

Legislative Council

No. , 1902.

A BILL

To amend the law with respect to the liability of employers to make compensation to workmen for injuries suffered in the course of their employment.

[MR. WISE ;—26 November, 1902.]

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

5 1. This Act may be cited as the "Workman's Compensation Short title.
Act, 1902."

2. In this Act, unless the context or subject-matter otherwise Interpretation.
indicates or requires,—

10 "Court" means the court constituted by the Industrial Arbitration
Act, 1901.

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"Dependant"

“Dependant” means the husband, wife, brother, sister, child, grandchild, step-child, parent, grandparent, and step-parent, of a workman at the time of his death wholly or in part dependant upon his earnings.

“Employer” includes the Crown and any body of persons, 5
 corporate or unincorporate and a corporation sole, and the legal representative of a deceased employer.

“Workman” means any person, not being a miner or in the naval or military service of the Crown, who, under contract with an employer, whether made before or after the passing of this 10
 Act—whether oral or in writing, express or implied—is engaged in or about any agricultural, industrial, commercial, or manufacturing work carried on by or on behalf of his employer, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship 15
 or otherwise, and whether on land or on a ship within the jurisdiction of New South Wales.

Compensation for injuries.

3. Where personal injury has been caused to a workman by an accident arising out of and in the course of his employment, his employer shall be liable to pay compensation to such workman or his 20
 dependants in accordance with the provisions of this Act, and the regulations thereunder :

Provided that no such liability shall arise where the injury was caused by the serious and wilful misconduct of the workman injured.

Conditions under which proceedings to recover compensation may be taken.

4. (1) No proceedings by any workman against his employer 25
 for the recovery of compensation for an injury caused to such workman by an accident arising out of and in the course of his employment shall be maintainable—

- (a) at Common Law or under any Act other than this Act; and
- (b) unless notice of the injury has been given within six weeks, 30
 and proceedings have been commenced within six months after the occurrence of the accident, or, in the case of death, within six months after the time of death; and
- (c) unless it be shown that the employer has refused or neglected for a period of six weeks after a claim has been duly made 35
 to compensate the workman, or that a dispute has arisen between them, either as to the liability of the employer or the amount of the compensation payable by him, or as to the extent of the workman's incapacity for work by reason of his injury. 40

(2) Such notice shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date and place at which it was sustained.

(3) Such notice shall be served on the employer, or if there is more than one employer upon one of such employers. 45

Where

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, to any one of the offices of such body.

5 (4) The want of or any defect or inaccuracy in any such notice shall not be a bar to the maintenance of the proceedings if, upon application made for leave to proceed notwithstanding no such notice has been given, or notwithstanding such defect or inaccuracy, the court is of opinion that the employer is not prejudiced in his
10 defence by such want of notice; and, in the case of want of notice, also that there was reasonable excuse for such want of notice.

5. Proceedings for the recovery of compensation under this Act shall, except as herein or in the Second Schedule hereto otherwise specially provided, be taken in and conducted before the Court in the
15 same manner as proceedings for the settlement of an industrial dispute under the Industrial Arbitration Act, 1901. Procedure in the recovery of compensation.

Provided that—

(a) the workman or, if he be dead, any of his dependents may be a party to the dispute, and that in any case any party may
20 appear personally or by his counsel or attorney.

(b) if any question arises as to the cause of the injury the court shall, at the request of any party, direct that an issue as settled by the court, be tried in the Supreme Court or District Court as the court directs, to determine such question.

25 6. (1) The costs of and incidental to the trial of an issue under proviso (b) of the preceding section shall be added by the court to the compensation awarded by the court if the workman succeeds, and shall be deducted therefrom by the court if the employer succeeds. Deductions to be made by Court.

(2) The amount of any penalty or of the part of any penalty
30 paid in pursuance of any other Act to any workman or his representatives, or to persons claiming by under or through him, shall be deducted from any compensation awarded to such workman by the court under this Act.

(3) No penalty or part of a penalty as aforesaid shall be
35 paid to any workman, representative, or person as aforesaid after proceedings have been commenced under this Act in respect of the same cause of action.

(4) The amount of any expenses which the employer has had to pay to any workman, being a seaman, or his representatives, or
40 to any person claiming by, under, or through him, under the provisions of the Act twenty-seven Victoria number thirteen, shall be deducted from any compensation awarded to such workman by the court under this Act.

Certificate to be
enforced as award of
Court.

7. The court, when assessing the compensation under the Act, shall give a certificate of the amount awarded and of any additions or deductions made by the court as hereinbefore provided, and such certificate shall have the force and effect of an award under the Industrial Arbitration Act, 1901. 5

Liability in cases of
contracting or
sub-contracting.

8. In any case where any person (hereinafter called "the principal") contracts with any other person (hereinafter called "the contractor") for the execution of any work by or under the contractor, and the contractor employs any workman thereon, the following provisions shall apply:— 10

- (1) Both the principal and the contractor shall be deemed to be employers of the workmen, and shall be jointly and severally liable to pay to the workmen any compensation which the contractor if he were the sole employer would be liable to pay under this Act. 15
- (2) The principal shall be entitled to be indemnified by the contractor against the principal's liability under the section.
- (3) The principal shall not be liable under this section except in cases where the work to be executed under the contract, and in which the workmen are employed,— 20
 - (a) relates directly to the land, building, vessel, or other property of the principal; or
 - (b) is directly a part of or a process in the trade or business of the principal:

Provided that his liability shall be presumed until the 25
contrary is shown.
- (4) In the case of sub-contracts the expression "principal" shall extend to and include not only the original principal, but also each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the 30
execution by him of the whole or any part of the work; and the expression "contractor" shall extend to and include not only the original contractor, but also each sub-contractor: 35

Provided that each principal's right of indemnity shall be a right over against every contractor standing between him and the contractor by whom the workman was employed at the time when the accident occurred. 35

Recovery of damages
from stranger.

9. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof 40
independently of this Act, the workman may, at his option, proceed either against that person to recover damages independently of this Act, or against his employer for compensation under this Act, but not against both; and if compensation is paid under this Act, the employer paying the same shall be entitled to be indemnified by the 45
said other person. 10.

10. Where any employer becomes liable under this Act to pay compensation or damages in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then, in the event of the employer becoming
5 bankrupt or making a composition or arrangement with his creditors, or, if the employer is a company, of the company being wound up, such workman shall, by force of this Act, have a first charge upon the sum aforesaid for the amount so due.

Claims of worker for compensation or damages in case of bankruptcy of employer.

11. In any case where, on application in the prescribed manner, the Court, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependents than the provisions
15 of this Act, the following provisions shall apply :—

Contracting out under scheme for compensation approved by Court.

- 20 (1) The employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall, as respects the workmen with whom he so contracts, be liable in accordance with the scheme in lieu of this Act but save as aforesaid; this Act shall apply, notwithstanding any contract to the contrary made after the commencement of this Act.
- 25 (2) The Court may give such certificate, to expire at the end of a limited period to be specified therein, being not more than five years.
- 30 (3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.
- 35 (4) If during the currency of the certificate complaint is made to the Court by or on behalf of the employer or the workmen, or a majority of them, that the provisions of the scheme are no longer on the whole so favourable to the employers or to the general body of workmen and their dependents as the provisions of this Act, or that the provisions of the scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Court shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.
- 40 (5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Court in the event of a difference of opinion.
- 45 (6)

- (6) For the purposes of this section, it shall be the duty of the employer and workmen to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Court.

Regulations.

12. The Governor may make regulations prescribing the manner in which claims and questions under this Act may be determined under the Industrial Arbitration Act, 1901, and for any other purpose necessary to give effect to this Act. 5

Such regulations shall be published in the Gazette, and shall be laid before both Houses of Parliament within fourteen days from such publication if Parliament be then sitting, or within fourteen days after the commencement of the next ensuing session. 10

SCHEDULES.

FIRST SCHEDULE.

Scale of compensation.

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1. The amount of compensation under this Act shall be computed and assessed as follows, that is to say :—

(1) Where death results from the injury,—

(a) If the workman leaves any dependents wholly dependent upon his earnings at the time of his death, the compensation shall be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds: 20

Provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment. 25

(b) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings at the time of his death, the compensation shall be one hundred and fifty-six times the average weekly amount contributed by the workman solely for the support of such dependents. 30

(c) If the worker leaves no dependents, the compensation shall be a sum equal to the reasonable expenses of his medical attendance and burial, not exceeding ten pounds. 35

(2) Where the workman's total or partial incapacity for work results from the injury—

(a) The compensation shall be a weekly payment during the incapacity after the second week not exceeding fifty per centum of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer: Provided that such weekly payment shall not exceed one pound, and the total liability of the employer in respect thereof shall not exceed one hundred and fifty-six times such average weekly earnings, or in any case exceed three hundred pounds: 40
(b) 45

- 5 (b) Provided, also, that in the case of partial incapacity for work the employer shall not be liable to pay more than fifty per centum of the difference between the earnings of the workman after the accident and the average amount he was able to earn before the accident, not exceeding in any case the said weekly sum of one pound :
- (c) Provided, further, that if and as soon as the workman is able to earn the same wage as he received prior to his accident, his right to any compensation in respect of his injuries shall absolutely cease and determine.
- 10 (d) In fixing the amount of the weekly payment, regard shall be had to any payment which he may receive from the employer in respect of his injury during the period of incapacity.

SECOND SCHEDULE.

General conditions.

- 15 1. The payment shall, in case of the workman's death, be made to his legal personal representative, or, if he has no legal personal representative, then to or for the benefit of his dependents, or, if he leaves no dependents, then to the person to whom the expenses are due; and if made to the legal personal representative, shall be paid by him to or for the benefit of the dependents or other person entitled thereto under this Act.
- 20 2. Any question as to who is a dependent, or as to the amount payable to each dependent, shall, in default of agreement, be settled as an industrial dispute under the Industrial Arbitration Act of 1901:
Provided that the employer shall not be liable for any costs where any such question is raised solely by dependents or persons who claim to be dependents.
- 25 3. The sum allotted as compensation to a dependent may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or in default of agreement, as determined by the court.
- 30 4. Where a workman has given notice of an accident or is entitled to weekly payments under this Act, he shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified by insurance or otherwise, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer or such person:
Provided that if the workman objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner as to his condition
- 35 when communicated to him, he shall submit himself for examination to one of the medical practitioners appointed by the Governor for the purposes of this Act; and the certificate of that medical practitioner as to the condition of the worker at the time of the examination shall be given to the employer and worker, and shall be conclusive evidence of that condition.
- 40 5. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his rights under this Act in respect of the accident to which such examination relates shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.
- 45 6. Any weekly payment may be reviewed at the request either of the employer or of the worker, and on such review may be ended, diminished, or increased, subject to the maximum above provided.
- 50 7. Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, not exceeding the amount limited in paragraph two of the Second Schedule hereto, to be agreed on by the parties, or in default of agreement to be determined by the court, and such lump sum may be ordered to be invested or otherwise applied as above mentioned.
- 55 8. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same.

