
- 10 for the purposes of this Act be deemed to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.
- (f) by inserting at the end of the same section the following new subsection:—
- 15 (15) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.
- 20 **3.** The Workers' Compensation Act, 1926-1941, is further amended—
- (a) (i) by omitting subsection one of section seven, and by inserting in lieu thereof the following new subsection:—
- 25 (1) Where a worker receives injury—
- (a) in the course of his employment whether at or away from his place of employment; or
- 30 (b) without his own default or wilful act—
- (i) on the daily or other periodic journey between his place of abode and place of employment; or
- 35 (ii)
- Subst. sub-subsec. (11).
- Contract of bailment.  
cf. 13 and 14 Geo. V,  
Ch. 42, s. 9 (2); 1 and 2 Geo. VI,  
Ch. 27, s. 1; N.S.W. Act No. 15, 1926, s. 6 (11).
- New subsec. (15).
- School leaving age.
- Further amendment of Act No. 15, 1926, s. 7.
- Liability of employer to worker for injury.  
Employment cases.  
N.S.W. Act No. 15, 1926, s. 7 (1).
- Journey cases.



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5 (ii) on any journey between the worker's place of abode, or place of employment, and any trade, technical or other training school, which by the terms of his employment, he is required or expected by his employer to attend,

10 and the injury be not received during any substantial interruption of, or substantial deviation from, any such journey, made for a reason unconnected with the worker's employment,

15 such worker, and in the case of the death of the worker, his dependants, shall receive compensation from his employer in accordance with this Act.

20 (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following new subsection:—

25 (2) Compensation shall be payable in respect 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 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 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. (iii)

Subst. subsec. (2).

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

- (iii) by omitting from paragraph (a) of subsection three of the same section the word "seven" and by inserting in lieu thereof the word "three"; Subsec. (3).
- 5 (iv) by inserting next after subsection five of the same section the following new subsection:— New subsec. (5A).
- (5A) 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. cf. N.S.W. Act No. 15, 1926, s. 7 (6).
- 10
- 15 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.
- 20 (b) by omitting from paragraph (b) of subsection one of section eight the word "wholly"; Sec. 8 (1) (b). (Dependency of children.)
- 25 (c) (i) by inserting at the end of paragraph (a) of subsection one of section nine the following words "and in the case of an adult male worker shall not be less than two pounds per week in the case of total incapacity"; Sec. 9 (1) (a). (Total or partial incapacity.)
- 30 (ii) by omitting from subparagraph (ii) of paragraph (b) of the same subsection the words "age of fourteen years," and by inserting in lieu thereof the words "school leaving age";
- 35 (iii) by omitting from subparagraph (ii) of paragraph (c) of the same subsection the words "age of fourteen years" and by inserting in lieu thereof the words "school leaving age";
- (iv)

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

- (iv) by inserting at the end of the same sub-  
section the following new paragraph:—
- 5 (d) Any payment made under the Child  
Endowment Act 1941 of the Parlia-  
ment of the Commonwealth of Aus-  
tralia, shall not preclude the child  
from being totally or mainly depen-  
dent on the earnings of the worker  
for the purposes of this Act; Child  
endowment.
- 10 (v) by inserting in subsection three of the same  
section after the words "shall not exceed  
one thousand pounds in any one case" the  
following words:— Permanent  
and total  
disablement.  
N.S.W. Act  
No. 15, 1926,  
s. 9 (3).
- 15 "except in the case of a worker whose  
injury results in his—
- (a) permanent and total disablement  
for work; or
- 20 (b) permanent and partial disablement Permenant  
and partial  
disablement.  
for work and such partial disable-  
ment is established by the worker  
to be of a major degree. In such Discretion.  
a case the Commission may in its  
discretion, having regard to the  
provisions of sections eleven and  
25 twelve of this Act, and, if the case  
is not one in which the worker's  
disablement should be deemed to  
be total incapacity for work, make  
such order as under the circum-  
stances of the case may appear  
30 proper."
- (vi) by omitting from subsection six of the same  
section the words "age of fourteen years"  
wherever occurring, and by inserting in lieu  
35 thereof the words "school leaving age";
- (d) (i) by inserting at the end of paragraph (c) of Sec. 10.  
(Medical  
and  
hospital  
treatment.)  
subsection three of section ten the words  
"unless the Commission upon application  
made from time to time by or on behalf of  
the

