

WORKERS' COMPENSATION

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Approved for Reprint 28th July, 1978.

WESTERN AUSTRALIA.

WORKERS' COMPENSATION

No. 69 of 1912.¹

(Affected by Act No. 23 of 1947.)

[As amended by Acts:

No. 43 of 1920 assented to 31/12/20;² No. 9 of 1923 assented to 22/2/23;³
No. 40 of 1924 assented to 16/1/25;⁴ No. 14 of 1925 assented to 4/11/25;
No. 34 of 1927 assented to 28/12/27; No. 36 of 1934 assented to 4/1/35;
No. 50 of 1938 assented to 31/1/39; No. 35 of 1939 assented to 16/12/39;
No. 26 of 1941 assented to 8/12/41;⁵ No. 36 of 1941 assented to 19/12/41;
No. 42 of 1944 assented to 11/1/45; No. 77 of 1948 assented to 25/1/49;⁶
No. 33 of 1949 assented to 26/10/49; No. 48 of 1951 assented to 2/1/52;⁷
No. 64 of 1952 assented to 7/1/53; No. 88 of 1953 assented to 21/1/54;⁸
No. 74 of 1954 assented to 14/1/55; No. 80 of 1956 assented to 17/1/57;
No. 66 of 1959 assented to 10/12/59;⁹ No. 81 of 1960 assented to 12/12/60;¹⁰
No. 63 of 1961 assented to 28/11/61; No. 80 of 1963 assented to 19/12/63;
No. 88 of 1964 assented to 14/12/64; No. 96 of 1964 assented to 14/12/64;
No. 60 of 1965 assented to 19/11/65; No. 113 of 1965 assented to 21/12/65;¹¹
No. 50 of 1966 assented to 5/12/66; No. 55 of 1967 assented to 5/12/67;¹²
No. 18 of 1970 assented to 8/5/70; No. 43 of 1970 assented to 23/9/70;
No. 94 of 1972 (as amended by No. 42 of 1975);¹³ No. 96 of 1973 assented
to 27/12/73; No. 76 of 1975, assented to 14/11/75; No. 111 of 1976
assented to 25/11/76; No. 70 of 1977 assented to 28/11/77; No. 28 of
1978 assented to 18/5/78;¹⁴

and reprinted pursuant to the Amendments Incorporation Act, 1938.]†

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—

1. This Act may be cited as the *Workers' Compensation Act, 1912-1978*.

Short Title.
Amended by
No. 28 of
1978, s. 1.

¹ Came into operation on 14/2/13; see *Gazette* of 24/12/12, p. 5077.

² Came into operation on 14/3/21; see *Gazette* of 4/2/21, p. 184.

³ Came into operation on 2/4/23; see *Gazette* of 12/3/23, p. 461.

⁴ Came into operation on 1/3/25; see *Gazette* of 30/1/25, p. 113; and 27/2/25, p. 379.

⁵ Came into operation on 1/7/42; see *Gazette* of 26/6/42, p. 689.

⁶ Came into operation on 8/4/49; see *Gazette* of 18/3/49, p. 478.

⁷ Came into operation on 25/1/52; see *Gazette* of 25/1/52, p. 205.

⁸ Came into operation on 12/3/54; see *Gazette* of 12/3/54, p. 385.

⁹ Came into operation on 2/2/60; see *Gazette* of 2/2/60, p. 249.

¹⁰ Came into operation on 24/12/60; see *Gazette* of 23/12/60, p. 4074.

¹¹ Decimal Currency Act, 1965, s. 4 (1) came into operation 14/2/66.

¹² Came into operation on 5/12/66; see section 3 of Act No. 55 of 1967.

¹³ Metric Conversion Act, 1972-1975. The relevant amendments included in this reprint effective from 28/11/75; see *Gazette* of 28/11/75, p. 4334.

¹⁴ Sections 6 and 10 came into operation 1/1/78; see section 2. Balance to operate from assent.

†NOTE.—In this reprint—

(a) references in the marginal and footnotes to:

(i) the 1943 reprint are references to the reprint of the *Workers' Compensation Act, 1912-1941*, contained in Vol. 2 of the *Reprinted Acts of the Parliament of W.A. (1943)*;

(ii) the 1949 reprint are references to the reprint of the *Workers' Compensation Act, 1912-1948*, approved for reprint on 2nd February, 1949, and reprinted pursuant to the *Amendments Incorporation Act, 1938*.

(b) the numbering of Parts, sections, etc. as contained in the reprint of the *Workers' Compensation Act, 1912-1953*, appearing in Vol. 6 of the *reprinted Acts of the Parliament of W.A.* is retained.

*Workers' Compensation.*Commence-
ment.

Ss. 2, 3 and 4.

2. This Act shall come into operation on a day to be fixed by proclamation published in the *Government Gazette*¹; 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.

Repeal.

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.

Effect of
amendments
on compen-
sation.Substituted
by No. 74 of
1954, s. 2.Amended by
No. 80 of
1956, ss. 2
and 3;No. 66 of
1959, s. 3;No. 81 of
1960, s. 3;No. 113 of
1965, s. 4 (1);No. 18 of
1970, s. 2;No. 96 of
1973, s. 2;No. 28 of
1978, s. 3.Cf. Act No.
5676 of
Victoria,
s. 15.

4. (1) Where the rate or amount of weekly payments and of the additional payments in respect of dependants referred to in paragraph (c) of clause 1 of the First Schedule to this Act and the total liability of the employer in respect thereof is amended whether by or pursuant to the Workers' Compensation Act Amendment Act, 1954, or by any subsequent Act the provisions of subsections (2), (3) and (4) of this section shall apply.

