

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 3

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service.

[Assented to 10th October, 1894.]

**B**E it enacted by the Queen'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 Employers' Liability Act, 1894.'

Short title

2. For the purposes of this Act, unless the context otherwise requires :

Interpretation

Imp. Act, 43 & 44 Vic., c. 42, s. 8

The expression ' person who has the superintendence entrusted to him ' means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

The expression ' employer ' includes a body of persons corporate or unincorporate, and the Governor or any Minister acting for or on behalf of Her Majesty or Her Majesty's Government within the Colony.

The expression ' workman ' means a railway servant, and any person (other than a domestic or menial servant) who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into, or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

The expression ' Judge who tries the action ' includes ' the Magistrate ' of a Local Court and the Justices exercising the powers of a Local Court.

3. Where, after the commencement of this Act, personal injury is caused to a workman—

Amendment of law

Imp. Act, 43 & 44 Vic., c. 42, s. 1

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

*Employers' Liability*

- (2) By reason of the negligence of any person in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence ; or
- (3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or
- (4) By reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or
- (5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal points, locomotive engine, or train upon a railway ;

the workman, or in case the injury results in death, the legal personal representatives of the workman and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of, the employer nor engaged in his work.

4. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :—

- (1) Under sub-section (1) of the last preceding section, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition.
- (2) Under sub-section (4) of the last preceding section, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned ; provided that where a rule or by-law has been approved, or has been accepted as a proper rule or by-law by the Governor in Executive Council, or by any department of the Government or officer under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

5. An action under this Act shall lie and may be maintained against the legal personal representatives of a deceased employer.

6. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the

Exceptions to  
amendment of  
law  
Imp. Act, 43 &  
44 Vic., c. 42, s. 2

Representatives  
of deceased  
employer may  
be sued  
Limit of sum  
recoverable as  
compensation

*Employers' Liability*

same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

Imp. Act, 43 &  
44 Vic., c. 42, s. 3

7. In determining in any case the amount of compensation payable by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any payment or contribution made by such employer to any insurance or compensation fund to the extent to which any person who would otherwise be entitled to compensation has received or is entitled to receive compensation out of such fund. In any action the fact of any payment or contribution having been made by the employer as aforesaid shall not, of itself, be any admission of liability on the part of the employer.

In determining compensation, payments or contributions by employer to or for benefit of workman to be considered

8. Where compensation is awarded in case of the death of a workman for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant, may, if the Judge who tries the action so directs, be divided between the wife, parents, and children of the deceased, in such shares as the Judge may determine.

Judge may divide compensation

9. Where the personal injury to a workman who is illegitimate results in death, the same rights of compensation shall exist for the benefit of his mother, or of brothers and sisters by the same father and mother, as if he and such brothers and sisters were legitimate.

Illegitimacy no bar to action

10. An action for the recovery, under this Act, of compensation for an injury shall not be maintainable unless notice in writing that injury has been sustained is given within six weeks, and the action is commenced within six months, from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death; Provided always, that the want of such notice shall be no bar to the maintenance of such action if the Judge who tries the action shall be of opinion that there was reasonable excuse for such want of notice, and that the employer has not been prejudiced thereby.

Limit of time for recovery of compensation  
Imp. Act, 43 &  
44 Vic., c. 42,

11. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman, in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Money payable under penalty to be deducted from compensation under Act  
Imp. Act, 43 &  
44 Vic., c. 42, s. 5

*Employers' Liability*

Mode of serving  
notice of injury  
Imp. Act, 43 &  
44 Vic, c. 42, s. 7

12. (1) 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 at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

(2) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(3) The notice may also 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; and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

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

(5) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Actions under  
this Act brought  
in Local Courts  
may be removed  
as other actions

13. (1) Every action for recovery of compensation under this Act brought in a Local Court, may, upon the application of either plaintiff or defendant, be removed into the Supreme Court, in like manner and upon the same conditions as an action commenced in a Local Court may by law be removed.

And may be  
consolidated  
Imp. Act, 43 &  
44 Vic, c. 42, s. 6

(2) Actions under this Act in a Local Court may be consolidated by order of the Magistrate, in like manner as a Judge may order consolidation of actions in the Supreme Court; and for the purpose of preventing multiplicity of such actions, rules and orders may be made, varied, and repealed from time to time, in the same manner as rules and orders for regulating the practice and procedure in other actions in the Local Court; and until such rules and orders are made, the rules and orders governing the practice and procedure of County Courts in England, in actions under 'The Employers' Liability Act, 1880,' shall be in force and govern the proceedings as far as the same may be applicable.

Contracts to  
forego benefits  
of Act to be void

14. Every covenant, contract, or agreement hereafter made or entered into, whereby any workman or person binds himself or his personal representatives, either expressly or by implication, not to claim any benefit or enforce any right under this Act, shall be null and void.

W. C. F. ROBINSON,  
GOVERNOR.