

THE WORKERS' COMPENSATION ACT, 1912.

(No. 69 of 1912.)

SYNOPSIS.

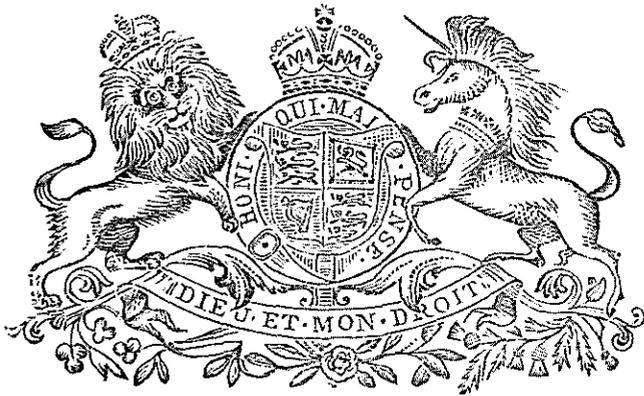
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WESTERN AUSTRALIA.



ANNO TERTIO

GEORGII QUINTI REGIS,

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No. 69 of 1912.

AN ACT to amend the Law with respect to Compensation to Workers for Injuries suffered in the course of their Employment.

[Assented to 21st December, 1912.]

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*, 1912. Short title.

2. This Act shall come into operation on a day to be fixed by proclamation published in the *Government Gazette*; but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act. Commencement.
6 Edw. 7, c. 52,
s. 16.

3. The *Workers' Compensation Act*, 1902, and the *Workers' Compensation Amendment Act*, 1909, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases. Repeal.

Interpretation.
See 6 Edw. 7, c.
58, s. 13.

S.A. No. 1053.
Cf. 6 Edw. 7,
c. 58, s. 13.

C.f. N.Z., 1908, No.
248, s. 2.

6 Edw. 7, c. 58, s. 13.
Cf. S.A. No. 1053,
s. 4

4. In this Act, unless inconsistent or repugnant to the context, or some other meaning is clearly intended—

“Dependants” means such members of the worker’s family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would but for the incapacity due to the accident have been so dependent;

“Employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person, but shall be entitled to be indemnified by that other person to the extent of any compensation paid under this Act by the employer in respect of any injury received by such worker whilst he is working for that other person:

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, illegitimate son, illegitimate daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister; and with respect to an illegitimate worker includes his mother, and his brothers and sisters, whether legitimate or illegitimate, by the same father and mother;

“The Minister” means the member of the Executive Council to whom for the time being the administration of this Act is committed by the Governor;

“Outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in his own home, or on other premises not under the control or management of the person who gave out the materials or articles:

“Registrar” means the Registrar of Friendly Societies, or such other person as the Governor may appoint in his place for the purposes of the sections of this Act in which the Registrar is mentioned:

“Ship” means any ship, vessel, boat, or other craft:

“This Act” includes regulations made under this Act:

“This State” means the State of Western Australia:

“Worker” does not include any person whose remuneration exceeds three hundred pounds a year, or a person

whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of the police force, or an out-worker, or a member of the employer's family dwelling in his house; but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing.

Any reference to a worker who has been injured shall, where the worker is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable:

Reference to worker.

The exercise and performance of the powers and duties of a municipal corporation, road board, or other local, public, or statutory authority shall, for the purposes of this Act, be treated as the trade or business of such municipal corporation, road board, or other authority.

Local and other authorities
Cf. 6 Edw. 7, c. 58, s. 13, and S.A. No. 1053, s. 4.

5. (1.) This Act does not apply to persons in the naval or military service of the Crown, but otherwise applies to workers employed by or under the Crown to whom this Act would apply if the employer were a private person.

Application to workers in employment of Crown.
See 6 Edw. 7, c. 58, s. 9.

(2.) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

S. A. No. 1053, s. 5.

(3.) The Minister may, notwithstanding anything in this Act, frame schemes for Government departments with a view to their being certified by the Registrar under section eight.

(4.) In all claims against the Crown, whether arising out of injuries to workers employed by or under the Crown, or in respect of any other claim under this Act by any other person, proceedings may be taken and prosecuted under this Act by suit against the Attorney General as representing the Crown in his representative capacity and without imposing any personal liability upon the occupant of the office of Attorney General.

6. (1.) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule:

Liability of employers to workers for injuries.
6 Edw. 7, c. 58, s. 1.
Schedule I.