(2) Notwithstanding any rule of law or construction to the contrary or an agreement which provides otherwise the worker shall be entitled after the coming into operation of the amendment to receive weekly payments (including payments in respect of dependants) at the amended rate or amount and the employers' total liability in respect thereof and under subsection (3) of section seven of this Act shall be the amended total liability less the total of such payments made to the worker prior to the date the amendment becomes operative irrespective of whether the injury giving rise to the liability of the

¹ Came into operation on 14/2/13; see *Gazette* of 24/12/12, p. 5077.

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employer was caused to the worker before or after coming into operation of the amendment unless this section provides otherwise.

(3) Subsection (2) of this section does not apply to payments due in respect of any week commencing before the coming into operation of the amendment nor where, prior to the coming into operation of the amendment—

- (i) the employer's liability for future weekly payments has been determined by the Board as an ascertained sum payable by way of redemption; or
- (ii) the employer's liability has been agreed as a sum payable by way of redemption by an agreement binding on the parties to it and registered under this Act as an agreement before or within fourteen days after the coming into operation of the amendment.

(4) Notwithstanding any rule of law or construction, or a provision in a policy of insurance mentioned in subsection (1) of section 13 of this Act, or any other agreement to the contrary, such a policy is deemed to include—

- (a) a provision that, where during the currency of the policy and thereafter the rates or amounts of payments to workers under this Act and the total liability of employers in respect thereof are amended, the employer under the policy shall be insured in respect of liability for the amended rates or amounts in respect of all personal injuries by accident occurring during the currency of the policy; and
- (b) a provision that, where during the currency of the policy the Premium Rates Committee, pursuant to section 30 of this Act, alters the maximum premium rate for the risks insured under the policy, the

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premium payable under the policy shall be altered to the extent such maximum premium rate is altered.

(4a) Notwithstanding any rule of law or construction to the contrary or an agreement which provides otherwise, where after the coming into operation of the Workers' Compensation Act Amendment Act, 1970¹ a worker, while he is being paid or is entitled to be paid weekly payments of compensation under this Act for an injury, incurs expenses in respect of that injury, for any of the services of the kinds referred to in paragraph (c) of the proviso to paragraph (c) of clause one of the First Schedule to this Act, compensation shall be payable for those expenses in accordance with the provisions for compensation relating to the expenses that are in this Act at the date they are incurred irrespective of whether the injury was caused before or after the coming into operation of those provisions.

(4b) Notwithstanding any rule of law or construction to the contrary or an agreement which provides otherwise, where, after the coming into operation of the Workers' Compensation Act Amendment Act, 1970¹, an employer is liable to pay compensation in respect of the death of a worker the compensation shall be payable in accordance with the provisions for compensation relating to the death of a worker that are in this Act at the date of his death irrespective of whether the injury relevant to compensation payable in respect of the death was caused before or after the coming into operation of those provisions.

[Subsections (5) and (6) repealed by No. 96 of 1973, s. 2.]

¹ Came into operation on 8th May, 1970.

5. (1) In this Act, unless inconsistent or repugnant to the context, or some other meaning is clearly intended—

“Board” means the Workers’ Compensation Board constituted under the provisions of this Act.

“Dependants” means such members of the worker’s family as were wholly or in part dependent upon, or wholly or in part supported by, 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.

“Disabled from earning full wages” means rendered less able to earn full wages.

“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.

The word “employer” shall extend to any person for or by whom any worker, as defined in paragraph (a) or (b) of the definition of “worker,” works or is engaged.

“Fund” means the Workers’ Compensation Board Fund.

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Interpretation.
No. 69 of 1912, s. 4.
Amended by
No. 43 of 1920, s. 2;
No. 9 of 1923, s. 2;
No. 40 of 1924, s. 3;
No. 14 of 1925, s. 2;
No. 36 of 1941, s. 2;
No. 42 of 1944, s. 2;
No. 77 of 1948, s. 5.
Renumbered s. 5 in 1949 reprint.
Amended by
No. 48 of 1951, s. 4;
No. 88 of 1953, s. 2;
No. 74 of 1954, s. 3;
No. 80 of 1956, s. 4;
No. 18 of 1970, s. 3;
No. 43 of 1970, s. 2;
No. 96 of 1973, s. 3;
No. 70 of 1977, s. 2;
No. 28 of 1978, s. 4.
[Cf. Q. Act, 1916-1939, s. 3 (1) and s. 18.]
Cf. s. 6 (5) post.

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"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grand-son, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes his mother, and his brothers and sisters, whether legitimate or ex-nuptial, 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.

"Prescribed amount" means the amount to the nearest dollar ascertained by multiplying by two hundred and eight the amount specified in the estimate, published each year by the Commonwealth Statistician, of the average weekly earnings per employed male unit for the March quarter in Western Australia, but so that any variation of the prescribed amount by reason of any difference between the amount specified in the estimate seasonally adjusted for the March quarter of one year and the amount specified in the estimate seasonally adjusted for the March quarter of the next year shall

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apply on and from the 1st July immediately following that last mentioned March quarter.

“Registrar” means the Registrar of the Workers’ Compensation Board.

“Self-insurer” means any employer or group of employers whom the Governor, pursuant to the provisions of the proviso to subsection (1) of section thirteen of this Act exempts from the operation of that section and “self insurance” has a corresponding meaning.

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

“specialist” means a qualified medical practitioner duly registered under the *Medical Act, 1894-1950*,¹ who has made a special study of some particular branch of his profession and who is recognised by the Medical Board appointed under the *Medical Act, 1894-1950*,¹ as a specialist in that particular branch.

