

WORKERS' COMPENSATION.

12° and 13° GEO. VI., No. LXXVII.

No. 77 of 1948.

AN ACT to amend the **Workers' Compensation Act, 1912-1944.**

[Assented to 25th January, 1949.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Workers' Compensation Act Amendment Act, 1948*, and shall be read as one with the *Workers' Compensation Act, 1912-1944* (Act No. 69 of 1912 as reprinted with amendments to and including Act No. 36 of 1941 incorporated, pursuant to the Amendments Incorporation Act, 1938, in Volume 2 of *The Reprinted Acts of the Parliament of Western Australia, 1943*, and further amended by Act No. 42 of 1944) hereinafter referred to as the principal Act. Short title.

2. The principal Act as amended by this Act may be cited as the *Workers' Compensation Act, 1912-1948*. Citation of principal Act as amended by this Act.

Commence-
ment.

3. This Act shall come into operation on a day to be fixed by proclamation.

4. The principal Act is amended by adding after the word "cases" in section three, line six, a section as follows:—

3A. When at the time of the coming into operation of the Workers' Compensation Act Amendment Act, 1948, a worker has been entitled to receive weekly payments for any period of total or partial incapacity in accordance with the provisions of the Workers' Compensation Act, 1912-1944, and that incapacity continues after that time, he shall from that time and during the continuance of that period, be entitled to payments in accordance with the provisions of the last-mentioned Act as amended by the first-mentioned Act, but nothing in the first-mentioned Act shall be construed so as to entitle any such worker to any increase in such weekly payments made or payable before that time.

Amendment
of s. 4.

5. Section four of the principal Act is amended by—

(a) adding after the word "intended" in line two the following:—

"Board" means the Workers' Compensation Board constituted under the provisions of this Act;

(b) adding after the word "dependent" in line six of the definition "Dependants" the words "and as are resident in the Commonwealth of Australia or in any part of the Dominions of the Crown or any other country, to which the benefits of this Act in favour of dependants residing therein have been extended under the provisions of this Act.";

Cf. Q. Act,
1916-1939,
s. 3 (1), and
s. 18.

Cf. s. 5 (5)
post.

(c) adding after the word "engaged" in line nineteen of the definition "Employer," the following:—

"Fund" means the Workers' Compensation Board Fund;

Cf. Q. Act,
1916-1939,
s. 3 (1).

- (d) amending the definition "member of a family" by—
- (i) inserting after the word "stepmother" in line three the words "any person who stands in the place of a parent to another person and also that other person,";
 - (ii) substituting for the word "illegitimate" wherever it occurs, the word "ex-nuptial";
- (e) substituting for the definition "Registrar" the following:—
- "Registrar" means the Registrar of the Workers' Compensation Board;
- (f) adding after the word "mentioned" in line five of the definition "Registrar" the following:—
- "Self insurer" means any employer or group of employers whom the Governor, pursuant to the provisions of the proviso to subsection (1) of section ten of this Act, exempts from the operation of that section and "self insurance" has a corresponding meaning;
- (g) amending the definition "Worker" by—
- (i) substituting for the words "five hundred" in line two the words "seven hundred and fifty";
 - (ii) inserting the words ", except as hereinafter provided in this definition," after the word "or" appearing firstly in line six and in line seven;
 - (iii) adding after the word "overtime" in line fifteen the words "The term 'Worker,' save as hereinbefore provided in this definition, includes a member of the police force, who suffers personal injury as mentioned

Of. s. 10 (8)
post.

in section six of this Act and dies as a result of that injury, and any member of the employer's family dwelling in his house whose name, employment and estimated wages are disclosed, at the time of employment and thereafter from time to time when the insurance is renewed, in writing to the insurer of the employer's liability to pay compensation under this Act, unless the insurer is permitted by the Board to refuse insurance of that liability in respect of the member of the employer's family.'';

(iv) inserting in paragraph (b) after the word—

(I) "timber" in line three the words "or firewood or both";

(II) "industry" in line four the words "or firewood industry or both";

(h) substituting for the words "five hundred" appearing in both lines four and six of the paragraph referring to tributers the words "seven hundred and fifty".

Amendment
of s. 5.

6. Section five of the principal Act is amended by—

(a) repealing subsection (3);

(b) adding subsections as follow:—

Reciprocal
application.
Of. Q. Act,
1916-1939,
s. 18, and
s. 4 ante.

(5) If the Governor is satisfied that by the laws, operating similarly to the provisions of this Act, of any other country, whether part of the Dominions of the Crown or not, compensation for injury by accident to a deceased worker is payable to his dependants who are resident in this State,

the Governor may, by Order in Council, declare that when a worker is so injured in this State and dies as a result of the injury, his dependants who are not resident in this State shall have the same rights and remedies under the provisions of this Act, as if they were resident in this State and if satisfied that those laws have ceased wholly or partly so to operate the Governor may in like manner revoke or vary such declaration and effect shall be given thereto.

(6) Where an employer has a place of employment in the State or is for the time being present in the State and there employs a worker, whose employment under his contract of service or apprenticeship with the employer is not wholly carried out in the State but is carried out partly in any other part of the Commonwealth of Australia or territory under the authority of the Commonwealth then, if the worker, while in that other part of the Commonwealth or territory receives injury under circumstances which had the injury been received in the State would entitle him to compensation in accordance with this Act, the worker (and in the case of the death of the worker, his dependants) shall receive compensation in accordance with the provisions of this Act, which shall apply, the necessary alterations and modifications by way of adaptation being regarded as having been made, to and in respect of the injury:

Compensation in relation to workers employed partly in and partly out of the State.

Provided that—

- (a) compensation shall not be payable pursuant to the provisions of this subsection if in respect of the injury the worker has (and in the case of the death of the worker, his dependants have) received workers' compensation in any part of the Common-

wealth of Australia (other than the State) or territory under the authority of the Commonwealth or obtained judgment against his employer in respect of the injury independently of this Act;

- (b) if the worker receives compensation pursuant to the provisions of this subsection in respect of the injury and subsequently in respect of the injury receives workers' compensation in any part of the Commonwealth of Australia (other than the State) or territory under the authority of the Commonwealth or obtains judgment against his employer in respect of the injury independently of this Act the employer shall be entitled to recover from the worker the amount of compensation paid by him pursuant to the provisions of this section.

Amendment
of s. 6.

7. Section six of the principal Act is amended by—

- (a) substituting the word "or" for the word "and" in subsection (2), paragraph (b), line eleven;
- (b) by amending subsection (3) as follows:—
- (i) By inserting after the word "shall" in paragraph (a), line five, the words " , subject to the provisions of this Act relating to that Second Schedule,".
- (ii) By adding after paragraph (c) paragraphs as follows:—
- (ca) For the purposes of the said table the words "loss of the genital organs" shall also include "mental, psychological, or physical incapacity for work at a rate of pay

equivalent to that for the work at which the worker was employed at the time of the accident, when such incapacity arises out of mutilation of, injury to, or loss of all or any of the genital organs.”

- (cb) (i) When, by personal injury by accident, within the meaning of this Act, a worker has already suffered a permanent loss of any percentage of the full efficient use of—

any part or faculty of the body referred to in the first column of the table—

and by subsequent injury by accident within that meaning suffers further loss of the full efficient use of—

that part or faculty of the body—

the compensation payable under the provisions of that table in respect of each such subsequent injury shall be proportionate to any increase (resulting from that subsequent injury) in the percentage of loss of that full and efficient use.

(ii) When a worker has received the whole of the amount set out in the second column of the table and indicated as payable in respect of the loss of, or the permanent loss of, the efficient use of any part or faculty of the body referred to in the first column of the table—

whether in one payment
for permanent total loss
of, or permanent total
loss of the efficient use
of—

that part or faculty of the
body—

or in several payments,
each of which has been
made for a permanent
partial loss of, or a per-
manent partial loss of
the efficient use of—

that part or faculty of the
body, then and in such case,
the worker shall not be
entitled to any further pay-
ment under the provisions of
the table in respect of that
part or faculty.

- (iii) By substituting for the word "seven" in paragraph (a), line thirteen, and in paragraph (d), line six, the words "one thousand two".
- (iv) By substituting the word "clause" for the word "section" in paragraph (d), line ten.
- (v) By adding after the word "subsection" in paragraph (d), line thirteen, the words "and to the proviso that if the principal place of residence of a dependant of a worker is elsewhere than in any part of the Dominions of the Crown, the dependant shall not be entitled to compensation under the provisions of this Act, unless the worker is wholly supporting the dependant when the injury is caused".
- (vi) By adding after paragraph (d) paragraphs as follow:—
 - (e) Nothing in the foregoing provisions of this subsection or

in the table shall limit the amount of compensation payable for any injury during any period of incapacity due to illness resulting from that injury, and the amount of compensation payable pursuant to the foregoing provisions of this subsection and the table shall be payable in addition to any weekly payments payable in respect of incapacity due to that illness, except in the case where and then only to the extent that the total of one thousand two hundred and fifty pounds would be exceeded otherwise.

