



Western Australia.

ANNO PRIMO ET SECUNDO

EDWARDI VII. REGIS.

No. V.

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

[Assented to, 19th February, 1902.]

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

1. (1.) THE short title of this Act is the Workers' Compensation Act, 1902. Short title.

(2.) This Act shall commence on a date to be fixed by the Governor by Order in Council, not being earlier than the first day of January, One thousand nine hundred and two, except as to section eighteen hereof, which shall come into operation on the passing hereof. Commencement.

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Interpretation.

2. (1.) IN this Act, if not inconsistent with the context,—

- “Dependants” means such members of a worker’s family, specified in the First Schedule hereto, as at the time of his death were wholly or in part dependent on his earnings;
- “Employer” includes persons, firms, companies, and corporations employing workers, and the legal representatives of a deceased employer;
- “Engineering Work” means any work of construction or alteration or repair of a railroad, harbour, dock, canal, sewer, or tunnel, telegraph, telephone, or electric power, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used.
- “Factory” means any manufactory, workshop, workroom, or premises wherein or whereon manual labour is exercised for the purpose of gain in or incidental to the making, altering, or repairing any article by way of trade or for purpose of gain or for sale, and includes any ship or boat in port, dock, wharf, quay, or warehouse, so far as relates to machinery and plant used in the process of loading or unloading therefrom or thereto, and every laundry worked by steam, water, or other mechanical power.
- “Injury” means personal injury or loss of life by accident arising out of and in course of employment, or injury to health or loss of life arising out of or consequent upon any employment declared by proclamation to be dangerous to health or dangerous to life or limb: Provided that no such proclamation shall issue except on addresses of both Houses of Parliament.
- “Proclamation” means proclamation by the Governor in the *Government Gazette*.
- “Worker” means a person of any age or sex who is engaged under contract with an employer (made before or after the commencement of this Act) in any employment to which this Act applies, whether the agreement is one of service, apprenticeship, or otherwise, and whether the employment is on land, or on any ship or vessel (of whatsoever kind and howsoever propelled) in any navigable or other waters within Western Australia or the jurisdiction thereof.

(2.) Any reference to a worker who has been injured shall, where he is dead, include a reference to his legal personal representatives, or to his dependants or other person to whom compensation is payable.

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3. THIS Act shall apply to workers engaged by the Government of Western Australia in any employment by or under the Crown within that State, and to which this Act would apply if the employer were a private person.

Application to workers in employment of Crown.

Provided that all sums payable under this Act by or on behalf of the Crown shall be payable out of moneys to be appropriated by Parliament.

4. THIS Act applies only to injuries of workers employed by employers—

Employments to which Act applies.

(1.) On or in or about any railway, waterwork, tramway, electric lighting work, factory, mine, quarry, or engineering or building work:

(2.) On or in or about any employment declared by proclamation to be dangerous or injurious to health or dangerous to life or limb: Provided that no such proclamation shall issue except pursuant to addresses from both Houses of Parliament.

5. THE employer shall not be liable in respect of any injury which—

Cases in which employer not liable.

(a.) Does not disable the worker for a period of at least two weeks from earning full wages at the work at which he was employed; or

(b.) Is directly attributable to the serious and wilful misconduct of the worker.

6. IF, in any employment as aforesaid, 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 Second Schedule hereto.

Liability for injuries to workers.

7. (1.) NOTHING herein shall affect any civil liability of the employer independently of this Act where the injury is caused by the negligence of the employer or of some person for whose act or default the employer is responsible.

Worker may claim compensation under this Act or take independent proceedings.

(2.) The worker may claim compensation under this Act or take the same proceedings as are open to him independently of this Act; but the employer shall not be liable to pay compensation independently of and also under this Act.

8. (1.) IF any question arise as to liability to pay compensation under this Act, or as to the amount or duration of such compensation, the question, if not settled by agreement, shall, subject

Mode of settling questions arising under Act.

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to the provisions of the Second Schedule hereto, be heard and determined by the Local Court of the district within which the injury happens; and for all such purposes jurisdiction is hereby conferred upon such Court.

(2.) For the hearing and determination of such question, the Magistrate shall sit with two assessors appointed in the manner prescribed by regulation; and the decision of a majority of such three persons shall be the decision of the Court.