“The Chairman” means the person appointed to the office of the Chairman of the Board, and includes a person so appointed to act in the place and during the absence of the Chairman, while that person is so acting.

“This Act” includes regulations made under this Act.

“This State” means the State of Western Australia.

¹ Now Medical Act, 1894-1976.

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"Widow" or "Wife" in relation to compensation payable in respect of the death of a worker includes—

(a) any former wife of the worker if he was legally obliged immediately before his death to make provision for that former wife with respect to financial matters; and

(b) a woman, who although not legally married to him—

(i) lived with him on a permanent and *bona fide* domestic basis immediately before his death, if he leaves any dependant who is the child of the union between him and the woman; or

(ii) lived with him on such a basis for not less than three years, if he does not leave any such dependant.

"Worker" does not include a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business, or except as hereinafter provided in this definition a member of the police force, or an out-worker, or except as hereinafter provided in this definition 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.

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The term "Worker," save as hereinbefore provided in this definition, includes a member of the police force, who suffers personal injury as mentioned in section seven of this Act and dies as a result of that injury, and any member of the employer's family dwelling in his house whose name, employment and estimated wages are disclosed, at the time of employment and thereafter from time to time when the insurance is renewed, in writing to the insurer of the employer's liability to pay compensation under this Act, unless the insurer is permitted by the Board to refuse insurance of that liability in respect of the member of the employer's family.

The term "worker," save as aforesaid, also includes—

- (a) any person to whose service any industrial award or agreement applies;
- (b) any person working for another person for the purpose of the other person's trade or business under a contract for service, the remuneration of the person so working being in substance a return for manual labour bestowed by him upon the work in which he is engaged.
- (c) (Deleted by No. 18 of 1970, s. 3.)

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 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 or other authority.

Local and
other
authorities.

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Tributers.

A tributer within the meaning of the word in the Mining Act, 1904, and its amendments, and the regulations thereunder, and any wages man employed by the tributer, shall be deemed a worker, and the lessee or owner of the mine let on tribute shall be deemed an employer of the tributer or wages man, and the earnings of a tributer shall be deemed remuneration paid to the tributer as a worker. If the earnings or average weekly earnings of a tributer cannot be otherwise ascertained for the purposes of this Act, the earnings of the tributer shall be deemed to be equal to the ruling rate of wages for miners as prescribed for the time being by the current industrial agreement or award in force in the district in which the mine is situated.

The word "worker" does not include any person employed under articles of agreement as a "pearl fisher" within the meaning of those words in the Pearling Act, 1912, that is to say, "for the purpose of pearling on board of a ship," and not otherwise employed, and introduced into the State by permission of the Government of the Commonwealth subject to the obligation of the employer to return such person to the place whence he came on the cessation of his employment.

(2) In this Act "worker" includes a clergyman of the Church of England, that is, a priest ordained within the Church of England and licensed to work under the authority of the Bishop of the Diocese within which he is employed, under terms and conditions laid down by the Bishop with the approval of the governing body of the Church in the Diocese, and, irrespective of the Diocese in which he is so employed, the Archbishop of the Church of England Diocese of Perth is, for the purposes of this Act, deemed to be the employer of such a clergyman.

Ss. 5, 5A and 5B.

(3) At the request of the governing body of any other church, the Minister—

- (a) may, by notice published in the *Government Gazette*, declare that in this Act “worker” includes a clergyman, as defined in the notice, of that church and, if the Minister so declares, he shall also declare, in the same notice, who is, for the purposes of this Act, deemed to be the employer of such a clergyman, and thereupon the notice shall have effect according to its terms as if they were provided in this Act; and
- (b) may at any time by subsequent notice so published cancel or amend the firstmentioned notice and thereupon the subsequent notice shall have effect according to its terms as if they were provided in this Act.

5A. Notwithstanding anything in section five of this Act, a person shall be deemed not to be a worker within the meaning of this Act while he is, pursuant to a contract—

Exclusion of certain persons who are contestants in sporting or athletic activities.
Added by No. 70 of 1977, s. 3.

- (a) participating as a contestant in any sporting or athletic activity;
- (b) engaged in training or preparing himself with a view to his so participating; or
- (c) engaged on any regular journey, daily or other periodic journey, or other journey in connection with his so participating or being so engaged

if under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

5B. (1) A person is not entitled to claim or receive compensation under this Act, in respect of an injury to or the death of a person that occurred before the coming into operation of section five A

Compensation not payable in certain cases.
Added by No. 70 of 1977, s. 3.

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Ss. 5B, 5C and 6.

of this Act if, had that section been in force when the injury or death occurred, the person who was injured or died would not have been a worker within the meaning of this Act by reason only of the amendments made by that section.

(2) Subsection (1) of this section does not apply to or in relation to compensation in respect of which proceedings had been commenced in the Board before the fifth day of July, 1977.

Continued operation of this Act where compensation previously paid.
Added by No. 70 of 1977, s. 3.

5C. Nothing in sections five A or five B of this Act in any way affects or limits the operation of this Act apart from those sections in relation to an injury to or the death of a person if any person, at any time before the coming into operation of those sections, received compensation under this Act in respect of that injury or death, and this Act shall continue to apply to the liability for and the right to compensation in respect of that injury or death as if those sections were not in this Act.

Application to worker in employment of Crown.
No. 69 of 1912, s. 5; amended by No. 77 of 1948, s. 6; and renumbered s. 6 in 1949 reprint.
Amended by No. 18 of 1970, s. 4.

6. (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.

(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.