(f) For the purposes of the said table, the following provisions shall apply:—

(i) In the case of a worker who habitually uses his left hand and arm to perform work, usually performed by a worker with his right hand and arm, the table shall be read, construed and applied as if the word "left" were substituted for the word "right," and the word "right" were substituted for the word "left."

(ii) Where a worker has suffered an injury for which compensation would, but for the provisions of this paragraph be payable under the foregoing provisions of this subsection, and it appears to the Board—

(a) that the amount of compensation which would be so payable

would be substantially less than the amount of compensation which would be payable under the provisions of the First Schedule to this Act if compensation were assessable under that Schedule; and

- (b) that, because of the special circumstances of the worker (including, without limiting the generality of the foregoing, the nature of his injury in relation to the nature of his former usual employment), the amount of compensation under the foregoing provisions of this subsection would be inadequate,

then the Board may award compensation pursuant to the provisions of the First Schedule without regard to the foregoing provisions of this subsection and the said table, the intention being that the power conferred upon the Board by this subparagraph shall not be exercised as a matter of course, but only when the special circumstances of the case commend themselves to the Board as justifying the exercise of that power.

- (c) substituting for subsection (4) the following subsection:—

Ss. (4) substituted.
Of ss. 36 and 37 post.

(4) If, under the provisions of this Act, there arises any question or matter for determination, it shall be determined in accordance with the provisions of this Act relating to the powers, duties, and functions of the Board;

- (d) inserting after the word "compensation" in subsection (5), line seven, the words "or refer the assessment of the compensation to the Board,";

- (e) adding a subsection as follows:—

Ss. (5a) added.

(5a) When any question arises as to the loss of, or the permanent loss of the efficient use of, any of the parts or faculties of the body referred to in the first column of the Second Schedule to this Act, or to the degree of that loss, the Board may refer the question to a medical board of three medical practitioners, registered under the Medical Act, 1894-1946, and the determination of the question by them, or by the majority of them, shall be final and binding

8. Section seven of the principal Act is amended by—

Amendment of s. 7, ss. (1).

- (a) substituting for the words "twelve months" in subsection (1), line twelve, the words "three years";

- (b) substituting for the words "twelve months" in subsection (5), line three, the words "three years";

Amendment of ss. (5).

- (c) inserting after the word "period" in paragraph (i) of the proviso to subsection (5), line five, the words "of three years";

- (d) substituting for the words "twelve months" in paragraph (iii) of the proviso to subsection (5), line three, the words "period of three years";

- (e) substituting for the words "twelve months" in subsection (7), line three, the words "period of three years";

Amendment of ss. (7).

- (f) repealing subsection (9);

Repeal of ss. (9).
Cf. s. 6 (4) and s. 36 (2), (b). (iii).

Amendment
of ss. (11).

- (g) inserting after the word "to" in subsection (11), line four, the word "silicosis,";
- (h) inserting after the word "tuberculosis" in subsection (11), line eight, the word "silicosis,";
- (i) adding after subsection (13), subsections as follow:—

Ss. (13a)
added.

(13a) Notwithstanding any of the provisions of the Mine Workers' Relief Act, 1932-1943, or of this Act, the compensation payable to any worker in respect of any period or periods of total or partial incapacity due or deemed due solely to silicosis, whether early or advanced, pneumoconiosis, or miner's phthisis, arising or deemed to arise out of or in the course of employment in any of the processes described in the second column of the Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting, or stone or metal screening, or to any of those diseases in combination with any other disease, shall not in any case exceed one thousand two hundred and fifty pounds when the liability of the employer to pay the compensation shall be agreed to or adjudged after the coming into operation of the Workers' Compensation Act Amendment Act, 1948, or seven hundred and fifty pounds when that liability has been agreed to or adjudged before the coming into operation of that Act as the case may be. The provisions of this subsection shall apply whether the period or periods of incapacity occur or result while the worker is employed by the same or different successive employers.

Any worker who has received the full amount of one thousand two hundred and fifty pounds or seven hundred and fifty pounds as the case may be in respect of such period or periods of incapacity and who is subsequently employed in any of the processes described in the second column of the Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting,

or stone or metal screening, by the same employer or different successive employers, shall not be entitled in any circumstances whatever to any further compensation or benefit for any period of incapacity, due to any of those diseases or combination of any of them, or with any other disease or aggravation or acceleration of any of them, or any combination of any of them with any other disease arising or deemed to arise from the subsequent employment in any of those processes.

For the purpose of this section, aggravation or acceleration includes the development of pneumoconiosis or early silicosis into advanced silicosis.

(13b) Where in any proclamation made under section two of Act No. 40 of 1924 reference is made to the diseases mentioned in the Third Schedule to this Act set opposite the description of the process mentioned therein as mining, quarrying, or stone crushing or cutting, or stone or metal screening, the reference shall, subject to any proclamation to the contrary, from the date of the coming into operation of the Workers' Compensation Act Amendment Act 1948, be deemed as regards those diseases, to include silicosis, and, as regards that description of the process, to include stone or metal screening, notwithstanding that when the proclamation was made under the provisions of that section the Third Schedule did not include among those diseases silicosis, and did not include among those processes stone or metal screening.

Ss. (13b) added.

9. The principal Act is amended by adding after section eight the following sections:—

8A. (1) For the purposes of this Act a worker's incapacity resulting from hernia shall be deemed to be incapacity resulting from injury by accident

Section 8A added.
Compensation for hernia.
Cf. N.Z. Act, No. 23 of 1948, s. 6.

arising out of or in the course of his employment only if—

(a) the hernia is—

- (i) clinical hernia of disabling character appearing to have recently occurred for the first time; or
- (ii) an aggravation or strangulation of a pre-existent hernia resulting in immediate pain and disablement; and

(b) in either case the onset of the hernia is immediately preceded by an accident arising out of or in the course of the employment and of such a nature as to be likely to cause the hernia; and

(c) when the employer or his agent or other representative is immediately available, the worker reports his condition to his employer or his agent or other representative immediately after the occurrence of the accident, or when the employer or his agent or other representative is not immediately available, ceases work at the time of the accident and reports his condition to his employer or his agent or other representative so soon as practicable, but within forty-eight hours of the accident and no later, the provisions of paragraph (a) of the proviso to subsection (1) of section nine of this Act notwithstanding, unless the Board is of opinion that, owing to circumstances beyond the worker's control, he was unable so to report within that time, the intention being that every such case of hernia shall be reported so soon as is practicable.

(2) Where the Board is satisfied that it is reasonable so to do, the Board may order that a worker's right to compensation under this section shall cease on a date to be specified in the order, being not less

than four weeks from and after the date of the order, unless the worker undergoes a surgical operation for a cure of the hernia.

(3) Where an order is made under the last preceding subsection, the following provisions shall apply:—

- (a) If the worker does not submit himself to the operation before the date so specified or before such later date as the Board may specify in any subsequent order, the weekly payments of compensation payable to the worker shall cease on that date or later date, as the case may be.
- (b) If the worker submits himself to the operation, the weekly payments of compensation payable to him shall continue for a period of twelve weeks from the date of the operation and shall then cease:

Provided that if the worker is not wholly recovered at the end of that period the Board may extend his right to receive weekly payments of compensation for such further period or periods as the Board thinks fit.

(4) The failure of a worker to make any report to his employer in pursuance of the foregoing provisions of this section shall not deprive the worker of any compensation to which he may be otherwise entitled in respect of hernia if the Board considers that the failure was excusable.

8B. (1) When permanent partial incapacity of a worker results from personal injury by accident within the meaning of section six of this Act, the liability of the employer to pay compensation in accordance with the First Schedule, pursuant to section six or pursuant to section seven of this Act, as the case may be, shall be proportionate to the degree of that incapacity, the ratio of that liability to liability for permanent total incapacity being the same as the ratio of that permanent partial incapacity to the permanent total incapacity.

Section 8B
added.
Permanent
partial in-
capacity.

(2) For the purposes of this section partial incapacity includes the degree to which the disability referred to in section seven, subsection (13), is caused by silicosis, pneumoconiosis or miner's phthisis due to the nature of the worker's employment.