(2.) Provided that—

Minimum period
of disablement

- (a.) The employer shall not be liable under this Act in respect of any injury which does not disable the worker for a period of at least one week from earning full wages at the work at which he was employed;

Liability inde-
pendently of Act.

- (b.) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the worker may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a worker by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

Injuries due to
misconduct of
worker.
Cf. S.A., No. 1053,
s. 6 (2) (c).

- (c.) If it is proved that the injury to a worker is attributable to the serious and wilful misconduct of that worker, any compensation claimed in respect of that injury shall be disallowed;

Where claim ex-
ists elsewhere as
well as in this
State.
S.A., No. 1053,
s. 6 (1) (d).
Cf. Comm. Sea-
men's Compen-
sation Act, 1911,
s. 5 (e).

- (d.) If a claim for compensation has already been made by the claimant in respect of the injury under any law of the United Kingdom or of any other part of His Majesty's dominions, compensation under this Act shall not be allowed to the claimant, nor shall any person having such a claim under any such law claim under this Act unless he declares in writing that he has not claimed, and will not claim, compensation for the injury under any such law.

(3.) Provided also that—

Compensation for
injuries mentioned
in the Second
Schedule.

N.Z., 1908, No. 248,
s. 8.
Tas., 1910, No. 66,
s. 3.

- (a.) Notwithstanding anything contained in this Act or the First Schedule as to the rate of compensation, compensation for the injuries mentioned in the first column of the Second Schedule to this Act shall be assessed in the manner indicated in the second column of that Schedule;
- (b.) Nothing in the Second Schedule shall limit the amount of compensation recoverable under the First Schedule for any such injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be taken into account in estimating the compensation payable in accordance with the Second Schedule.

(4.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a worker to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First and Second Schedules, be heard and determined by the Local Court nearest to which the party applying resides, or to which the matter is transferred in the manner and circumstances prescribed by Rules of Court, and for such purposes jurisdiction is hereby conferred upon Local Courts.

Settlement of questions as to compensation.

Schedules I. and II.

(5.) If, within the time limited hereinafter by this Act, an action is brought to recover compensation independently of this Act, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the Court in which the action is tried shall assess such compensation, and shall deduct therefrom all the costs which have been caused by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly.

Where action brought for injury for which compensation is payable under this Act.

(6.) Nothing in this Act shall affect any proceedings for a fine or penalty under the enactments relating to mines, factories, or workshops, or the application of such fine or penalty.

Penalties not affected.

7. (1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless—

Time for taking proceedings.
6 Edw. 7, c. 58, s. 2.

(a.) Notice of the accident has been given as soon as practicable after the happening thereof and before the worker has voluntarily left the employment in which he was injured; and

Notice of accident.

(b.) The claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Time for making claim.

Provided always that—

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

Defect or inaccuracy in notice.

the State of Western Australia, or other reasonable cause; and

Claim not within prescribed time.

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

Contents of claim.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date and place at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

Service of claim.

(3.) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

Where employer is a body of persons.

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

Where employer is the Crown.
See S.A., No. 1053, s. 7 (5).

(5.) When the employer is the Crown, notice shall be served on the Crown Solicitor, at Perth, or the manager of the work upon which the workman was employed at the time of the accident.

Contracting out.
6 Edw. 7, c. 58, s. 3.

8. (1.) If the Registrar, after taking steps to ascertain the views of the employer and workers, certifies—

Certificate by Registrar as to scheme.

(a.) That any scheme of compensation, benefit, or insurance for the workers of an employer in any employment (whether or not such scheme includes other employers and their workers) provides scales of compensation not less favourable to the workers and their dependants than the corresponding scales contained in this Act; and

(b.) That, where the scheme provides for contributions by the workers, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workers would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workers to whom the scheme is applicable are in favour of such scheme,

Scheme may be substituted for Act.

the employer may, whilst the certificate is in force, contract with any worker employed by him that the provisions of the scheme

shall be substituted for the provisions of this Act, and thereupon the employer shall, with respect to such worker and his dependants, be liable only in accordance with the scheme; but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made either before or after the commencement of this Act.

(2.) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew, with or without modifications, such certificate so as to expire at the end of the period for which it is renewed.

Period of certificate.

(3.) No scheme shall be so certified which contains an obligation upon the workers to join the scheme as a condition of their hiring, or which does not contain provisions enabling a worker to withdraw from the scheme.