(3) [*Repealed by No. 77 of 1948, s. 6 (a).*]

(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.

(5) [*Repealed by No. 18 of 1970, s. 4.*]

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

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

Provided that—

- (a) compensation shall not be payable pursuant to the provisions of this subsection if in respect of the injury the worker has (and in the case of the death of the worker, his dependants have) received workers' compensation in any part of the Commonwealth of Australia (other than in the State) or territory under the authority of the Commonwealth or obtained judgment against his employer in respect of the injury independently of this Act;
- (b) if the worker receives compensation pursuant to the provisions of this subsection in respect of the injury and subsequently in respect of the injury receives workers' compensation in any part of the Commonwealth of Australia (other than the State) or territory under the authority of the Commonwealth or obtains judgment against his employer in respect of the injury independently of this Act the employer shall be entitled to recover from the worker the amount of compensation paid by him pursuant to the provisions of this section.

Liability of employers to workers for injuries. No. 69 of 1912, s. 6. Amended by No. 43 of 1920, s. 3; No. 40 of 1924, s. 4; No. 42 of 1944, s. 3; No. 77 of 1948, s. 7; Renumbered s. 7 in 1949 reprint. Amended by No. 48 of 1951, s. 14; No. 83 of 1953, s. 3; No. 74 of 1954, s. 4; No. 88 of 1964, s. 2; No. 60 of 1965, s. 2; No. 113 of 1965, s. 4; No. 50 of 1966, s. 2; No. 18 of 1970, s. 5; No. 43 of 1970, s. 3; No. 96 of 1973, s. 4; No. 28 of 1978, s. 5.

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7. (1) If in any employment personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer's instructions, is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule.

(1a) Without limiting the generality of subsection (1), but subject to the succeeding provisions, of this section, a worker is deemed to have suffered personal injury by accident arising out of or in the course of his employment where—

(a) the worker suffers a personal injury without any substantial default or wilful act, on his part, while he is travelling on any regular, daily or periodic journey—

- (i) between his place of residence and place of employment;
- (ii) between his place of residence or place of employment and any trade, technical or other training school that he is required, by the terms of his employment or as an apprentice, to attend; or
- (iii) between any camp or place, where the worker is required by the terms of his employment, or is expected by his employer, to reside temporarily or where it is reasonably necessary or convenient that he shall temporarily reside for any purpose of his employment, and the worker's place of abode when not so residing, if the journey is undertaken in accordance with the terms and conditions of his employment, and

(b) the injury arises out of, and in the course of, the journey,

unless the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with his employment or with his attendance at the trade, technical or other training school.

(1b) For the purposes of subsection (1a) of this section and notwithstanding any other provision of this Act, any injury to which a disease is a contributing factor, and any aggravation, acceleration, exacerbation, recurrence or recrudescence of any such injury or of any pre-existing disease, is not, whether of sudden occurrence or of gradual development, a personal injury by accident.

(1c) [*Repealed by No. 96 of 1973, s. 4.*]

(1d) For the purposes of this section, a place at which persons, ordinarily employed in a particular employment in relation to port or harbour operations at each port or harbour, customarily attend, by prior arrangement, for the purpose of being selected and engaged, and at which employers of port or harbour labour at each port or harbour customarily select and engage persons, for that employment is the place of employment of a person who attends there for the purpose of being selected and engaged or who is travelling between that place and his place of residence, in order to attend there, or by reason of having attended there, for that purpose; and such a person, while so attending or travelling, is deemed to be a worker under a contract of service with the employer by whom he was last employed in that particular employment.

(2) Provided that—

(a) the employer shall be liable to pay compensation under this Act from the date of the accident;

(b) [*Deleted by No. 60 of 1965, s.2.*]

(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 unless the injury results in death or serious and permanent disablement;

Injuries due to misconduct of worker.

(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 Her Majesty's

Where claim exists elsewhere as well as in this State.

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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.

Compensation for injuries mentioned in the Second Schedule.

(3) (a) Notwithstanding the provisions of the First Schedule to this Act, where the worker so elects, the compensation payable for the injuries mentioned in the first column of the table set out in the Second Schedule to this Act shall, subject to the provisions of this Act relating to that Second Schedule, be the amounts indicated in the second column thereof, but the compensation payable for each such injury shall be in accordance with the amount indicated in that column in respect of such an injury at the date of the accident whereby that injury was caused to the worker, irrespective of whether he so elects in respect of that injury before or after the coming into operation of section five of the Workers' Compensation Act Amendment Act, 1978.

(b) For the purpose of the said table the expression "loss of" includes "permanent loss of the use of".

(c) For the purpose of the said table the expression "loss of" also includes the "permanent loss of the efficient use of," but in such case such percentage of the prescribed amount payable as is equal to the percentage of the diminution of the full efficient use, may be awarded, in lieu of the full amount.

(d) [*Repealed by No. 33 of 1949, s. 4.*]

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

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

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

that part or faculty of the body—

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

(ii) Where a worker has received compensation payable under the provisions of that table for one hundred per cent of the loss of, or the permanent loss of the efficient use of, any part or faculty of the body referred to in the first column of the table—

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

that part or faculty of the body—

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

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

(ea) Notwithstanding the other provisions of this Act and in particular the provisions of subsection (2) of section twenty-nine of this Act, where any

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decision, ruling, order, award, judgment, settlement, or agreement was given or made by, or registered with, the Board, before the coming into operation of section five of the Workers' Compensation Act Amendment Act, 1978, on the basis that compensation payable for an injury under the provisions of the table was in accordance with the amount indicated in the second column of the table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement, or agreement shall not be rescinded, altered, or amended, and the worker shall not be entitled to any further payment under the provisions of the table in respect of that injury, by reason that it was given, made, or registered on that basis.