(3) Nothing in subsections (1) or (2) of this section shall limit the amount of compensation payable for such injury during any period of total incapacity resulting from that injury and any sum so paid shall not be deducted from the compensation payable in accordance with subsections (1) and (2) of this section except in the case where and then only to the extent that the total of one thousand two hundred and fifty pounds would be exceeded otherwise.

Amendment
of s. 10,
ss. (1).
Cf. s. 4,
definition of
"worker" as
including
member of
employer's
family, and
ss. (4) post.
Cf. N.S.W.
No. 15 of
1926, s. 18
(2).
Ss. (4) and
(5) added.

10. Section ten of the principal Act is amended by—

(a) adding after the word "him" in subsection (1), line five, the words "except when an insurer is permitted by the Board to refuse insurance of that liability.";

(b) adding subsections as follow:—

(4) (a) Any incorporated insurance office which has received the approval of the Minister under the provisions of this section shall, subject to the provisions of paragraph (d) of this subsection, and unless permitted by the Board to refuse insurance of that liability wholly or in part in respect of a member of an employer's family dwelling in his house pursuant to the provisions of Section IV., subsection (g), paragraph 3 of this Act, insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

(b) If permitted by the Board to refuse insurance of that liability in part, any such insurer as is referred to in the next preceding paragraph shall issue a policy of insurance for the residue of that liability.

(c) Subject to the provisions of paragraph (d) of this subsection, any such insurer as is referred to in this subsection, failing to comply with or contravening the provisions of this section commits an offence:

Penalty—One hundred pounds.

(d) The provisions of this subsection shall not apply to a refusal by any such insurer, as is referred to in this subsection, to issue a policy of insurance for the liability of any employer to pay compensation under this Act in respect of silicosis, pneumoconiosis or miner's phthisis (or any of those diseases in combination with any other disease) which may arise or may be deemed to arise out of or in the course of employment of any worker in any of the processes described in the second column of the Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting, or stone or metal screening.

(5) (a) On and after the coming into operation of the Workers' Compensation Act Amendment Act, 1948, the State Government Insurance Office shall be the only insurer authorised to insure any employer for the liability of the employer to pay compensation under this Act to all workers employed by him in any mining operation carried on in any defined portion of the State the subject of a proclamation under the provisions of the Workers' Compensation Act Amendment Act, 1924, section two.

Insurance relating to mining operations.

Cf. No. 40 of 1924, s. 2.

(b) The provisions of the last preceding paragraph shall not affect the rights and liabilities of the parties to any existing contract of insurance for the duration of the contract unexpired on the coming into operation of the Workers' Compensation Act Amendment Act, 1948.

Saving of existing policies.

Revocation of exemption and discharge and return of securities.

(6) When an employer or group of employers exempted from the operation of this section pursuant to the proviso to subsection (1) of this section—

- (i) shall apply to the Minister for a revocation of the exemption referred to in that proviso; and
- (ii) shall apply to the Minister for the return of securities lodged by him or them with the Treasury discharged from the charge referred to in that proviso; and
- (iii) shall prove to the satisfaction of the Minister that the employer or the group, as the case may be, has ceased to employ workers or has obtained from an approved insurer within the meaning of this section, a policy of insurance for the full amount of liability to pay compensation under this Act to all workers employed by him or them;

the Governor may by Order in Council revoke the exemption and order that the securities be discharged from the charge and returned to the employer or group as the case may be.

Repeal of ss. 17, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32, and ss. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 added.

Workers' Compensation Board.

Cf. Vic. Act, No. 4524 of 1937, s. 2 (1).

11. The principal Act is amended by repealing section seventeen and sections twenty-three to thirty-two, both inclusive, and by adding the following sections:—

33. (1) For the purposes of this Act there shall be constituted a Board to be called the Workers' Compensation Board.

(2) The Board shall consist of three members who shall be appointed by the Governor.

(3) Of the three members—

(a) one shall be chairman;

(b) two shall be nominee members.

(4) A person shall not be eligible for appointment to the office of chairman unless he is a practitioner as defined by the Legal Practitioners Act, 1894-1946, of not less than seven years' practice and standing.

Qualifications of chairman.

(5) The chairman shall, subject to retirement as hereinafter provided be entitled to hold office during good behaviour but may be removed from office by the Governor upon the address of both Houses of Parliament in the same session praying for the removal on the ground of proved misbehaviour or incapacity.

Term of office of chairman.

(6) Of the two nominee members—

Nominee members.

(a) one shall be a person nominated in the prescribed manner by the governing body of the association known as The Employers' Federation (W.A.);

(b) one shall be a person nominated in the prescribed manner by the governing body of the Australian Labour Party, Western Australian Branch.

(7) If for any reason a person is not nominated as a nominee member or having been nominated and appointed fails to take office the Governor may appoint a person to act in the office.

Appointment on failure of nomination.

(8) Subject to the provisions of this Act a person appointed as a nominee member shall be appointed to hold office for a term of not less than five years or more than ten years from appointment, but upon expiration of any term of appointment, shall be eligible for reappointment.

Term of office of nominee member.
Cf. Ch. 4 of the Statutes of Alberta, 1943-45, s. 4.

(9) Subject to the provisions of this Act the office of nominee member shall become vacant by reason of the occupant—

Vacancy in office of nominee member.

(a) being absent from his duties for a period of one month or longer without the consent of the Board;

(b) becoming of unsound mind or being declared under any law for the time being relating to mental infirmity, incapable of managing his affairs;

- (c) becoming bankrupt or availing himself as a debtor of any law for the relief of bankrupt debtors;
- (d) resigning, attaining the age of sixty-five years, or dying;
- (e) being removed from office on the ground of misbehaviour or incapacity.

Appointments to office of nominee member for remainder of unexpired term.

(10) Any person appointed to fill any vacancy in the office of nominee member occurring during the term of appointment of the occupant shall be appointed for the remainder of the term for which his predecessor was appointed, but shall, subject to the provisions of this Act, be eligible for reappointment on its expiration.

Appointment of deputy members.

(11) The Governor may appoint to act in the place and during the absence of members of the Board as their deputies, persons with qualifications rendering them eligible for appointment to the respective offices on the Board.

Validity of appointments of deputies and to fill vacancies.

(12) No appointment and no act, matter, or thing done by any person acting as deputy for any member of the Board or to fill any vacancy in office on the Board shall be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

Retirement.

(13) Each member of the Board shall retire on the day on which he attains the age of sixty-five years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave, or unless the Governor directs that he shall be at liberty to continue in office at the Governor's pleasure.

Remuneration allowances and leave.

(14) In respect of his office, each member of the Board shall be entitled to such remuneration, allowances and leave of absence as shall be determined by the Governor.

Prohibition of other employment for remuneration.

(15) No member of the Board shall engage in any business or occupation for remuneration other than that of his office on the Board without the consent of the Minister.

(16) At any meeting of the Board at which all three members are present, the determination of a majority of members shall be the determination of the Board, but the chairman alone shall determine any questions of law.

Determination of questions by majority. Chairman alone to decide questions of law.

(17) The Chairman and one other member of the Board shall be a quorum and shall have all the powers and duties conferred upon the Board by this Act:

Quorum.

Provided that if at any meeting of the Board in which the chairman and one other member only are present, there is a difference of opinion upon any matter (other than a matter of law), the determination of the matter shall be postponed to a meeting at which all the members are present.

(18) The Board shall be a body corporate with perpetual succession and a common seal.

Board, a corporate body.

34. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Board by this Act or any other Act, the Board, with the approval of the Public Service Commissioner appointed under the provisions of the Public Service Act, 1904-1947, may make use of the services of any of the officers and employees of the Public Service.

Co-operation of Public Service. Cf. Act No. 15 of 1926. N.S.W. s. 33.

(2) The Registrar and other members of the staff of the Board shall be appointed under and be subject to the provisions of the Public Service Act, 1904-1947.

Registrar and staff of Board.

35. (1) A fund, to be called the Workers' Compensation Board Fund, shall be established and kept in the Treasury, and from the Fund shall be paid—

Workers' Compensation Board Fund. Act No. 15 of 1926. N.S.W. s. 41 (4).

(a) all moneys required for the salaries of the members of the Board and its staff;

(b) compensation in accordance with the provisions of the Act to any worker (other than a worker in respect of whom refusal of insurance is permitted by the Board pursuant to the provisions of this Act) whose employer has not effected insurance against his liability to pay compensation under the provisions of this Act and is unable to pay that compensation;

(c) costs of prosecutions instituted by the Board under the provisions of this Act;

(d) all other moneys required by the Board for carrying out the provisions of this Act.