In what circumstances scheme may not be certified.

(4.) If complaint is made to the Registrar by or on behalf of the workers of any employer—

Revocation of certificate.

(a.) That the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or

(b.) That the provisions of such scheme are being violated, or

(c.) That the scheme is not being fairly administered, or

(d.) That satisfactory reasons exist for revoking the certificate,

the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workers, or as may be determined by the Registrar in the event of a difference of opinion.

Distribution of moneys, etc., on termination of scheme.

(6.) Whenever a scheme has been certified as aforesaid it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required from time to time by the Registrar.

Inquiries and accounts.

(7.) The Registrar shall in every year make to the Minister a report of his proceedings under this Act, and the Minister shall lay such report before Parliament.

Report.

9. (1.) In any case where any person (hereinafter referred to as the principal) contracts with any other person (hereinafter referred to as the contractor) for the execution of any work by or under the contractor, and the contractor employs any worker therein, both the principal and the contractor shall, for the pur-

Principal, and contractor, and sub-contractors deemed employers.

See N.Z., 1908, No. 248, s. 13.

6 Edw. VII., No. 58, s. 4

poses of this Act, be deemed to be employers of the worker so employed, and shall be jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

(2.) The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section.

(3.) The principal shall not be liable under this section unless one of the following conditions is fulfilled:—

(a.) The work in which the worker is employed at the time of the accident is directly a part of or a process in the trade or business of the principal; or

(b.) The work in which the worker is employed at the time of the accident is one of the occupations mentioned in the Third Schedule to this Act.

Third Schedule.

(4.) When the principal and the contractor are jointly and severally liable under this section, judgment recovered against one of them shall not be any bar to proceedings against the other, except to the extent to which that judgment has been actually satisfied.

(5.) When compensation is claimed from or proceedings are taken against the principal, then in the application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(6.) In the case of sub-contracts the expression "principal" shall include not only the original principal for whom the work is being done, but also each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work; and the expression "contractor" shall include not only the original contractor, but also each sub-contractor; and each principal's right of indemnity shall include a right against every contractor liable under this section and standing between him and the contractor by whom the worker was employed.

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

Provided also, where the contract relates to clearing, fencing, or other agricultural or pastoral work, the contractor alone shall be liable under this Act to pay compensation to any worker employed by him on such work.

(7.) This section shall not apply in any case where the accident occurred elsewhere than on or in or about premises on which the principal has undertaken to execute the work, or which are otherwise under his control or management.

10. (1.) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any worker, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding any statutory enactment relating to bankruptcy or to the winding-up of companies, be transferred to and vest in the worker, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the worker than they would have been under to the employer.

Provision as to cases of bankruptcy of employer.
6 Edw. 7, c. 58, s. 5.

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

(3.) There shall be included among the debts which, under the Bankruptcy Act, 1892, in the distribution of the property of a bankrupt, and under the Companies Act, 1893, in the distribution of the assets of a company being wound up are to be paid in priority to all other debts, the amount not exceeding in any individual case one hundred and fifty pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of commencement of the winding up (as the case may be), and those Acts shall have effect accordingly. Where the compensation is a weekly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer or worker made an application for that purpose under the First Schedule.

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

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

Remedies both
against employer
and stranger.
6 Edw. 7, c. 58,
s. 6.

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

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

Indemnities.

(2.) If the worker has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action in any Court of competent jurisdiction.

Act to apply as to
accidents to per-
sons employed on
"Western Aus-
tralian ships."
Sec S.A. No. 1053,
s. 13.
6 Edw. 7, c. 58,
s. 7.

12. (1.) This Act applies in respect of an accident happening to a worker employed on a Western Australian ship, as defined in this section, if the accident happens out of and in the course of his employment: Provided that it happens within this State or within the jurisdiction of this State.

(2.) In this Act the term "Western Australian ship" means any ship which—

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

(3.) The application of this Act in respect of accidents happening to workers, as provided by this section, shall be subject to the following modifications:—

Modifications of Act in case of accidents to seamen.

- (a.) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give notice of the accident;
- (b.) In the case of the death of the worker, the claim for compensation shall be made within six months after news of the death has been received by the claimant;
- (c.) In the case of the death of a worker leaving no dependants, no compensation shall be payable if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;
- (d.) Where incapacity for work results from the injury, the owner of the ship may deduct from the payments due to the injured worker under this Act any expenses of maintenance which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment or otherwise, liable to defray and has, in fact, defrayed;
- (e.) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury;
- (f.) Subsections two and three of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

Crew of fishing vessel.