(f) The provisions of this subsection are subject to the proviso that a worker who elects under paragraph (a) of this subsection shall not in any case (including the case of a worker suffering by the same accident more than one of the injuries mentioned in the Second Schedule) be entitled to receive more than the prescribed amount in addition to payment of such expenses as are provided for in paragraph (c) of the proviso to clause one of the First Schedule, which paragraph is hereby made applicable to workers entitled to compensation under this subsection until they so elect.

(g) [*Deleted by No. 18 of 1970, s.5.*]

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

(i) [*Deleted by No. 96 of 1973, s. 4.*]

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

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

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

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

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

(i) This subsection does not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the injuries referred to in paragraph (a) of this subsection unless he elects under that paragraph.

(j) Subject to paragraph (f) of this subsection, when a worker elects under paragraph (a) of this subsection, any amount of compensation that was paid or payable to him for any period of incapacity resulting from the injuries referred to in that paragraph and occurring before he so elects shall not be deducted from the amount payable in accordance with the table referred to in that paragraph.

(k) This subsection does not limit the amount of any compensation, payable in respect of the death of a worker.

Settlement
of questions
as to com-
pensation.

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

Where
action
brought for
injury for
which com-
pensation
is payable
under this
Act.

(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, or refer the assessment of the compensation to the Board, 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.

Board may
refer to
Medical
Board.

(6) When any question arises as to the loss of, or the permanent loss of the efficient use of, any of the parts or faculties of the body referred to in the first column of the Second Schedule to this Act, or to the degree of that loss, the Board may refer the question to a medical board of three medical practitioners, registered under the Medical Act, 1894-1946,¹ and the determination of the question by them, or by the majority of them, shall be final and binding.

Penalties not
affected.

(7) 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.

(8) Except as expressly provided by this Act, nothing in this Act affects any liability that exists independently of this Act.

(9) Where a worker has received compensation under this Act, if, after the expiration of twelve months from the date on which he received, or, as the case may be, first received, payment of compensation, the worker has not commenced proceedings

¹ Now Medical Act, 1894-1976.

against the employer for the recovery of damages independently of this Act, the employer may, by notice in writing, require the worker to commence those proceedings, within forty-two days after the service on him of the notice and, unless the worker, within that period,—

- (a) commences those proceedings; or
- (b) notifies the employer, by notice in writing, that he does not intend to take proceedings for damages,

the employer may apply to the Supreme Court, in the manner provided by Rules of Court, for an order that the worker commence those proceedings within such time as the court may direct.

(10) Upon the hearing of an application under subsection (9) of this section, the court may—

- (a) order that the worker commence proceedings for damages independently of this Act, within such time as it may direct;
- (b) adjourn the proceedings for such period or indefinitely (with liberty to either party to apply), upon such terms and conditions as it thinks fit; or
- (c) make such other order or give such directions as it thinks fit,

and upon the hearing of any adjourned application the court has the same powers with regard to that application as it has on an original application.

(11) The court has power to extend any period limited for the commencement of proceedings of an order made under subsection (10) of this section, if the application for the extension is made prior to the expiration of that period.

(12) Where the worker notifies the employer that he does not intend to take proceedings for damages independently of this Act or does not commence those proceedings within the period, or any extension of the period, limited by an order of the court,

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Ss. 7, 7A and 7B.

his right to take those proceedings is, without affecting his right to compensation under this Act, extinguished.

(13) (a) Where a judgment for damages has been given in favour of a worker, independently of this Act, in respect of an injury by accident and the worker receives payment of the whole amount of the judgment, he shall not commence or continue proceedings for, or in relation to, compensation under this Act in respect of the same injury.

(b) Any amount paid to a worker under a judgment for damages in respect of an injury by accident shall be deducted from the sum recoverable by the worker from the employer, by way of compensation under this Act, in respect of the same injury.

(c) Any amount received by the worker from the employer by way of compensation under this Act in respect of an injury by accident shall be deducted from the amount recoverable by or payable to a worker from or by the employer, under a judgment for damages in respect of the same injury.

Compensation for noise induced hearing loss.
Added by
No. 98 of
1973, s. 5.

7A. If compensation under this Act is claimed in respect of the injury known as noise induced hearing loss, then, unless the injury is one for which either in whole or in part compensation has previously been paid, that compensation shall be assessed as if the whole of the loss of function arising from that injury occurred immediately before the notice of that injury was given.

Ascertainment of percentage hearing loss.
Added by
No. 98 of
1973, s. 5.

7B. (1) Subject to this section, in ascertaining, for the purposes of this Act, the percentage of the diminution of hearing in respect of noise induced hearing loss of a worker who is over the prescribed age, it shall be conclusively presumed that his loss of hearing is, to the extent of the prescribed number of decibels for each complete year of his age in excess of the prescribed age, to be attributed to presbycusis.

(2) For the purposes of this section—

(a) the prescribed age is fifty years; and

Ss. 7B and 8.

- (b) the prescribed number of decibels is one-half or, where some other number is prescribed, the number so prescribed.

(3) Regulations made for the purposes of paragraph (b) of subsection (2) of this section may prescribe different numbers of decibels in respect of different methods of ascertaining the extent of diminution of hearing, and any number thereby prescribed may be or include a fraction.

(4) Nothing in this section applies in a case of total loss of hearing of either ear.