Board to prepare and submit estimate to Minister annually.

(2) (a) The Board shall in each year make an estimate of the amount, which shall be required by the Board for carrying out the provisions of this Act from the Fund for the next following year commencing the first day of July: Provided that for the year in which this Act comes into operation the Board may prepare the estimate at any time during that year.

(b) So soon as possible after the preparation of every estimate the Board shall submit it to the Minister and no estimate shall have any force or effect until approved by the Minister.

Contribution to Fund by insurers.

(3) Each insurer shall contribute annually to the Fund a sum amounting to a percentage to be fixed by the Board on the total amount of the premium income (whether received by or owing to the insurer) of the insurer in respect of the year ended the thirtieth day of June then last past in respect of insurance of employers against their liability to pay compensation under the provisions of this Act, and their liability under any other law in respect of persons employed by them, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act. The percentage shall be uniform for all insurers. The amount of any annual contribution shall be paid in quarterly instalments on the first days of January, April, July and October in each year, or on such other days as the Board may determine, and shall be recoverable as a debt due to the Board in any court of competent jurisdiction.

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

Contributions to Fund by self insurers.

(4) A self-insurer shall, in respect of any period for which contributions to the Fund are payable by insurers, pay such contribution to the Fund as the

Board may deem reasonable, assessed upon the wages paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling or industry, and the employer shall upon demand supply the Board with such particulars of the wages paid by him during that period as are required by the Board.

(5) (a) In the month of July of each year or at such other time as the Board may appoint, every insurer shall send a return showing the amount of the premium income (whether received by or owing to the insurer) in respect of insurance of employers against their liability to pay compensation under the provisions of this Act and their liability under any other law in respect of persons employed by them during the year ended the thirtieth day of June then last past, excluding any part of that premium income actually paid by way of reinsurance to any other insurers contributing under this Act, together with a statutory declaration by the insurer or his or its manager, secretary or agent in this State, that he has carefully examined the return and to the best of his knowledge information and belief the return is a true return of that amount.

Returns to be furnished to Board by insurers.

(b) Any insurer failing to send the return in that month or by such other time as the Board shall appoint, as the case may be, shall be liable to a penalty not exceeding five pounds for every day during which the default continues.

Penalty for failure to furnish return.

(c) If any insurer sends a return which is false in any material particular, he or it shall be liable to a penalty not exceeding one hundred pounds.

Penalty for false return

(d) (i) In any one year the Board may levy contributions to the Fund of an amount equal to—

the amount of compensation estimated as hereinafter provided as payable in that year pursuant to the provisions of paragraph (b) of subsection (i) of section 35 of this Act

plus—

a sum of eight thousand pounds—

but shall not levy contributions in excess of that amount unless authorised by resolutions of both Houses of Parliament.

(ii) For the period of the first year in which the Workers' Compensation Act Amendment Act, 1948, comes into and is in operation the amount of compensation referred to in the last preceding paragraph shall be estimated by the Board and for each year thereafter the estimate of the amount of that compensation shall be based upon the amount of the compensation payable during the next preceding year.

Audit of
Board's
accounts.

(6) The accounts of the Board shall be inspected, examined, audited and reported upon by the Auditor General, who shall have in respect of those accounts all powers conferred on the Auditor General by any law now or hereafter in force relating to the audit of public accounts.

Appointment
of Registrar.

36. (1) (a) The Governor in Council may appoint a person as Registrar who shall also act as secretary to the Board.

Records to be
kept.

(b) The Registrar shall keep a register in the prescribed form and containing the prescribed particulars of all claims for compensation received by the Board and of determinations and orders of the Board upon or arising out of all those claims.

(c) The Registrar shall keep minutes of all meetings of the Board.

Deputy
Registrar.

(d) The Board may direct any officer attached to its staff to act as Deputy to the Registrar during the Registrar's absence, and while so acting, the Deputy shall exercise the powers and perform the duties of the Registrar.

Proceedings
before the
Board.

(2) (a) All proceedings before the Board shall be conducted in public.

(b) The Board may—

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

(ii) summon a medical referee to sit with the Board as an assessor; and

(iii) submit to a medical referee or a medical board for report any matter which seems material to any question arising out of the proceedings.

(3) Any sum awarded as compensation shall, unless paid into the custody of the Board, be paid on the receipt of the person to whom it is payable under any agreement or award.

Payment of compensation awarded.

(4) No legal practitioner or other agent representing any person claiming compensation under this Act shall be entitled to recover from that person any costs in respect of any proceedings before the Board, or to claim a lien in respect of those costs, or to deduct those costs from the sum awarded or agreed as compensation, except such sum as may be awarded by the Board on an application made by the person claiming compensation, or by his representative, to determine the amount of costs to be paid to the representative of the person claiming compensation, and that sum shall be awarded subject to the prescribed scale of fees, costs, and rules.

No deduction from compensation by representative of claimant, unless authorised by the Board.

37. (1) Subject to the provisions of this Act, the Board shall have exclusive jurisdiction to examine into, hear, and determine all questions and matters arising under this Act, and the action or decision of the Board thereon shall be final and conclusive, and except as herein provided, shall not be open to question or review in any Court, and no proceedings by or before the Board shall be restrained by injunction, prohibition, or other process or proceedings in any Court, or by removal by *certiorari* or otherwise into any Court, nor shall any action be maintained or brought against the Board or any member thereof in respect of any act or decision done or made in the honest belief that the same was within the jurisdiction of the Board.

Jurisdiction of the Board. Cf. Chap. 4 of the Statutes of Alberta, 1943-45, s. 10. Cf. s. 6 (4) ante.

Injunction, prohibition, certiorari, etc., excluded.

(2) Nothing in subsection (1) of this section shall prevent the Board from reconsidering any matter which has been dealt with by it, or from rescinding, altering, or amending any decision or order previously made, all of which the Board shall have authority to do.

Board authorised to reconsider its own decisions. Act No. 15 of 1926, N.S.W., s. 36.

Cf. Act No. 57 of 1912, Vol. 2, 1943 Reprints, s. 69.

Board to determine each case on the substantial merits.

(3) (a) In the hearing and determination of every question, the Board and the chairman, and any member, and the Registrar and any person or Court, acting pursuant to any power delegated by the Board under the provisions of this Act, shall act according to equity and a good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by legal precedent or its own decisions and rulings in any other question, nor by any rules of evidence, but may inform its or his mind on any matter in such a way as it or he regards as just.

(b) The granting of relief or redress under this Act shall not necessarily be restricted to the specific claim made, nor to the subject matter of the claim.

Party may appear in person or by representative.

Cf. Local Courts Act, 1904-1931, s. 29, and Cf. s. 36 (4) ante.

(c) Any person who is a party to any question for hearing and determination under the provisions of this Act, may appear in person or by a legal practitioner authorised to practise as such by the provisions of the Legal Practitioners Act, 1893-1946, or by other agent duly appointed in writing for that purpose, and subject to the provisions of this Act, every party appearing by a representative shall be bound by the acts of his representative.

Chap. 4 of the Statutes of Alberta, s. 10 (6) (a) and (b). Board may delegate its power to make inquiries and act upon the delegate's report.

(4) (a) The Board may act upon the report of any of its officers, and any inquiry which it shall be deemed necessary to make may be made by a member or by an officer of the Board, or by some other person appointed by the Board to make the inquiry, and the Board may act upon his report as to the result of the inquiry.

(b) The person appointed to make the inquiry shall for the purposes thereof, have all the powers conferred upon the Board.

Provisions relating to delegation to Local Courts. Cf. s. 43 post.

(5) (a) For the purposes of expediency, the Board may delegate all or any of its powers, except this power of delegation—

- (i) relating to the determination of questions and matters arising for determination under the provisions of this Act, to the magistrate for the time being to whom a Local Court is assigned under the provisions of the Local Courts Act, 1904-

Cf. No. 51 of 1904, s. 10.

1931, but the delegation shall in each case be of a specific and not a general nature, and may be enlarged from time to time, if the Board shall deem it expedient;

(ii) relating to such corresponding matters as are referred to in sections fourteen and fifteen of the Local Courts Act, 1904-1931, which relate to procedural matters, to the clerks of Local Courts, and such delegation may be either specific or general;

Cf. No. 51 of 1904, ss. 14 and 15.

(iii) relating to such corresponding matters as are referred to in sections seventeen to twenty-two of the Local Courts Act, 1904-1931, which relate to the service of processes and the execution of warrants and the functions of bailiffs generally, to bailiffs appointed under that Act, and such delegation may be either specific or general.