(4.) This Act does not apply in respect of accidents to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

Appointment and remuneration of medical referees and practitioners.
6 Edw. 7, c. 58, s. 10.
S.A. No. 1053, s. 14.

13. (1.) The Minister may appoint such legally qualified medical practitioners to be medical referees respectively for the purposes of this Act as he may determine; and the remuneration of, and expenses incurred by, medical referees under this Act shall subject to regulations made by the Governor, be paid out of moneys provided by Parliament.

Referee not to act if previously employed.

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

Provisions as to existing contracts and schemes.
6 Edw. 7, c. 58, s. 15.

14. (1.) Any contract (other than a contract substituting the provisions of a scheme certified under the Workers' Compensation Act, 1902, for the provisions of that Act) existing at the commencement of this Act, whereby a worker relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the worker's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Existing scheme to continue if recertified.

(2.) Every scheme under the Workers' Compensation Act, 1902, in force at the commencement of this Act shall, if recertified by the Registrar, have effect as if it were a scheme under this Act.

To be recertified if conforms with Act.

(3.) The Registrar shall recertify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

Revoked unless recertified within six months.

(4.) If any such scheme has not been so recertified before the expiration of six months from the commencement of this Act, the certificate thereof shall be deemed to be revoked.

Deductions towards compensation not lawful.
S.A. No. 1053, s. 16.

15. (1.) Subject to a scheme certified under section eight it shall not be lawful for any employer or any person on his behalf, or for any insurers or any person on their behalf, to directly or indirectly take or receive any money from any worker, whether by way of deduction from wages or otherwise howsoever, in respect of any liability of an employer to pay compensation under this Act.

(2.) All money so taken or received as aforesaid from any worker, whether with the consent of such worker or not, may be recovered in any Court of competent jurisdiction as a debt due to him by the employer, insurers, or person who took or received it.

16. (1.) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in this State or in any waters within the territorial jurisdiction of this State, a Judge of the Supreme Court may, upon its being shown to him by any person applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners resides in this State, issue an order directed to any officer of the said Court requiring such officer to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by a Judge of the said Court, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

Order for detention of ship.
See 6 Edw. 7,
c. 58, s. 11.
S.A. No. 1053,
s. 17.

And Com. Seaman's Comp. Act,
1911. s. 13,
adapted.

(2.) The officer to whom the order is directed may detain the ship in accordance with the order.

Detention.

(3.) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the Judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

Parties.

(4.) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State of Western Australia if it has an office in the said State at which service of process can be effected.

Residence of corporation.

(5.) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable to a penalty not exceeding One hundred pounds.

Penalty for proceeding to sea.

(6.) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the master thereof shall each be liable to pay a further penalty at the rate of Ten pounds for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

Officer taken to sea.

Agreements and receipts under the Act exempt from stamp duty.
S.A. No. 1053,
s. 18.

17. Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or any Act hereby repealed, and any receipt given for or upon the payment of any money payable under this Act, or any Act hereby repealed, or under any such agreement aforesaid, shall be exempt from all stamp duties chargeable under the Stamp Act, 1882, or any Act amending or substituted for that Act.

Special provision for securing compensation or damages to worker in mine, factory, building, or vessel.
1 & 2 Edw. VII,
No. 5, s. 17.

18. For the purpose of securing to the worker the full benefit of his claim for compensation under this Act, or for damages or compensation independently of this Act, the following provisions shall apply in every case where the accident in respect whereof the claim arises occurred in or about a mine, factory, building, or vessel:—

N.Z., 1908, No. 207,
s. 20.

(1.) At and from the time when the accident occurred, the amount of compensation or damages to which he may become entitled, whether under or independently of this Act, shall, notwithstanding that such amount is unadjusted or unascertained, be deemed to be a charge in his favour on his employer's estate or interest in—

(a.) Such mine, factory, building, or vessel, and the plant, machinery, tackle, and appliances in or about the same; and also in

(b.) The land whereon such mine, factory, or building is situate, or whereto it appertains.

(2.) As between themselves, all such charges shall have priority according to the priority of the time when they accrue (being the time when the accident occurred), but such of them as accrue on the same day shall be deemed to accrue at the time when the earliest of them accrued, and shall rank equally one with another.