8.¹ (1) Where a worker is disabled from earning full wages by reason of suffering from, or his death is caused by, any disease, except pneumoconiosis or mesothelioma, mentioned in the first column of the Third Schedule to this Act and the disease is or was due to the nature of any employment in which the worker was employed at any time within one year previous to the date of the disablement, whether under one or more employers, the worker, or in the case of death his dependants, shall be entitled to compensation in accordance with this Act as if the disease were a personal injury by accident within the meaning of section seven, suffered by the worker at the place of his employment, and the provisions of this Act shall apply thereto accordingly, subject, however, to the provisions of this section.

(1a) Where a worker is disabled from earning full wages by reason of suffering from, or his death is caused by, pneumoconiosis or, on and after the 8th May, 1970, mesothelioma and the disease is, or was, due to the nature of any employment in which the worker was employed at any time previous to the date of the disablement and it is shown to the satisfaction of the Board that, since he was last employed in the State in any employment of that nature, the worker—

- (a) has not been absent from the State for a period of, or periods aggregating, more than six months; or

Compensation of worker dying from or affected by certain industrial diseases.
Added by No. 40 of 1924, s. 5 as s. 6A; renumbered as s. 7 in 1943 reprint, and as s. 8 in 1949 reprint.
Amended by No. 34 of 1927, s. 4; No. 36 of 1934, s. 2; No. 77 of 1948, s. 8; No. 33 of 1949, s. 5; No. 48 of 1951, s. 14; No. 88 of 1953, s. 4; No. 74 of 1954, s. 5; No. 80 of 1956, s. 5; No. 81 of 1960, s. 4; No. 63 of 1961, s. 2; No. 80 of 1963, s. 2; No. 88 of 1964, s. 3; No. 96 of 1964, s. 24 and Schedule; No. 113 of 1965, s. 4 (1); No. 50 of 1966, s. 3; No. 18 of 1970, s. 6; No. 43 of 1970, s. 4; No. 96 of 1973, s. 6.

¹ See No. 40 of 1924, s. 2, and proclamation in *Gazette* of 30th January, 1925, and of 27th February, 1925. See also proclamations gazetted 4th June, 1926; 11th June, 1926; 10th December, 1926; 24th December, 1926; 16th August, 1929; 31st March, 1939, and 14th August, 1953. See also footnote ¹ to Third Schedule.

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- s. 8. (b) having been absent from the State for a period of, or periods aggregating, more than six months, has not during that period or those periods been employed in any employment of that nature,

then he is or, in the case of his death, his dependants are, subject to this section, entitled to compensation in accordance with this Act, as if the disease were a personal injury by accident, within the meaning of section seven of this Act, suffered by the worker at the place of his employment.

(1b) Subsection (1a) of this section applies and shall be deemed always to have applied to every worker who, being disabled in the manner and circumstances therein provided (irrespective of when he was so disabled), is living at the date of the coming into operation of the Workers' Compensation Act Amendment Act, 1964.¹

(1c) Whenever, after the coming into operation of the Workers' Compensation Act Amendment Act, 1964,¹ a worker becomes disabled from earning full wages, by reason of suffering from chronic bronchitis in association with silicosis, and the latter of those diseases is, or was, due to the nature of his employment in the mining industry, he is deemed to be so disabled by pneumoconiosis and is entitled to compensation under the provisions of this Act; but a worker who, after receiving compensation pursuant to this subsection, is subsequently employed in the mining industry, whether by the same or any other employer, shall not be entitled to any further compensation or benefit, in respect of any period of incapacity due to pneumoconiosis of any kind or to the aggravation or acceleration of any such disease, arising from his subsequent employment in that industry.

(1d) Whenever a claim is made by a worker for compensation under subsection (1a) or (1c) of this section, the question of the worker's condition and fitness for employment shall be referred, by the Registrar, to a medical board comprising—

- (a) the Mines Medical Officer, appointed under the Mine Workers' Relief Act, 1932;

¹ Came into operation on 14th December, 1964.

- (b) a physician of the Department of Public Health, specialising in occupational diseases, nominated from time to time by the Commissioner of Public Health; and
- (c) a physician specialising in diseases of the chest, nominated, from time to time, by the Commissioner of Public Health;

and the question of the worker's condition and fitness for employment shall be determined by, or by a majority of, the Board whose determination shall be final, conclusive and binding on the worker, on his employer and on any tribunal hearing a matter in which any such determination is relevant.

(1da) On a reference under subsection (1d) of this section any duly qualified medical practitioner who has examined or treated the worker on his own behalf or has examined him on behalf of the employer may attend and make oral submissions to the Board, and, where such a medical practitioner does so attend the Mines Medical Officer shall so certify to the Registrar, and the practitioner shall be paid from the Fund such witness fee as he would have been entitled to receive if he had attended the Workers' Compensation Board to give evidence in a hearing before that Board.

(1db) On a reference under subsection (1d) of this section, the Board, having examined the worker clinically, scrutinised such x-ray films as it may think fit, considered such oral submissions as have been made pursuant to subsection (1da) of this section, and perused such certificates of other duly qualified medical practitioners as either party may in person or by his solicitor or agent tender to that Board, shall thereupon consider and determine the following questions—

- (a) is the worker suffering from pneumoconiosis or mesothelioma?

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(b) if so, is he thereby disabled from earning full wages?

(c) for what type of employment (if any) is the worker fit?

and the determination thereon of that Board or a majority of its members shall be final and conclusive and binding on the worker, on his employer, and on any tribunal hearing a matter in which any such determination is relevant.