(3.) Should an assessor neglect or fail to attend any sitting of the Court, those present may proceed in his absence.

(4.) In respect of all interlocutory proceedings, the Magistrate alone may exercise all authority and jurisdiction which is conferred upon him by the Small Debts Ordinance, 1863, or any amendment thereof, in the same manner as if the proceeding under this Act arose within the ordinary jurisdiction of the Local Court.

Procedure when
action wrongly
brought independ-
ently of Act.

9. IF, within the time limited by section eleven, 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.

Proceedings for fines
not affected.

10. NOTHING in this Act shall affect any proceeding for, or the application of any fine under any Act; but if such fine, or any part thereof, is applied for the benefit of the person injured, the amount applied shall be taken into account in estimating the compensation under this Act.

Time within which
notice to be given
and claim made.

11. (1.) PROCEEDINGS under this Act for the recovery of compensation shall not be maintainable unless—

(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

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

(2.) A worker shall not be deemed to have voluntarily left the employment in any case where by reason of the accident he is unable to continue in the employment;

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(3.) The want of or any defect or inaccuracy in any notice shall not be a bar to the maintenance of such proceedings, if it is found by the Court, when settling the claim, that the employer is not prejudiced in his defence by such want, defect, or inaccuracy, or that the same was occasioned by mistake or other reasonable cause.

12. WITH respect to such notice, the following provisions shall apply:—

Form and service of notice.

- (1.) The notice may be signed by the worker injured or by any of his dependants, or by any person on behalf of the worker or his dependants.
- (2.) The notice shall give the name and address of the person injured, and shall state in ordinary language the cause and nature of the injury, and the date and locality at which it was sustained, and shall be served on the employer, or if there is more than one employer upon any one of them.
- (3.) The notice may be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business.
- (4.) The notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post; and in proving the service, it shall be sufficient to prove that the notice was properly addressed and registered.
- (5.) Where the employer is the Crown, the notice shall be served on the Crown Solicitor at Perth, or the manager for the time being of the work upon which the worker is employed.

13. WHERE the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workers, certifies that any scheme of compensation, benefit, or insurance for the workers, whether or not such scheme includes other employers and their workers, is on the whole not less favourable to the general body of workers and their dependants than the provisions of this Act, the following provisions shall apply:—

Contracting out under scheme for compensation approved by Board of Conciliation.

- (1.) The employer may, until the certificate is revoked, contract with any of those workers that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall, as respects the workers with whom he so contracts, be liable in accordance with the scheme in lieu of this Act; but, save

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as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

- (2.) The Registrar may give a certificate, to expire at the end of a limited period to be specified therein, being not more than five years.
- (3.) No scheme shall be so certified which contains an obligation upon the workers to join the scheme as a condition of their hiring.
- (4.) If complaint is made to the Registrar by or on behalf of the employer or a majority of the workers that the provisions of the scheme are no longer on the whole so favourable to the employer or to the general body of workers and their dependants as the provisions of this Act, or that the provisions of the scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the 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 be distributed as may be arranged between the employer and the workers, or as may be determined by the Registrar in the event of a difference of opinion.
- (6.) For the purposes of this section, it shall be the duty of the employer and workers to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be required by the Registrar.

Liability in cases of contracting or sub-contracting.

14. WHERE any employer (hereinafter called the contractor) contracts with any other person (hereinafter called the sub-contractor) for the execution of any work by or under the sub-contractor, and the sub-contractor employs any worker thereon, the following provisions shall apply:—

- (1.) Both the contractor and the sub-contractor shall be deemed to be employers of the worker, and shall be jointly and severally liable to pay to the worker any compensation which the sub-contractor, if he were the sole employer, would be liable to pay under this Act.
- (2.) The contractor shall be entitled to be indemnified by the sub-contractor against the employer's liability under this section; and also by any other person who would have been liable independently of this section.

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- (3.) The contractor shall not be liable under this section, except in cases where the work to be executed under the contract, and in which the worker is employed,—
- (a.) Relates directly to the land, building, vessel, or other property of the contractor; or
 - (b.) Is directly a part of or a process in the trade or business of the contractor.
- (4.) In the case of such contracts, the expression “contractor” shall extend to and include not only the original contractor but also each sub-contractor who constitutes himself a contractor 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 “sub-contractor” shall extend to and include not only the original sub-contractor but also each sub-contractor: Provided that each contractor’s right of indemnity shall be a right over against every subsequent sub-contractor.