Cf. No. 51 of 1904, ss. 17-22.

(b) The decision of a magistrate acting under such delegated authority shall be as binding and as effective as if such decision were a decision of the Board.

(c) A report of the proceedings before a magistrate shall be forwarded to the Board within fourteen days of a decision on the proceedings being promulgated by the magistrate.

(6) Every copy or extract from an entry of any book or record of the Board and of any document filed with the Board certified by the Registrar to be a true copy or extract shall be received in any court as *prima facie* evidence of the matter so certified without proof of the Registrar's appointment, authority or signature.

Certified copies, etc., of Board's records to be *prima facie* evidence.

(7) Without limiting the generality of the provisions of subsection (1) of this section, the jurisdiction of the Board shall extend to—

Chap. 4 of the Statutes of Alberta, 1943-45. s. 10 (8).
Act No. 15 of 1926, N.S.W., s. 36 (4).

(a) determining—

(i) whether an injury has arisen out of or in the course of an employment within the meaning of this Act;

Enumeration of certain matters of jurisdiction.

- (ii) the existence and degree of disability by reason of the injury;
- (iii) the permanence of disability by reason of any injury;
- (iv) the degree of diminution of earning capacity by reason of any injury;
- (v) the amount of average earnings of a worker;
- (vi) the amounts of any refunds or adjustments of assessments which in its discretion it may deem proper to make;
- (vii) the existence and extent of dependency;
- (viii) whether any person or aggregation of persons is or is not an employer of a worker within the meaning of the Act and if so whether such worker is or is not entitled to compensation under the Act;
- (ix) the existence, for the purpose of the Act, of any relationship of any member of the family of a worker as defined by the Act;
- (x) all cases of permanent partial or total incapacity, and making awards of compensation within the limits prescribed by the Act as may appear proper after taking into consideration all the circumstances of the case;
- (xi) the modification of weekly payments when a partially incapacitated worker resumes or is capable of resuming any employment other than his former employment;
- (xii) whether the circumstances of any particular case justify the making of an order for redemption

of weekly payments of compensation by payment of a lump sum;

(xiii) whether an insurer shall be permitted to refuse the insurance of an employer against any liability under this Act;

(xiv) liability of any person in respect of the expenses of medical or surgical attendance on an injured worker at the suit of any person by whom they have been incurred or at the suit of any person entitled to receive payment in respect of them;

(b) ordering that compensation, which cannot be immediately paid to any person under legal disability to give an effective discharge for payment, or which is payable to any dependant of a deceased worker, shall be paid to the Public Trustee, constituted under the Public Trustee Act, 1941, and the manner in which it shall be applied.

Orders relating to payment of compensation in respect of persons under legal disability or who are dependants.

(8) The Board may in any case where it is deemed necessary, and shall, on the application of any employer or worker interested in any order, ruling or decision of the Board, issue a certificate in the prescribed form or to the like effect embodying the substance of any such order, ruling or decision.

Cf. Chap. 4 of the Statutes of Alberta, 1943-46, s. 11. Issue of certificate of Board's finding. Cf. s. 43 (2) (d) (ii) post.

(9) When any question of law arises in any proceedings before the Board, the Board may of its own motion, and shall, if requested in the manner and within the time prescribed by rules by any party to the proceedings, state a case for the decision of the Full Court of the Supreme Court thereon. The case may be stated under this section notwithstanding that an award, order, direction or decision has been made or given by the Board.

Cf. Act No. 15 of 1926, N.S.W., s. 37 (4), (5), (6) and (7). Case stated on question of law.

Case stated to be considered and determined by Supreme Court.

(10) The Full Court of the Supreme Court shall have power to make such order as it thinks fit in regard to the case and to the costs of and incidental to the hearing and determination of any case so stated.

Board to furnish workers and employers with information as to their rights. Cf. Act No. 15 of 1926, N.S.W., s. 39 (a).

(11) The Board shall—

(a) when requested furnish workers and employers with information as to their rights and liabilities in respect of injuries sustained by workers in connection with their employment;

Board to endeavour to conciliate. Cf. Act No. 15 of 1926, N.S.W., s. 39 (b).

(b) make all reasonable efforts to conciliate and bring parties to agreement where dispute has arisen concerning compensation claims of injured workers.

Board may regard illegal contracts of employment as valid. Cf. Act No. 15 of 1926, N.S.W., s. 40.

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

Powers of the Board.

(13) The Board shall also have the following powers:—

Investigation of industrial diseases.

(a) To investigate all matters relating to industrial diseases of any nature whatsoever and to cause to be made a study of the causes, and the results of varying methods of treatment, of such accidents and diseases, and to publish from time to time such findings and information as, in the opinion of the Board, is in the interests of the proper administration of this Act, and for all or any of such purposes may co-opt not more than three qualified medical practitioners registered under the Medical Act, 1894-1946.

- (b) To obtain from all insurers and self-insurers returns necessary for the compilation of statistics for the purpose of recording such information as, in the opinion of the Board, is essential for the proper administration of this Act. Compilation of statistics.
- (c) To establish and maintain a register of medical practitioners registered under the Medical Act, 1894-1946, and authorised by the Board to carry out medical or surgical treatment of or in attendance on any worker with respect to any injury for which the worker is receiving or is entitled to receive compensation under this Act. Establishment and maintenance of register of medical practitioners authorised to treat injured workers.
- (d) To preclude a medical practitioner whose name is not for the time being on the register from charging, receiving, recovering or retaining any medical expenses or fees for medical or surgical treatment of or attendance on any worker with respect to any injury for which the worker is receiving or entitled to receive, or has received compensation under this Act, unless, in the opinion of the Board, that treatment or attendance has been rendered or bestowed in a case of sudden emergency, or the medical practitioner had reasonable grounds for believing that the injury was not an injury for which the person treated had received or was receiving or entitled to receive compensation under this Act. Medical practitioners not on register to be prohibited from charging or receiving professional fees.
Inserted by No. 36 of 1941, s. 3, as s. 20C, re-numbered s. 25 in reprint Vol. 2.
- (e) (i) Of its own motion, or upon a complaint in writing made within twelve months after the occurrence, giving rise to such complaint, by— Board may hold inquiries.
Inserted by No. 36 of 1941, s. 3, as s. 20D, re-numbered s. 26 in reprint Vol. 2.
- (I) the worker; or
- (II) the employer; or
- (III) a near relative of the worker, when for any reason deemed sufficient by the Board the worker is unable to make the complaint himself;

(IV) any other person authorised in that behalf by the Board,

the Board may hold an inquiry into the conduct of any registered medical practitioner with respect to the treatment of or attendance on the worker, or to the expenses or fees charged for such treatment or attendance by the medical practitioner, or any other matter concerning the conduct of a medical practitioner in relation to a worker seeking to obtain or obtaining or having obtained compensation under this Act.

When holding any inquiry under this paragraph, the Board shall comprise as well as at least its quorum, two medical practitioners who shall be registered under the provisions of the Medical Act, 1894-1946, nominated by the Western Australian Branch of the British Medical Association and appointed by the Governor, and shall be entitled to such fees and allowances as shall be prescribed while acting as members of the Board.

(ii) If upon the inquiry the matter of the complaint is proved to its satisfaction, the Board may—

- (I) order the name of the medical practitioner to be erased from the register either absolutely or for a specified period;
- (II) order the medical practitioner to pay a fine not exceeding fifty pounds;
- (III) order the medical practitioner to make restitution of such amount with respect to the fees charged by him as the Committee deems just;

and effect shall be given to the order.

(iii) The amount of any fine imposed, or of any restitution ordered under subparagraph (ii) of this paragraph may be

recovered summarily before Justices sitting in a court of petty sessions.

(iv) The Board may allow a complaint made under this subsection to be amended at any time before the completion of its inquiry into the matter of the complaint upon such terms as the Board may deem just.

(v) Subject as in this subsection provided, the Board upon the holding of the inquiry may make such order as to costs against the person making the complaint or against the medical practitioner concerned or, when the Board holds an inquiry of its own motion, in favour of or against the medical practitioner concerned as in the opinion of the Board is warranted by the circumstances of the case, and with respect to any such order the following provisions shall apply--

(I) the Board may itself determine and fix the amount of the costs to be paid pursuant to its order; or direct that the costs to be paid shall be taxed by the Master of the Supreme Court;

(II) where the Board directs that the costs shall be taxed, the Master of the Supreme Court shall tax them and give his allocatur in relation to them;

(III) the order for payment of costs may be enforced and the amount of the costs as fixed by the Board or allowed in taxation by the Master of the Supreme Court, as the case may be, may be recovered by execution or otherwise as if the order were a judgment of the Supreme Court for the payment of a liquidated sum of the amount at which the costs have been fixed by the Board or taxed and allowed by the Master of the Supreme

Court: Provided that the Board shall not make any order for payment of costs against the person making the complaint when that person has been authorised so to do by the Board pursuant to the provisions of item (IV) of subparagraph (i) of this paragraph.