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

the worker directs that the employer shall be liable for a further sum to be specified in the order”;

5 (ii) by inserting at the end of paragraph (b) of subsection four of the same section the words “unless the Commission upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order”;

10 (iii) (a) by omitting from paragraph (a) of subsection six of the same section the words “in the manner prescribed”;

15 (b) by inserting at the end of the same paragraph the following words:—

20 The provisions of section fifty-three as to notice of injury shall, mutatis mutandis, apply to notice under this subsection, and to proceedings for the recovery of the cost of any treatment or service under this section.

(iv) by inserting at the end of the same section the following new subsection:—

25 (8) Any application made to the Commission under this section shall be made in the manner prescribed by rules of the Commission and until a rule in that behalf is made the application may be made at a sitting in chambers.

30 (e) by inserting at the end of section eleven the following new subsections:—

Sec. 11.  
(Partial incapacity.)

35 (2) Where the Commission in exercise of its discretion thinks it proper so to do, the Commission may order that an employer shall provide suitable employment for his injured worker during the worker's partial incapacity for his pre-injury employment for such period and subject to such conditions as may be provided by its order.

Re-employment of partially incapacitated workers.

Upon

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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5 Upon any failure by such employer to comply with any order so made, the worker's incapacity for work shall be deemed to be total, and he shall be compensated accordingly. Any order made under this section shall be without prejudice to the right of review conferred by this Act.

10 (3) The onus of proving that an employer is unable to provide suitable employment for his partially incapacitated worker shall be on the employer. Onus of proof.

15 (f) (i) by omitting from paragraph (e) of section fourteen the words "who has worked under successive contracts of service with two or more employers" and by inserting in lieu thereof the words "that is to say a worker whose contracts of service are mainly contracts for separate periods each of which is of not more than five working days"; Sec. 14.  
(Average weekly earnings of casual worker.)

20 (ii) by omitting from the same paragraph the words "such contracts" and by inserting in lieu thereof the words "his contracts of service";

25 (g) by omitting from subsection two of section sixteen all words after the words "resulting from that injury" and by inserting in lieu thereof the following words:— Sec. 16.  
(Compensation for certain injuries.)

30 Where such an election has been made, the weekly compensation payments which the worker has received from his employer in respect of the period of incapacity shall be deducted from the amount payable in accordance with the table.

35 4. The Workers' Compensation Act, 1926-1941, is further amended— Further amendment of Act, No. 15, 1926.

(a) by inserting in subsection four of section eighteen after the words "one hundred pounds" the words "or imprisonment for a term not exceeding six months"; Sec. 18.  
(Compulsory insurance.)

(b)

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(b) by inserting after section 18B the following new section:— New sec.  
18c.

5           18c. (1) There shall be constituted a Scheme called the Uninsured Liability Scheme, which shall be administered by the Commission. Uninsured  
liability  
scheme.

10           (2) A claim may be made under the Uninsured Liability Scheme, hereinafter referred to as "the Scheme," by any person who has obtained or obtains an award of compensation from the Commission against an employer and— Claimants.

15           (a) the employer had not obtained, or was not maintaining in force, a policy of insurance or indemnity under this Act for the full amount of his liability to the injured worker at the time of the happening of the worker's injury; and

20           (b) the person who has obtained or obtains the said award satisfies the Commission that he has proceeded under subsection five of section thirty-six of this Act, and that execution upon the judgment entered has not been fully satisfied, or has taken other reasonable steps, but for good and sufficient reason has been unable to obtain the compensation awarded.

25           (3) From the fund constituted in pursuance of section forty-one of this Act the Commission may pay such amounts as it deems reasonable in or towards satisfaction of claims made under the Uninsured Liability Scheme: Payments.

