

WORKERS' COMPENSATION.

2° and 3° GEO. VI., No. L.

No. 50 of 1938.

AN ACT to amend the Workers' Compensation Act, 1912-1934.

[Assented to 31st January, 1939.]

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:—

Short title.

1. This Act may be cited as the *Workers' Compensation Act Amendment Act, 1938*, and shall be read as one with the Workers' Compensation Act, 1912-1934 (No. 69 of 1912) as reprinted in the appendix to the sessional volume of the Statutes for the year 1937, hereinafter referred to as "the principal Act."

Amendment
of s. 10 of the
principal Act.

2. Section ten of the principal Act is amended by adding the following paragraphs to subsection (1) thereof:—

(a) by inserting after the word "section" in line twelve the words "for the purpose of this section the term 'incorporated insurance office' includes any duly incorporated company carrying on insurance business in Western Australia under the provisions of the Commonwealth Insurance Act, 1932 (No. 4 of 1932)";

(b) by inserting the words "or group of employers" after the word "employer" wherever appearing in the proviso to subsection (1).

3. Section ten of the principal Act is amended by adding thereto subsections as follows:—

Amendment
of s 10 of
the principal
Act.

(3) If and when the State Government Insurance Office becomes an approved office within the meaning of this section, the Minister shall forthwith grant approval to every incorporated insurance office as herein defined which does in fact make application to become approved under the provisions of this section.

(4) Where by virtue of the conditions of any policy or contract of insurance obtained by an employer in compliance with this section the amount of premium payable for such policy or contract of insurance, or for a renewal thereof, is ascertained by reference to, or upon the basis of the aggregate amount of, wages paid by such employer to his employees during a specified period as disclosed by a statement to be furnished by the employer to the insurer, such employer shall, if so requested by the insurer, verify the particulars furnished in such statement by a statutory declaration made by the employer under section one hundred and six of the Evidence Act, 1906.

4. Section thirteen of the principal Act is amended by the insertion after paragraph (1) thereof of a new paragraph (1a) as follows:—

Amendment
of s. 13 of the
principal Act.

(1a) Payment by the employer of any compensation due or proceedings taken by the worker against the employer to recover compensation due under this Act, whether successful or otherwise, shall not operate, by way of election, estoppel or otherwise, as a bar to proceedings by the worker to recover damages from such other person liable to pay damages as in this section hereinbefore referred to: Provided that where the worker is successful in such proceedings to recover damages the employer's liability to pay compensation under this Act shall thereupon cease and be forever determined to the extent of all such damages actually recovered by the worker from such other person and any amount paid by the employer to the worker as compensation under this Act whether voluntarily or by order of the Court shall be a charge upon and shall be refunded out of such damages actually recovered by the worker from such other person liable as aforesaid.

Amendment
of s. 13 of
the principal
Act.

5. Section thirteen of the principal Act is amended by inserting a new paragraph in the section as follows:—

(3) If the worker has been successful in such proceedings to recover damages as is mentioned in paragraph 1 (a) of this section and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of such damages then the employer shall be entitled at his own expense and in the name of the worker and upon giving the worker an indemnity against all costs and expenses to take any proper steps for the purpose of enforcing payment by such third person of the amount of the damages awarded to the worker or any balance of such damages then remaining unpaid: Provided always, that any damages so recovered from such third person in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker.

Amendment
of the first
schedule to
the principal
Act.

6. The first schedule to the principal Act is amended as follows:—

(a) by deleting subparagraph (i) of paragraph (a) of clause (1) of the schedule and inserting in lieu thereof a subparagraph as follows:—

(i) If the worker leaves any dependants wholly dependent upon his earnings, the sum of seven hundred and fifty pounds, less the amount of any weekly payments made under this Act and less the amount of any lump sum paid in redemption thereof;

(b) by inserting in paragraph (c) of the proviso to clause (1) of the schedule, after the words "artificial limbs" in line ten of the said paragraph, the words "including artificial teeth, artificial eyes glasses or spectacles as an aid to vision where an injury to an eye renders the use of glasses or spectacles necessary";