- (vi) For the purposes of this subsection—
- (I) the phrase “treatment of or attendance on any worker” means medical or surgical treatment of or attendance on any worker with respect to any injury for which the worker is receiving or is entitled to receive or has received compensation under this Act;
 - (II) the expression “compensation” includes not only money payable to a worker in lieu of earnings but also all monetary benefits and benefits of monetary value to which a worker is entitled under this Act; and
 - (III) the expression “near relative” means a person who is either the wife, husband, mother, father, sister, brother or child of the worker, and, in respect of a child wholly or partly dependent upon the earnings of the worker, the guardian of that child.

- (f) To establish and maintain a register of medical practitioners to be selected from time to time from a panel of names of medical practitioners supplied to the Board by the Medical Board constituted pursuant to the provisions of the Medical Act, 1894-1946, authorised by the Board to assess the degree of disability for the purpose of determining the amount of compensation payable under the Second Schedule to this Act.

Establishment and maintenance of register of medical practitioners to assess disability in relation to Second Schedule.

- (g) To take such measures and make such expenditure as is deemed necessary or expedient by the Board with a view to—
- (i) providing facilities for pre-employment medical examination and occupational guidance to workers;
 - (ii) formulating recommendations and preparing estimates for submission to Parliament of the cost of providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from personal injury by accident within the meaning of the Act so as to minimise or remove any handicap resulting from the injury;
 - (iii) providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from personal injury by accident within the meaning of the Act in accordance with the recommendations and estimates referred to in the last preceding subparagraph when those recommendations and estimates have been approved by resolution of both Houses of Parliament.

(14) (a) The Board may engage in and carry on the education and instruction in accident prevention and first aid work of workers and others and may impart such education and instruction by demonstration, exhibits, lectures, classes or otherwise and may hold examinations and issue certificates to persons whom it may deem sufficiently skilled in such matters as to warrant the issue to them of such certificates.

Education in accident prevention, etc.; examinations in and certificates of proficiency.

(b) Certificates issued by the Board under the provisions of the last preceding paragraph may be cancelled and recalled by the Board at any time

Certificates of proficiency may be cancelled and recalled.

when, in its opinion, the holder thereof does not continue to have the necessary qualifications in accident prevention and first aid work.

Any cost incurred under subsections (13) and (14) of this section shall, without prejudice to the operation of the provisions of subsection (1) of section thirty-five of this Act, be regarded as part of the administrative costs of the Board.

38. (1) Maximum premium rates to be charged for insurance in respect of all insurable risks under the provisions of this Act shall be determined from time to time—

(a) by a committee to be called the Premium Rates Committee, consisting of the Auditor General as Chairman, the Manager of the State Government Insurance Office and a person who shall be nominated by all other insurers approved by the Minister under the provisions of section ten of this Act, other than that section of such insurers known as the non-tariff Companies, and also a person who shall be nominated by the non-tariff companies as aforesaid both of whom shall be appointed by the Governor and entitled while acting on the Committee to such remuneration and allowances as shall be prescribed;

(b) on a basis which shall be formulated by the Board from time to time and which shall include consideration of—

(i) the duration of the particular period in respect of which the basis is formulated;

(ii) the total amount of premiums received and owing to all insurers for that period in respect of insurance of employers against their liability to pay compensation under the provisions of this Act;

(iii) the total amount of payments made and due for that period by all insurers in respect of that insurance;

- (iv) the total amount of premiums which would be payable for that period by self-insurers on the basis of wages paid by them to their workers during that period if the self-insurers were not self-insurers but were employers effecting insurance with the State Government Insurance Office against their liability to pay compensation under the provisions of this Act in the same or any similar trade, occupation, calling or industry as that carried on by the self-insurers;
- (v) the total amount of payments made and due for that period by self-insurers pursuant to their liability to pay compensation under the provisions of this Act;
- (vi) the total amount of payments made during that period by the Board pursuant to the provisions of this Act, to workers who have sustained personal injury by accident, in respect of the employers' liability for which no insurance exists;
- (vii) the total cost of the administration reasonably incurred during that period by insurers and self-insurers in relation to the matters referred to in subparagraphs (ii) to (v) of this paragraph;
- (viii) and all such other circumstances and factors, whether of the same or a different kind from the foregoing as in the opinion of the Board are just and proper.

(2) Nothing herein contained shall be interpreted to preclude any insurer referred to in the last preceding subsection from charging or accepting

Insurers may charge rates lower than those determined by the Premium Rates Committee.

premiums at rates lower than those determined, whether by a reduction of rates, the granting of bonuses or by any other means.

Annual report.

39. The Chairman of the Board shall prepare for the Minister, not later than the thirtieth day of September in each year, an annual report containing a statement in detail of the receipts and expenditure of the Workers' Compensation Board Fund, to the preceding thirtieth day of June of the Board's activities relating to that Fund and the report shall be laid before both Houses of Parliament, so soon as practicable in each year.

Protection of Board and members. Inserted by No. 36 of 1941, s. 3, as s. 20G, re-numbered s. 29 in Re-print Vol. 2.

40. Neither the Board nor any individual member thereof, nor any person discharging any duty in pursuance of the provisions of this Act shall be liable to any suit or action or to pay any claim or demand made or brought by or on behalf of any person with respect to anything lawfully done or omitted by the Board, or the individual member or the person discharging the duty, under and in accordance with the provisions of this Act.

General penalty.

41. Any person who commits an offence against this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding fifty pounds.

Judicial notice. Cf. No. 28 of 1906, s. 56.

42. All courts and persons acting judicially shall take judicial notice of the seal of the Board and signatures of the members of the Board and the Registrar on any judicial or official document.

Rules and regulations.

43. (1) Subject to this Act, the Governor may make rules and regulations prescribing all matters and things, which by the provisions of this Act are required or permitted to be prescribed, or are convenient for carrying into operation or for facilitating the operation of the provisions and purposes of this Act, and in particular but without prejudice to the foregoing power, may make regulations with respect to—

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act so far as the same relate to the Board or the Registrar of any proceedings of or before the Board;

- (b) fixing scales of fees to be paid to the Board and scales of fees, costs and expenses to be paid to counsel, medical practitioners and witnesses in proceedings before the Board;
- (c) fixing scales of fees to be paid to medical specialists and general practitioners for attendance on and treatment of injured workers when those fees are not determined by agreement between the Western Australian Branch of the British Medical Association and insurers approved under the provisions of this Act;
- (d) fixing fees to be paid to public and private hospitals in various parts of the State for treatment and maintenance of injured workers;
- (e) matters of general or special application, which may apply to both employers and workers, for the prevention of diseases in employments or places of employment within the State;
- (f) prescribing the manner in which payment of compensation whether in the case of death or otherwise may be made and the person to whom payment may be made;
- (g) regulating the practice and procedure of the Board or any person or court authorised by delegation by the Board under the provisions of this Act and providing for the effective exercise of jurisdiction by the Board or person or court so authorised and especially, but without limiting the general power to make rules and regulations under the provisions of this Act, with reference to—
 - (i) the times and places for sittings of the Board and any person or court so authorised;
 - (ii) the summoning of parties and witnesses;
 - (iii) the allowances to witnesses;
 - (iv) the enforcement of awards, orders and judgments;

- (h) prescribing penalties not exceeding ten pounds for any non-compliance with or any contravention of the provisions of any rule or regulation;
- (i) generally carrying into effect the provisions of this Act so far as the same relate to the Board and the Registrar and any proceedings of or before the Board;
- (j) regulating the meetings and proceedings of the Board when exercising its power of inquiry under the provisions of paragraph (e) of subsection (13) of section thirty-seven of this Act, and the conduct of the business thereof;
- (k) enabling the Board to establish a register providing for the registration of medical practitioners, the removal from the register of the name of any medical practitioner as a consequence of any decision of the Board, and the re-registration of any medical practitioner whose name has been removed;
- (l) providing for the fees and expenses payable with respect to establishing and maintaining the register;
- (m) carrying into effect the functions of the Board under the provisions of subsection (13) of section thirty-seven of this Act.
- (n) the basis on, and manner in which, self-insurers shall contribute to the Fund.