(1e) Subject to the provisions of this section, where a worker is disabled from earning full wages, by reason of suffering from tuberculosis in association with silicosis or asbestosis, and any of those diseases is, or was, due to the nature of any employment in which the worker was employed at any time previous to the date of disablement, that person is deemed to be totally incapacitated for work, during such period as the tuberculosis is active, and, thereafter, for a further period of three months or for the period that he is unemployed, whichever period is the shorter, and, during that period and further period, the person is—

(a) if in receipt of payments under the Tuberculosis Allowance (Commonwealth) Scheme, established under the Tuberculosis Act 1948, of the Commonwealth, entitled to compensation in weekly payments equal to the maximum weekly income permissible under that Scheme; and

(b) if not in receipt of payments under the scheme mentioned in paragraph (a) of this subsection, entitled to such compensation as that to which he would be entitled, if totally incapacitated by pneumoconiosis.

(2) The death of the worker shall, if there has been no previous period of incapacity in respect of which the employer is or has been liable under this section, be deemed to be the disablement.

(3) The disablement shall be treated as the happening of an accident.

(4) If it is proved that the worker has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

(5) The compensation shall be recoverable from the employer who last employed the worker during the period of one year mentioned in subsection (1) of this section or, in the case of pneumoconiosis or mesothelioma, who last employed the worker, in the employment to the nature of which the disease is, or was, due.

Provided that—

- (i) the worker or his dependants shall, if so required, furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said period of one year, or in the case of pneumoconiosis or mesothelioma, at any time previous to the date of disablement, as he or they may possess;
- (ii) if that employer alleges that the disease was in fact contracted whilst the worker was in the employment of some other employer and not whilst in his employ, he may join such other employer as a party to the proceedings, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable; and
- (iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said period of one year, or in the case of pneumoconiosis or mesothelioma, at any time previous to the date of disablement, employed the worker in the employment to the nature of

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which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

(5a) [*Repealed by No. 18 of 1970, s. 6.*]

(6) The amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable.

(7) The employer to whom notice of the disablement is to be given is the employer from whom compensation is recoverable under subsection (5) of this section, and that notice may be given notwithstanding that the worker has voluntarily left the employment of that employer.

(8) If the worker at or immediately before the disablement was employed in any process mentioned in the second column of the Third Schedule to this Act and produces a certificate from a duly qualified medical practitioner that the disease contracted is the disease or one of the diseases in the first column set opposite the description of the process, such disease shall be deemed to have been due to the nature of the employment, unless the employer proves the contrary.

(9) [*Repealed by No. 77 of 1948, s. 8 (f).*]

(10) The Governor may, by Order in Council published in the *Gazette*, declare that any other disease or disease and process shall be included in the Third Schedule to this Act.

Every such order shall on the expiration of three months from the date of such publication, or while in force, have the same effect as if the disease or disease and process named therein were inserted in the said Schedule, and this section of this Act shall be read and construed accordingly:

Provided that before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either House of Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within fourteen sitting days of such House after the said Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

(11) [*Repealed by No. 33 of 1949, s. 5 (a).*]

(12) Nothing in this section shall affect the rights of a worker to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this Act.

(13) Subject to the provisions of this section, if a worker, disabled by disease from earning full wages at the work at which he was employed, is found to be suffering from a disease to which this section does not apply, and also from pneumoconiosis, and his disability is partially caused by such industrial disease due to the nature of his employment, the worker shall, except in respect of the weekly payments, if any, which he is receiving or to which he is entitled under the provisions of the First Schedule to this Act, be entitled to a proportionate part of the compensation payable under this section apportioned to the degree to which such disability is caused by pneumoconiosis.

(14) Notwithstanding any provisions of the Mine Workers' Relief Act, 1932 or any other provisions of this Act, the compensation payable to a worker in respect of any period or periods of total or partial incapacity due, or deemed due, solely to pneumoconiosis, arising, or deemed to arise, out of or in the course of employment in a process, described in the second column of the Third Schedule to this Act as, any process entailing exposure to mineral dusts harmful to the lungs, or to that disease in combination with any other disease, shall

Added by
No. 77 of
1948, s. 8(1)
as (13a) and
renumbered
as (14) in
1949 reprint.

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not in any case exceed the prescribed amount; and the provisions of this subsection shall apply whether the period or periods of incapacity occur or result while the worker is employed by the same employer or by different, successive employers.

A worker who has received the full amount of compensation—

that was the maximum amount of his employer's liability to him under the provisions of this Act, as they existed at the time of the payment,

in respect of such period or periods of incapacity or, in the case of a worker whose disease has resulted in an injury also entitling him to compensation under the Second Schedule of this Act, of the appropriate maximum amount in respect of such period or periods of incapacity and such injury, and who is subsequently employed in a process, described in the second column of the Third Schedule to this Act as, any process entailing exposure to mineral dusts harmful to the lungs, whether by the same employer or by different, successive employers, shall not, in any circumstances, be entitled to further compensation or benefit, for any period of incapacity due to pneumoconiosis, or to the combination of that disease with any other disease, or to the aggravation or acceleration of pneumoconiosis or of that disease in combination with any other disease, arising or deemed to arise from his subsequent employment in any such process.

Added by
No. 77 of
1948, s. 8(1)
as (13b) and
renumbered
(15) in 1949
reprint.

(15) Where in any proclamation made under section two of Act No. 40 of 1924 reference is made to the diseases mentioned in the Third Schedule to this Act set opposite the description of the process mentioned therein as mining, quarrying, or stone crushing or cutting, or stone or metal screening, the reference shall, subject to any proclamation to the contrary, from the date of the coming into operation of the Workers' Compensation Act Amendment Act, 1948, be deemed as regards those diseases, to include silicosis, and, as regards that description of the process, to include stone or metal screening,

notwithstanding that when the proclamation was made under the provisions of that section the Third Schedule did not include among those diseases silicosis, and did not include among those processes stone or metal screening.