(3.) The Governor may from time to time, by regulations under this Act, prescribe the mode in which such charges may be enforced.

Regulations.
S.A. No. 1053,
s. 19.

19. (1.) The Governor may make such regulations as may be necessary or convenient for carrying out or giving effect to the provisions of this Act.

Penalties.

(2.) Any such regulations may prescribe penalties for any breach thereof not exceeding Ten pounds for any such breach.

Publication and effect.

(3.) Such regulations shall—

(a.) be published in the *Government Gazette*;

(b.) take effect from the date of such publication, or from a later date, to be specified therein; and

(c.) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

(4.) If either House of Parliament passes a resolution at any time within thirty days after such regulations have been laid before such House disapproving any regulation, such regulation shall cease to have effect.

Disapproval by
Parliament.

20. Rules of Court may be made under the Local Courts Act, 1904, for any purposes for which this Act authorises Rules of Court to be made, and also generally for regulating the practice of local courts and magistrates and officers of local courts under this Act, and for carrying into effect this Act so far as it affects or relates to such courts or magistrates or officers, and to proceedings in local courts or before magistrates of local courts; and such rules may also prescribe such forms and such scales of fees, costs, and expenses as may be necessary or convenient for the purpose of this Act.

Rules of Local
Courts.
S.A. No. 1053,
s. 21.

Any proceeding under this Act in a Local Court shall be heard and determined by the Local Court nearest to which the party applying resides, or to which the matter is transferred, in the manner and circumstances prescribed by rules of court.

21. (1.) All proceedings in respect of offences against this Act shall be by complaint, and shall be heard and determined in a summary way by a police or resident magistrate or two justices of the peace, and shall be regulated by the Justices Act, 1902, or any Act for the time being in force regulating the duties of justices of the peace as to summary proceedings.

Summary
proceedings.
S.A. No. 1053.
ss. 22, 23.

(2.) There shall be an appeal from any order or conviction by a magistrate or justices under this Act, or from any order by a magistrate or justices dismissing any information for any offence against this Act, under and subject to the provisions of Part VIII. of the Justices Act, 1902.

Appeals.
see S.A. No. 1053.
s. 23.

SCHEDULES.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

Section 6.

Amount of compensation.

1. The amount of compensation under this Act shall be—

(a.) Where death results from the injury—

In case of death.

(i.) If the worker leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of Three Hundred Pounds, whichever of those sums is the larger, but not exceeding in any case Four Hundred Pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the worker's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer:

(ii.) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, by proceedings under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding One Hundred Pounds:

In case of incapacity for work.

(b.) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings during the previous twelve months, if he has been so long employed; but if not, then for any less period during which he has been in the employment of the same employer; such weekly payment not to exceed Two pounds, and the total liability of the employer in respect thereof not to exceed Four Hundred Pounds:

Incapacity for less than two weeks.

Provided that—

(a.) If the incapacity lasts for less than two weeks, no compensation shall be payable in respect of the first week and

Worker under twenty-one years of age.

(b.) As respects the weekly payments during total incapacity of a worker who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Twenty Shillings, one hundred per centum shall be substituted for fifty per centum of his average weekly earnings.

- (c.) In the case of a worker whom his employer has reasonable cause to believe to be over sixty years of age, or who has, in accordance with the regulations, obtained from a medical referee a certificate to the effect that any physical or mental infirmity or incapacity from which he is suffering is such as to render him specially liable to accident, or to render the result of an accident to him specially serious, and who has entered into an agreement in writing with his employer as to the maximum amount of compensation to be payable under this Act in respect of accidents happening after the date of the agreement, the compensation shall not exceed that maximum, but the maximum shall not be less—
- (i.) Where death results from the injury, and the worker leaves any dependants, than One Hundred Pounds:
- (ii.) Where total or partial incapacity for work results from the injury, than a weekly payment during the incapacity of Ten Shillings, and a total liability of One Hundred Pounds.
- (d.) In addition to the compensation payable under this section there shall be payable a sum equal to the reasonable expenses incurred in respect of the medical or surgical attendance (including first aid) on the worker in respect of his injury, but not exceeding one pound.

Worker over
sixty years of
age.
S.A. No. 1053, 1st
Sch. (1), (c).

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

Computation of
"earnings" and
"average weekly
earnings."