(2) (a) Subject to the provisions of this Act; and

(b) without prejudice to the operation of the provisions of sections fifteen and sixteen of the Interpretation Act, 1918-1934, in so far as they relate to the amendment of the Workers' Compensation Act, 1912-1944, by the Workers' Compensation Act Amendment Act, 1948, in general, and in so far as they relate to the operation of section six, paragraph (d) of the lastmentioned Act (relating to the conferring and imposing upon the Board of certain powers and duties formerly conferred upon the Local Court), in particular; and

Regulations concerning the functions of the Board, inserted by No. 36 of 1941, s. 3, as s. 20E, re-numbered s. 27 in reprint Vol. 2.

Transitional provisions.

(c) notwithstanding the provisions of section thirty-six of the Interpretation Act, 1918-1934; and

(d) until rules and regulations are made pursuant to the provisions of the Workers' Compensation Act Amendment Act, 1948, and are validly promulgated and not disallowed in relation to any matter the subject of the provisions of that Act—

(i) the provisions of any rule or regulation in operation on the coming into operation of that Act and relating to that matter, shall, with appropriate adaptations, and in so far as not inconsistent with the provisions of that Act, by force of this subsection, come into operation and be of the same effect and be subject to amendment and revocation as if they were the provisions of rules and regulations made in pursuance of the provisions of that Act in relation to that matter and in operation;

(ii) any person in whose favour an award or order has been promulgated by the Board may file or cause to be filed the certificate issued under the provisions of subsection (8) of section thirty-seven of this Act in any Local Court established under the provisions of the Local Courts Act, 1904-1931, having jurisdiction within the district where the debtor mentioned in the certificate resides when the clerk of the Local Court shall enter judgment for that person for the sum of the certificate, together with any fees paid for the certificate to the Registrar and the fees paid for filing the certificate and entering judgment and when entered the judgment shall, subject to the provisions of this Act, be enforceable and be regarded for all purposes as a judgment of the Local Court.

Cf. Act No. 15 of N.S.W., 1926, s. 36 (5) (b).

Registration of certificate at Local Court and provision for enforcement of award, order, etc.

Cf. s. 37 (2).

Amendment
of the First
Schedule.

12. The First Schedule to the principal Act is amended—

Amendment
of cl. 1, para.
(a), subpara.
(i).
Of. Q. Act,
1916-1939
s. 14 (1) (A)
(i).

(a) by substituting for the words "seven hundred and fifty pounds" in clause 1, paragraph (a), subparagraph (i), lines two and three, the words "one thousand pounds and an additional sum of twenty-five pounds, in respect of each dependent child and dependent step-child of the worker under the age of sixteen years, but not in respect of any ex-nuptial child, which additional sum shall be payable in the discretion of the Board;

Amendment
of cl. 1, para.
(a a).

(b) by amending clause 1, paragraph (aa) as follows:—

(i) By inserting in line one, before the word "Where," the words "Subject to the provisions of the proviso to this paragraph,".

(ii) By adding after the word "dependants" in subparagraph (ii), line eight, a proviso as follows:—

Provided that if a worker dies leaving dependants and his death does not result from the injury, and at the time of his death he had been receiving compensation in respect of silicosis, pneumoconiosis, or miner's phthisis, by weekly payments, but for less than six months, then nevertheless, the preceding provisions of this paragraph shall apply in all respects as if, in fact, he had been receiving compensation by weekly payments for not less than six months.;

Amendment
of cl. 1, para.
(b).

(c) by amending clause 1, paragraph (b), as follows:—

(i) By substituting for the word "fifty" in subparagraph (i) line one the words "sixty-six and two-thirds."

(ii) By substituting for the word "he" in line six, the word "the."

- (iii) By substituting for the word "fifty" in subparagraph (ii), line one, the words "sixty-six and two-thirds."
 - (iv) By substituting for the words "seven shillings and sixpence" in subparagraph (ii), line seven, the words "ten shillings."
 - (v) By adding after the word "years" in subparagraph (ii), line nine, the words "while the worker is being paid compensation, notwithstanding that the child was not so dependent when the incapacity occurred, and one pound per week for a dependent wife or, if there be no dependent wife, for one dependent parent of the worker or person standing in the place of a parent of the worker."
 - (vi) By substituting for the words "four pounds ten shillings" in subparagraph (ii), lines eleven and twelve, the words "the average weekly earnings or six pounds whichever is the lesser amount."
 - (vii) By substituting for the word "seven" in subparagraph (ii), line thirteen, the words "one thousand two";
- (d) by amending paragraph (a) of the proviso to clause (1) as follows—
- Amendment
of proviso to
cl. 1.
- (i) By substituting the words "two pounds" for the words "thirty shillings" in lines three, seven, eight and nine.
 - (ii) By substituting the words "sixty-six and two-thirds" for the word "fifty" in line seven;
- (e) by amending paragraph (c) of the proviso to clause (1) as follows:—
- (i) By substituting the word "clause" for the word "section" in line two.

- (ii) By inserting after the word "pounds" in line sixteen, the words "except when the Board is of opinion, having regard to the circumstances of the case, that such amount is inadequate, in which event the Board may allow such additional amount as it deems necessary or expedient, but not exceeding fifty pounds."
- (iii) By inserting after the word "expenses" in line seventeen, the words ", including all cemetery board charges,".
- (iv) By substituting the word "thirty" for the word "twenty" in line seventeen;
- (f) by amending the last sentence of paragraph (c) of the proviso to clause 1 as follows:—
 - (i) By inserting the words "out of or" after the word "arising" in lines three and four.
 - (ii) By inserting the words "and, except in the case of artificial teeth, whether the worker suffers personal injury within the meaning of section six of this Act or not" after the word "employment" in line four.
 - (iii) By adding the words "or in the case of an artificial limb up to the sum of thirty pounds" after the word "pounds" in the last line;
- (g) by amending paragraph (d) of the proviso to clause (1) as follows:—
 - (i) By inserting after the word "exceed" in line two the words "those prescribed by the Board from time to time and until so prescribed shall not exceed".
 - (ii) By adding after subparagraph (iii) a subparagraph as follows:—
 - (iv) One pound eleven shillings and six pence for operating theatre fees;
- (h) by amending paragraph (e) of the proviso to clause 1 as follows:—

- (i) Substituting for the word "six" in line eleven, the word "ten."
- (ii) Substituting for the words "thirty-five shillings" in line twelve, the words "three pounds".
- (iii) Adding after the word "case" in line twenty-one, a proviso as follows:—

Provided that the amounts to cover the cost of meals and lodging shall not be payable to any worker who has no dependants unless a worker has incurred cost for meals and lodging in excess of that which he would have incurred had he remained at his home and then only to the amount of that excess;

- (i) by inserting the words "sixty-six and two-thirds per centum of" after the word "exceed" in clause 3 line four; Amendment
of cl. 3.

- (j) by amending clause 4 as follows:— Amendment
of cl. 4.

- (i) By substituting for the word "six" in paragraph (b), line seven, the word "ten".
- (ii) By substituting for the words "thirty-five shillings" in paragraph (b), line seven, the words "three pounds".
- (iii) By adding after the word "examination" in paragraph (b), line ten, a proviso as follows:—

Provided that the amounts to cover the cost of meals and lodging shall not be payable to any worker who has no dependants unless a worker has incurred cost for meals and lodging in excess of that which he would have incurred had he remained at his home and then only to the amount of that excess.

- (k) by repealing clauses 5 to 11, both inclusive; Repeal of
clauses 5 to
11 both
inclusive.

- (l) by amending clause 14 as follows:—

- (i) By substituting the word "Registrar" for the words "clerk of the Local Court" in line eight of paragraph (a). Amendment
of cl. 14.

- (ii) By substituting for the words "to the Court" in paragraph (a), line nine, the words "in manner prescribed".
- (iii) By deleting the words "by any Rule of Court" in paragraph (a), lines ten and eleven.
- (iv) By substituting for the words "accordance with regulations made by the Governor" in paragraph (b), line two, the words "manner prescribed".
- (v) by repealing paragraphs (e) and (f).

Amendment
of cl. 15.

(m) by amending clause 15 as follows:—

- (i) By inserting after the word "employment" in subclause (i), line two, the words "or as to whether or to what extent the incapacity of the worker is due to the accident".
- (ii) By inserting after the word "board" in subclause (ii), line one, the words "or any two members of it".
- (iii) By substituting for the word "Court" in subclause (ii), line three, the word "tribunal."
- (iv) By deleting all words after the word "Registrar" in subclause (iii), line three.
- (v) By substituting for the word "Board" in subclause (iv), line three, the words "medical board".