(c) by adding a subparagraph (d) to the proviso to clause (1) of the schedule as follows:—

(d) Where a worker is not, or is no longer, required to remain in hospital or other place for treatment, but is required by his employer,

his employer's duly authorised agent, or medical adviser to travel from the place where he resides to a hospital or other place for treatment or medical examination, then in addition to the compensation payable to such worker under this section, the employer shall pay all reasonable fares and expenses incurred by the worker in such travelling and return and also a sum not exceeding six shillings per day, but not exceeding the sum of thirty-five shillings per week, to cover the cost of meals and lodging necessarily incurred by the worker whilst away from his home for the purpose of such treatment or examination.

7. The first schedule to the principal Act is further amended as follows:—

Further amendment of the first schedule to the principal Act.

(a) by adding to clause (4) of the schedule a paragraph to stand as paragraph (b) as follows:—

(b) Where a worker, in order to submit himself for examination by a medical practitioner in compliance with this clause, is required to travel from the place where he resides to another place then, in addition to the compensation payable to such worker under any preceding section of this Act, the employer shall pay all reasonable expenses incurred by the worker in such travelling and also the sum of six shillings per day, but not exceeding the sum of thirty-five shillings per week, to cover the cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such medical examination;

(b) by adding to paragraph (a) of clause (14) of the schedule a proviso as follows:—

Provided that the party who desires the reference of a matter to a medical referee shall make the said application within one month after the date of the receipt by him of a copy of the medical report furnished to him by the other party;

(c) by inserting after clause (16) a new clause as follows:—

16A. When the court orders redemption as provided for in clause (16) of this schedule

Calculation of lump sum.

the lump sum shall be assessed upon a calculation by the Government Actuary of the present value of the balance of compensation still payable or likely to be payable to the applicant under the Act by way of weekly payments. No deduction of any nature or kind shall be made by the court from such actuarial assessment for any reason whatsoever;

- (d) by inserting in clause (20) of the schedule after the word "genuineness" in line eight of the clause, the words "and, where the agreement provides for the payment of compensation or other moneys, as to the adequacy of the amount thereof";
- (e) by deleting paragraph (d) of clause (20) of the schedule and inserting in lieu thereof a new paragraph as follows:—

(d) (i) Upon receipt of a memorandum for registration, the clerk of the court shall examine the same in order to satisfy himself as to the genuineness of the agreement and as to the adequacy of the amount of any compensation or other moneys payable thereunder, and if it appears to the clerk of the court as the result of such examination or as the result of any information which he considers sufficient that an agreement as to the redemption of weekly payments by a lump sum or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he shall refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the magistrate who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(ii) For the purpose of carrying out his duties under subparagraph (i) of this para-

graph the clerk of the court may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation payable under the agreement, the clerk of the court may require the employer to have the worker examined by a medical practitioner nominated by the clerk of the court, at the expense of the employer, in any case where the clerk of the court is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation aforesaid.

- (f) by inserting in paragraph (e) of clause (20) of the schedule, after the word "means" in line seven of the said paragraph, the words "or that the amount of compensation payable under the agreement is inadequate."

8. The third schedule to the principal Act is amended by adding at the end of the words "Mining or quarrying or stone crushing or cutting" where they appear in the second column of the schedule under the heading "Description of Process" the words "or stone or metal screening."

Amendment
of third
schedule to the
principal Act.

9. (1) The principal Act as amended by this Act may be cited as the Workers' Compensation Act, 1912-1938.

Citation of
principal Act
as amended.

(2) The principal Act as amended by this Act shall be reprinted by the Government Printer under the supervision of the Clerk of Parliaments.

(3) In any such reprint—

- (a) the sections shall be renumbered in arithmetical order and appropriate references shall be made in the margins to the section;
- (b) the cross-references shall be adjusted where necessary;
- (c) the short title of the reprint shall be in conformity with subsection (1) of this section.