30           Provided that—

35           (a) the aggregate of the amounts so paid shall not exceed five thousand pounds in any one year, which year shall commence on the first day of each July; and Limit per  
year.

(b)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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- 5 (b) subject to paragraph (c) of this proviso weekly allowances only shall be paid during the calendar year after the claim is approved by the Commission; and
- 10 (c) as at the thirtieth day of June in each year the Commission shall, after due provision is made for weekly payments to such claimants whose claims have already been approved, determine whether any awards of lump sums can be satisfied either wholly or partly from the moneys then available in the fund for the purposes of the scheme and may make from the fund payments on account of awards of lump sums on such equitable bases as the Commission may determine; and
- 15 (d) the Commission may make such order as it thinks fit in regard to the application of any amount paid under the Scheme.
- 20 (4) No amount shall be payable under the Scheme where the award was obtained prior to the tenth day of May in the year one thousand nine hundred and forty-one.
- 25 (5) (a) Where an award has been obtained from the Commission in default of appearance by the employer, or by consent of the worker and the employer, or otherwise, and a claim is made in respect thereof under the Scheme, the Commission may cause to be made such inquiries as may be deemed necessary to determine the genuineness of the grounds on which the award was originally based. It may reopen the award, and order its Registrar, or some other fit person, to take and defend the proceedings in substitution for the employer, and to such person for such purposes all the rights of the employer shall be subrogated.

(b)

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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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(b) No claim under the Scheme shall be approved unless the relevant award is based on testimony given and corroborated before the Commission on all matters which the Commission deems material. Corrobor-  
ation.

5

(6) Any employer who is a party to an award upon which a claim under the Scheme is based shall be liable— Recovery  
from  
employer.

10

(a) to reimburse the Commission such amount as it has paid out in respect of the claim under subsection three of this section and any costs incurred in connection therewith;

15

(b) to pay to the claimant under the Scheme any outstanding balance remaining due under the award, after crediting the payments made to him under subsection three of this section and any costs incurred in connection therewith.

20

(7) (a) Public notice of the claim shall be given by advertisement in such manner as is prescribed by rules made by the Commission. Publication.

25

Such notice shall be published at least seven days before the hearing of the claim under the Scheme.

30

(b) Any insurer who, without reasonable cause, fails to notify the Commission within the said period of seven days that it is the insurer of the liability under this Act of an employer whose worker is making a claim under the Scheme, or who fails to furnish the Commission with any information it has which may be material to the matter, shall be liable— Duty of  
insurer.

35

(i) to have the license issued to it by the Commission suspended or terminated; and

(ii) to reimburse the Commission such amount as it has paid out in respect of



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*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

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of the claim under subsection three of this section and any costs incurred in connection therewith; and

5 (iii) to a penalty not exceeding five hundred pounds.

(8) Claims under the Scheme shall be made in the manner prescribed by rules made by the Commission and shall be heard and determined—

- 10 (a) in chambers at meetings of the Commission convened by the Chairman; or  
 (b) at public sittings of the Commission arranged by the Chairman.

15 (9) This section shall come into operation on the first day of July, one thousand nine hundred and forty-two;

(c) by inserting in subsection one of section forty-one after the word "staff" the words "an amount of five thousand pounds for the purposes of the Uninsured Liability Scheme";

20

Sec. 41.  
(The Fund.)

(d) by omitting from subsection one of section forty-four the word "seven" and by inserting in lieu thereof the word "three";

Sec. 44 (1).  
(Reports of injuries to be furnished to the Commission.)

25 (e) by omitting subsections three and four of section sixty-three;

Sec. 63.  
(Common Law actions.)

(f) by omitting subsection five of section 63A;

Sec. 63A.  
(Proceedings before the Commission. Notice of election.)

30 (g) (i) by omitting from paragraph (a) of section sixty-four the word "recover" where secondly occurring and by inserting in lieu thereof the word "retain";

Sec. 64.  
(Remedies against both employer and stranger.)