Amendment
of cl. 16.

(n) by amending clause 16 as follows:—

- (i) By substituting the word "Board" for the words "Local Court" in line one and the word "Court" in line four.
- (ii) By substituting for the word "fifty" in line nine the words "sixty-six and two-thirds".
- (iii) By adding after the word "uninjured" in line eleven the words "but nothing in this proviso shall prejudice the right to payments in respect of any dependent wife or dependent child in accordance with the provisions of clause 1, paragraph (b), of this Schedule".

(o) by amending clause 17 as follows:—

Amendment
of cl. 17.

- (i) By inserting after the word "Where" in line one the words "permanent total or permanent partial incapacity has resulted from an accident and".
- (ii) Substituting the word "Board" for the words "Local Court" in lines four and five and the word "Court" secondly appearing in line five.
- (iii) Deleting the words "the magistrate shall take into consideration the ability of the employer to pay compensation in that form" in lines thirteen and fourteen and substituting the words "the Board shall be satisfied that the worker has special need of the lump sum instead of the continuance of the weekly payments or that any other circumstances of the case justify the making of an order for that redemption, the intention being that an order for redemption shall be made not as a matter of course but only when the special circumstances of the case commend themselves to the Board as justifying the making of an order for redemption.";

(p) by amending clause 18 as follows:—

Amendment
of cl. 18.

- (i) By substituting the word "Board" for the word "Court" in lines one and fifteen.
- (ii) By inserting after the word "permanent" in paragraph (i), line one, the word "total".
- (iii) By deleting the words "whether total or partial" in paragraph (i), lines one and two.
- (iv) Substituting for the word "seven" in paragraph (i), line five, the words "one thousand two".
- (v) By substituting for paragraph (ii) the following—

(ii) In any other case the lump sum shall be assessed upon a calculation or estimate by the Board of the compensation payable or likely to be payable under the provisions of this Act.

Amendment
of cl. 19.

(q) (i) By inserting the words "Subject to the provisions of this Act" before the word "If" in clause 19, line one.

(ii) By deleting the words "by Rules of Court" in clause 19, line four.

Amendment
of cl. 22.

(r) By amending clause 22 as follows:—

(i) By deleting the words "by Rules of Court" in line seven and the words "subject to such rules" in line eight.

(ii) By substituting for the words "clerk of the Local Court" in line eight the word "Registrar".

(iii) By substituting for the words "Local Court judgment" in line thirteen, the words "an award or order promulgated by the Board".

Amendment
of proviso to
cl. 22.

(s) By amending the proviso to clause 22 as follows:—

(i) By substituting the word "Registrar" for the words "clerk of the Court" where they appear in—

paragraph (a) line two;
paragraph (d) subparagraph (i) lines two and six;
paragraph (d) subparagraph (ii) lines two, eight, ten and twelve.

(ii) By substituting the word "Board" for the word "magistrate" where it appears in—

paragraph (b) lines eight and nine;
paragraph (c) line one;
paragraph (d) subparagraph (i) lines seventeen and eighteen;

paragraph (e), line one, and the words "the Board" for the word "he" in paragraph (d), subparagraph (i), line twenty.

(iii) By deleting the words "in accordance with Rules of Court" in—

paragraph (b) lines three and four;
paragraph (d) subparagraph (i)
line eighteen.

(iv) By substituting the words "the Board's" for the word "his" in paragraph (e) line seven.

(v) By substituting the words "the Board" for the word "he" in paragraph (e) in line twelve.

(vi) By inserting the words "upon application being made" after the word "may" in paragraph (e) line one.

(vii) By inserting after the clause number 22 the figure one in brackets thus (1) and by adding subclauses after paragraph (e) of the proviso as follows:—

(2) When a memorandum has been recorded under the provisions of the next preceding subclause the Registrar shall without fee issue a certificate of the memorandum and the recording on application by any party concerned.

(3) Subject to the provisions of this Act the certificate shall be evidence of the subject matter referred to in the certificate before any court or other tribunal or person in respect of proceedings to enforce compliance with the subject matter of the memorandum and for all other purposes under the provisions of this Act.

(t) By substituting the word "clause" for the word "section" in clause 24, lines one, two and four.

Amendment
of cl. 24.

(u) By repealing clauses 25 to 28, both inclusive.

Repeal of
clauses 25 to
28, both
inclusive.

Amendment
of the Second
Schedule.

13. The Second Schedule to the principal Act is amended by substituting for the Table thereto the following:—

TABLE.

Nature of Injury.	Amount of Compensation payable. £
Total loss of the sight of both eyes	1,250
Total loss of the sight of an only eye	1,250
Loss of both hands	1,250
Loss of both feet	1,250
Loss of a hand and a foot	1,250
Total and incurable loss of mental powers involving inability to work	1,250
Total and incurable paralysis of the limbs or of mental powers	1,250
	and in addition, when a medical practitioner certifies the injury to be total and incurable paralysis of the limbs, an attendant's remuneration at a rate not exceeding one pound per week.
Total loss of the right arm or of the greater part of the right arm	1,000
Total loss of the left arm or of the greater part of the left arm	935
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	875
Total loss of the same for the left hand and arm	812
Total loss of a leg	935
Total loss of a foot or the lower part of the leg	750
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	935
Total loss of hearing	750
Partial deafness of both ears	Such percentage of £750 as is equal to the percentage of diminution of hearing.
Complete deafness of one ear	250
Total loss of the sight of one eye	500
Loss of binocular vision	500
Total loss of the thumb of the right hand ..	375
Total loss of the thumb of the left hand ..	325
Total loss of the forefinger of the right hand	250
Total loss of the forefinger of the left hand	200

Cf. Vic., No. 5128, s. 5, substituted for No. 3806, s. 8, as amended by Nos. 4360, s. 6, and 4456, s. 7.

Nature of Injury.	Amount of Compensation payable. £
Total loss of a joint of the thumb	200
Total loss of the first joint of the forefinger of either hand	100
Total loss of the middle finger of the hand ..	150
Total loss of the little or ring finger of the hand	135
Total loss of the great toe of either foot ..	250
Total loss of a joint of the great toe of either foot	125
Total loss of any other toe or of a joint of a finger	75
Total loss of a joint of any other toe ..	25
Partial loss of the sight of both eyes Such percentage of £1,250 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of the sight of one eye Such percentage of £500 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

14. The Third Schedule to the principal Act is amended as follows:—

Amendment
of the Third
Schedule.

- (a) By substituting for the word "Zymotic" in the first column the word "Communicable".
- (b) By substituting for the words "Medical officer, nurse, orderly or other person employed in a hospital or quarantine station or in an ambulance brigade" in the second column the words "Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed."

Asterisks
referred to
in s. 8 (1).

- (c) By substituting for the words “*Poisoning by benzol or its nitro and amido derivatives (dinitrobenzol, anilin and others)” in the first column the words “*Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, anilin and others)”.
- (d) By substituting for the words “Any process involving the use of a nitro or amido derivative of benzol or its preparations or compounds” in the second column the words “Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds”.
- (e) By inserting in the first column as a separate description of disease, after the words “*Poisoning by carbon bisulphide.” the words “*Poisoning by fluorine.” and by inserting opposite thereto in the second column of the Schedule the words “Any process in which fluorine is used”.
- (f) By inserting in the first column, as a separate description of disease, after the words “*Poisoning by carbon monoxide.” the words “*Leptospirosis; endemic typhus, scrub typhus, brills’ disease, swineherds disease, plague, mite dermatitis and scrub itch.”, and by inserting opposite thereto in the second column of the Schedule the words “Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.”
- (g) By inserting in the first column, as a separate description of disease, after the words “*Chrome ulceration” the words “Effects of insolation” and by inserting opposite thereto in the second column of the Schedule the words “Work entailing prolonged exposure to sunlight”.

- (h) By inserting in the first column as a separate description of disease after the words "Effects of insolation" the words "Effects of electrical currents" and by inserting opposite thereto in the second column of the said Schedule the words "Workers exposed to electrical currents".
- (i) By substituting for the words "Eczematous ulceration of the skin produced by dust, caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust" in the first column the words "Any dermatosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn."
- (j) By inserting before the word "Pneumoconiosis" the word "Silicosis".

15. The Fourth Schedule to the principal Act is amended by inserting after the word "timber" in line one the words "or firewood or both".

Amendment
of the Fourth
Schedule.