15. 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 independently of this Act, the worker may, at his option, proceed either against that person to recover damages independently of this Act or against his employer for compensation under this Act, but not against both; and, if compensation is paid under this Act, the employer paying the same shall be entitled to be indemnified by such other person.

Recovery of damages from stranger.

16. WHERE any employer becomes liable, either under or independently of this Act, to pay compensation or damages in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a worker under such liability, 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, of the company having commenced to be wound up, such workers shall have a first charge upon the sum aforesaid for the amount so due.

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

17. 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 the course of his employment in or about a mine, factory, building, or vessel:—

Special provision for securing compensation or damages to worker in mine, factory, building, or vessel.

- (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

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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.

Provision as to existing contracts.

18. ANY contract existing at the time of the passing 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 on the passing of this Act be determined.

Regulations.

19. THE Governor may make regulations for the purpose of prescribing the mode in which claims and questions under this Act may be determined, and also for any other purpose which he deems necessary in order to give full effect to the provisions and intention of this Act.

Accident insurance policy.

20. EVERY policy of accident insurance issued after the coming into operation of this Act shall contain such provisions as may be prescribed by the Governor by regulation.

Repeal.

21. SECTIONS twenty and twenty-seven of the Mines Regulation Act, 1895, and sections thirteen and fourteen of the Mines Regulation Act Amendment Act, 1899, are hereby repealed.

In the name and on behalf of the King I hereby assent to this Act.

ARTHUR LAWLEY, Governor.

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SCHEDULES.

First Schedule.

MEMBERS OF WORKER'S FAMILY.

Husband	Son	Step-son	Grandfather	Section 2.
Wife	Daughter	Step-daughter	Grandmother	
Brother	Grandson	Father	Step-father	
Sister	Grandaughter	Mother	Step-mother	

Second Schedule.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

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

Section 6.

(1.) Where death results from the injury—

(a.) If the worker leaves any dependants wholly dependent upon his earnings at the time of his death, the compensation shall be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of Two 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 shall be deducted from such sum, and if the period of the worker's employment has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment.

(b.) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, the compensation shall be such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or as, in default of agreement, may be determined on under this Act to be reasonable and proportionate to the loss or damage suffered by the said dependants.

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

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

(d.) The compensation shall be a weekly payment during the incapacity, after the second week, not exceeding fifty per cent. 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 Three hundred pounds.

(e.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the worker before the accident and the average

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amount which he is able to earn after the accident and to any payment (not being wages) which he may receive from the employer in respect of his injury during the period of incapacity.

Conditions.

2. The payment shall, in case of the worker's death, be made to his legal personal representative, or, if he has no legal personal representative, then to or for the benefit of his dependants, or, if he leaves no dependants, then to the person to whom the expenses are due; and, if made to the legal personal representative, shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

3. Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by the Court under section eight of the Act.

4. The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or, in default of agreement, as adjudged by the Court under section eight of the Act.

5. Where a worker has given notice of an accident, or is entitled to weekly payments under this Act, he shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer or such person:

Provided that if the worker objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner as to his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed by the Governor for the purposes of this Act, and the certificate of that medical practitioner as to the condition of the worker at the time of the examination shall be given to the employer and worker, and shall be conclusive evidence of that condition.

6. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his rights under this Act in respect of the accident to which such examination relates shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

7. Any weekly payment may be reviewed by the 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.

8. Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum to be agreed upon by the parties, or, in default of agreement, to be determined by the Court, and such lump sum may be ordered to be invested or otherwise applied as above mentioned.

9. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same.

10. For the purposes of conditions 7 and 8 above, and of any application thereunder, if the matter has previously been before the Court, under section eight of the Act, the assessors who then sat may sit together with the Magistrate to hear and determine any such application or the parties or either of them may appoint a new assessor or assessors. If the matter has not previously been before the Court, assessors may be appointed by the parties in the prescribed manner to sit with the Magistrate.