- (a.) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated: Provided that where, by reason of the shortness of the time during which the worker has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district:
- (b.) Where the worker had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident:
- (c.) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;
- (d.) Where the employer has been accustomed to pay to the worker a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.
- (e.) With respect to casual workers employed as stevedores, humpers, or wharf labourers, the following special provision shall apply:—
- (i.) In every case where the compensation is based on the worker's average weekly earnings, they shall be deemed to be not less than a full working week's earnings at the ordinary (but not overtime) rate of pay for the work at which he was employed at the time of the accident, notwithstanding that he may not have actually worked or the employment may not have actually continued for the full week, and the compensation shall be computed and assessed accordingly.

(11.) This provision shall apply to cases of deaths as well as to cases of incapacity.

Regard to be had to payments, allowances, etc., to worker.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the worker before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

Medical examination.

4. Where a worker has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

Payment in case of death.

5. The payment in the case of death shall, unless otherwise ordered as herein-after provided, be paid into the Local Court nearest to the place of residence of the deceased at the time of his death, and any sum so paid into Court shall, subject to Rules of Court and the provisions of this Schedule, be invested, applied, or otherwise dealt with by the Magistrate whose duty, for the time being, it is to preside over the Court in which the sum is, in such manner as he in his discretion thinks fit, for the benefit of the persons appearing to him to be entitled thereto under this Act, and the receipt of the clerk of the Court shall be a sufficient discharge in respect of the amount paid into the Court. In the case of dependants, being infants, the Magistrate may, in his discretion, order the payment of their shares to be made to the widow or husband of the deceased worker, or to any other member of the worker's family (being a dependant) who may have undertaken the care of such infants.

Provided that, if so agreed, the payment in case of death shall, if the worker leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

Transfer of money from one Court to another.

6. Rules of Court may provide for the transfer of money paid into Court under this Act from one Court to another.

Payment of weekly sum due to person under disability.

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

Questions as to dependants.

8. Any question as to who is a dependant shall, in default of agreement, be settled by the Local Court, and the amount payable to each dependant shall also be settled by the Local Court. Where there are both total and partial dependants nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

Power to vary order.

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

10. Any sum which under this Schedule is ordered to be invested may be invested in the purchase of an annuity from a mutual life assurance society approved by the Magistrate investing such sum. **Investment in insurance society.**

11. Any sum to be so invested may be accepted by the Savings Bank of Western Australia as a deposit in the name of the Magistrate of the Local Court as a trustee. Any sum so deposited may be paid out upon an order drawn on the Savings Bank and signed by the Magistrate of the Local Court for the time being, and such order shall be a sufficient discharge to the Bank in respect of the money paid out pursuant thereto. **Deposit in Savings Bank.**

12. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do. **Periodical medical examinations.**

13. A worker shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (12) of this Schedule otherwise than in accordance with regulations made by the Governor, nor at more frequent intervals than are prescribed by those regulations. **Regulations as to such examinations.**

14. (a.) Where a worker has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the worker, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the worker's condition, then, in the event of no agreement being come to between the employer and the worker as to the worker's condition or fitness for employment, the clerk of a Local Court, on application being made to the Court by both parties, may, on payment by the applicants of such fee, not exceeding Two Pounds, as is prescribed by any Rule of Court, refer the matter to a medical referee. **Reference to medical referee.**

(b.) The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Governor, give a certificate as to the condition of the worker and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(c.) Where no agreement can be come to between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Governor, apply as if the question were a question as to the condition of the worker.

(d.) If a worker, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a worker in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

(e.) Rules of Court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes, and as to the fee to be paid under this paragraph. **Rules of Court as to this paragraph.**

15. Any weekly payment may be reviewed by the Local Court at the request either of the employer or of the worker, and on such review, may be ended, diminished, or increased subject to the maximum above provided, as from such date as the Court having regard to the past or present condition of the worker may see fit. **Review of weekly payment.**

Provided that where the worker was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per centum of the weekly sum which the worker would probably have been earning at the date of the review if he had remained uninjured.

Lump sum in redemption of weekly payments.

16. Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Local Court, and such lump sum may be ordered by the Court to be paid to or invested or otherwise applied for the benefit of the person entitled thereto.

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

Worker ceasing to reside in the State.