(ii) by omitting from the same paragraph the word "and" after the words "both damages and

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and compensation" and by inserting in lieu thereof the following words:—

If the worker recovers firstly compensation and secondly such damages he shall be liable to repay to his employer the full amount of compensation which the employer has paid in respect of the worker's injury under this Act, and the worker shall not be entitled to any further compensation.

Employer's  
indemnity.

If the worker firstly recovers such damages he shall not be entitled to recover compensation under this Act.

(iii) by omitting from paragraph (b) of the same section all words after the word "aforesaid" and by inserting in lieu thereof the following new paragraphs:—

(c) if the worker subsequently obtains judgment for damages against the person who has paid under such indemnity, such payment under the indemnity shall be, to the extent of the amount of such payment, a satisfaction of the judgment for damages;

Third party  
indemnity.

(d) all questions relating to matters arising under this section shall, in default of agreement, be settled by action, or, with the consent of the parties, by the Commission.

5. Any policy of insurance against liability under the Workers' Compensation Act, 1926-1941, being maintained in force at the commencement of this Act shall be deemed to insure the employer against any additional liability to which he may become liable during the currency of the policy under any amendment to the Workers' Compensation Act, 1926-1941, made by this Act.

Subsisting  
policies.

The employer shall be liable to pay to the insurer additional premium in respect of any such additional liability at rates fixed by the Governor upon the recommendation of the Commission and published in the Gazette.

Any

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

Any investigation or inquiry which the Commission may deem desirable for the purpose of collecting data upon which to found such recommendation shall be deemed to be an investigation or inquiry under the  
5 Workers' Compensation Act, 1926-1941.

PART III.

AMENDMENTS TO THE WORKMEN'S COMPENSATION  
(BROKEN HILL) ACT, 1920-1940.

6. (1) The Workmen's Compensation (Broken Hill) Act, 1920-1940, is amended—  
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Amendment  
of Act No.  
36, 1920,  
Sec. 8 (1).  
(Medical  
authority.)

(a) by inserting after paragraph (c) of subsection one of section eight the following words:—

15 "The Governor may appoint a legally qualified medical practitioner to be the deputy-chairman of the medical authority, who shall receive such fees as the Governor may fix.

20 The chairman of the medical authority may, from time to time, by writing under his hand delegate to the deputy-chairman such powers, authorities, duties and functions, conferred and imposed on the chairman of the medical authority by this Act, and the scheme of compensation set out in the Schedule hereto as the chairman of the medical authority may in  
25 and by such writing specify.

The deputy-chairman when acting within the scope of such delegation shall be deemed to be the chairman of the medical authority.

30 The chairman of the medical authority may, by writing under his hand, revoke any delegation made under this section.

35 During the temporary absence from Broken Hill of the chairman of the medical authority, or during any vacancy in the position of Medical Officer-in-Charge of the Bureau of Medical

*Workers' Compensation Act and Workmen's Compensation (Broken Hill) Act (Amendment).*

Inspection at Broken Hill, the deputy-chairman shall have and may exercise and perform all the powers, authorities, duties and functions of the chairman of the medical authority."

- 5 (b) (i) by omitting from the definition of "Beneficiary" in paragraph two of Part I of the Schedule the words "fourteen years" wherever occurring and by inserting in lieu thereof the words "the school leaving age"; Schedule Part I, para. (2).
- 10 (ii) by inserting after paragraph two of the same Part the following new subparagraph:—
- 15 (b) A reference in this Act to the "school leaving age" shall be construed in accordance with subsection four of section 2A of the Public Instruction (Amendment) Act, 1916, as amended by subsequent Acts.
- 20 (c) by omitting from paragraph six of Part II of the Schedule the words and figures "under 14 years" wherever occurring and by inserting in lieu thereof the words "under the school leaving age." Schedule Part II, para. (6).
- 25 (2) The Workmen's Compensation (Broken Hill) Act, 1920-1940, as amended by this Act, may be cited as the Workmen's Compensation (Broken Hill) Act, 1920-1942. Citation of Act No. 39, 1920, as amended by subsequent Acts.