17. If a worker receiving a weekly payment ceases to reside in Western Australia, he shall be entitled to receive the amount of the weekly payments accruing due so long as he proves, in such manner and at such intervals as may be prescribed by Rules of Court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

Payments not assignable.

18. A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

Suspension of payment.

19. Where under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Registration of memorandum of agreement.

20. Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, by agreement, a memorandum thereof shall be sent, in manner prescribed by Rules of Court, by any party interested, to the clerk of the Local Court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a Local Court judgment:

Provided that—

- (a.) No such memorandum shall be recorded before seven days after the dispatch by the clerk of the Court of notice to the parties interested:
- (b.) Where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with Rules of Court, proves that the worker has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Magistrate, under the circumstances, may think just:
- (c.) The Magistrate may at any time rectify the register:
- (d.) Where it appears to the clerk of the Court on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable 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 may 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:

- (e.) The Magistrate may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

21. An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment; and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

Effect of non-registration of agreement.

22. (a.) Where any matter under this Act is to be done in a Local Court, then, unless the contrary intention appears, the same shall, subject to Rules of Court, be done in the Local Court nearest to which the party applying resides, or to which the matter is transferred in manner and in circumstances prescribed by Rules of Court.

What Court or Magistrate to have jurisdiction.

(b.) Where in this Act a Magistrate or a clerk of a Local Court is referred to, such Magistrate or clerk shall, unless the context shows a different intention, be the Magistrate whose duty, for the time being, it is to preside at the Local Court prescribed by sub-paragraph (a.) of this paragraph and the clerk of such Court respectively.

23. The duties of a Magistrate under this Act shall, subject to Rules of Court, be part of the duties of Local Courts, and the officers of the Court shall act accordingly.

Duties to be part of duties of Local Courts.

24. Any sum awarded as compensation shall, unless paid into Court, under this Act, be paid on the receipt of the person to whom it is payable under any agreement or judgment; and no solicitor and no agent or a person claiming compensation under this Act shall be entitled to recover from him any costs in respect of any proceedings under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum may be ordered by the Court on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent; and any such sum, unless it is a lump sum, shall be awarded subject to taxation and to the scale of costs prescribed by Rules of Court.

Payment to be made to persons entitled.

Costs to be taxed.

25. Any money payable under this Act in respect of the expenses of the medical or surgical attendance on an injured worker may be recovered by action in the Local Court in accordance with this Act at the suit of that worker, or at the suit of any person by whom the said expenses or any of them have been incurred, or at the suit of any person entitled to receive any payment in respect of the said attendance.

Recovery of medical expenses.

26. Where a worker who has been partially incapacitated by injury resumes or attempts to resume work, and is unable, on account of the said injury, to work or continue to work, the resumption or attempted resumption of work by him shall not deprive him of any right to compensation under this Act which he otherwise had.

Worker not to be prejudiced by resuming work.

Section 6.

SECOND SCHEDULE.

Nature of Injury.	Ratio of Compensation to full com- pensation as for total incapacity. Per cent.
Loss of both eyes	} 100
Loss of both hands	
Loss of both feet	
Loss of a hand and a foot	
Total and incurable loss of mental powers involving inability to work	} 80
Total and incurable paralysis of limbs or mental powers	
Loss of either arm or greater part thereof	80
Loss of the lower part of either arm, either hand, or five fingers of either hand	70
Loss of a leg	75
Loss of a foot or lower part of a leg	60
Loss of the sight of one eye, together with serious diminution of the sight of the other eye	75
Loss of the sight of one eye	50
Loss of hearing	50
Loss of a thumb	30
Loss of a forefinger	20
Loss of part of a thumb	15
Loss of a little finger, middle finger, or ring finger	12
Loss of a toe or the joint of a finger	10
Complete deafness of one ear	10

For the purposes of this schedule the expression "loss of" includes "permanent loss of the use of."

Where a worker suffers by the same accident more than one of the injuries mentioned in this schedule he shall not in any case be entitled to receive more than full compensation as for total incapacity.

Section 9.

THIRD SCHEDULE.

Mining; quarrying; excavation; the cutting of standing timber, including the cutting of scrub and clearing land of stumps and logs; the erection or demolition of any building; the manufacture or use of any explosive; the charge or use of any machinery in motion and driven by steam or other mechanical power; the driving of any vehicle drawn or propelled by animal power or mechanical power; any occupation in which a worker incurs a risk of falling any distance, if the injury or death of the worker results from a fall.