(16) Where a worker at the time of his disablement within the meaning of this section—

- (a) is or was employed or was last employed in, on, or about a mine within the meaning of the Mines Regulation Act, 1946; and
- (b) the disease by which he is or was disabled is one of the diseases by reason whereof he would be liable, if found to be suffering from the same, to be prohibited under or by virtue of the regulations made under the Mines Regulation Act, 1946, from being employed, or from continuing to be employed, in, on, or about a mine within the meaning of the said Act; and
- (c) at the time of the disablement, was employed or was last employed in, on, or about a mine under the authority of a provisional certificate issued to him by a medical practitioner under the provisions of the regulations made under the Mines Regulation Act, 1946; and
- (d) at the time of or after the disablement is found upon examination by a medical officer or practitioner appointed under and for the purposes of the Mine Workers' Relief Act, 1932, or the State X-ray Laboratory at Kalgoorlie to have been suffering from the disease by which he is or was disabled as aforesaid at the time when the said provisional certificate was issued to him as aforesaid, and such medical officer or practitioner or the officer in charge of the said State X-ray Laboratory so certifies in writing,

Certain workers not to benefit under this section. Added by No. 36 of 1934, s. 2; and numbered s. 7 (14) in 1943 reprint and s. 8 (16) in 1949 reprint.

then, notwithstanding that the disease by which the worker is or was disabled is one of the diseases mentioned in the first column of the Third Schedule to this Act liable to be contracted by the worker in the course of his employment in, on, or about a mine,

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Ss. 8, 8A and 9.

and notwithstanding anything to the contrary contained elsewhere in this section, neither the worker nor any dependant of the worker shall be entitled to claim or recover any workers' compensation from any employer under or by virtue of the provisions of this section in respect of the said disablement.

(17) In subsections (1) and (1a) of this section "at the place of his employment" means the place where the worker was last employed in the employment to the nature of which his Third Schedule disease is, or was, due.

Special provision for cardio-vascular and cerebro-vascular "accidents".
Added by No. 96 of 1973, s. 7.

8A. Where a worker is disabled from earning full wages by a cardio-vascular or cerebro-vascular "accident" occurring whilst he is actually engaged in the performance of his ordinary work, he shall be deemed to have suffered personal injury by accident within the meaning of this Act and his death if occurring at the time of such accident or within three months thereafter shall, unless the employer proves the contrary, be deemed to have resulted from such injury for the purposes of paragraph (a) of clause 1 of the First Schedule to this Act.

Notification of disease.
Added by No. 40 of 1924, s. 6 as s. 6B and renumbered s. 8 in 1943 reprint, s. 9 in 1948 reprint.
Amended by No. 113 of 1965, s. 4 (1); No. 18 of 1970, s. 7.

9. (1) Every employer shall forthwith send written notice to the Registrar whenever it comes to his knowledge that any worker employed by him is suffering from a disease mentioned in the Third Schedule to this Act, and such notice shall state the name and address of the worker and the time when the disablement began.

Penalty—One hundred dollars.

Whenever a notice under this subsection relates to a disease mentioned in the Third Schedule and marked with an asterisk, it shall be the duty of the Registrar to forward a copy of the notice to the Commissioner of Public Health.

Ss. 9, 10, 10A, 11 and 12.

(2) It shall be the duty of every medical practitioner who attends a patient suffering from a disease mentioned in the Third Schedule to this Act, and which he has reason to believe was contracted by reason of the nature of his employment, to notify in writing the Commissioner of Public Health of the case within fourteen days after such attendance on a patient.

Penalty—One hundred dollars.

(3) [*Repealed by No. 18 of 1970, s. 7.*]

10. [*Repealed by No. 96 of 1973, s. 8.*]

10A. [*Added by No. 80 of 1956, s. 6; Repealed by No. 88 of 1964, s. 4.*]

11. [*Added by No. 77 of 1948, s. 9 as 8B; Repealed by No. 50 of 1966, s. 4.*]

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

Time for taking proceedings.
No. 69 of 1912, s. 7, and renumbered s. 9 in 1943 reprint and s. 12 in 1949 reprint.
Amended by No. 40 of 1924, s. 7; No. 81 of 1960, s. 5.

(a) a notice of the accident has been given as soon as practicable after the happening thereof; and

Notice of accident.

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

Defect or inaccuracy in notice.

S. 12.

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 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 shown that the employer has not been prejudiced in his defence by such failure, or 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.

- (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.

Ss. 12 and 12A.

(6) A person who fraudulently attempts to obtain any benefit under this Act, by malingering or by making any false claim or statement, and any person who, by a false statement or other means, aids or abets a person in that attempt, is guilty of an offence.

12A. (1) Except as provided in this section, the first of the weekly payments for total or partial incapacity under this Act shall be made not later than two weeks after the worker has provided evidence of his incapacity and all the criteria as contained in section 12 of this Act have been met, which evidence shall be in the form of a certificate from a medical practitioner registered under the Medical Act, 1894, as amended from time to time, and subsequent weekly payments shall be made on the employer's usual pay days.

Commence-
ment of
weekly pay-
ments.
Added by
No. 96 of
1973, s. 9.

(2) An employer who disputes his liability to pay compensation under this Act may, within the period of two weeks referred to in subsection (1) of this section or such extended time as may be ordered by the Board or Chairman, take out an application to the Board for an order that the subsection shall not apply and the application shall be heard and determined as an interlocutory proceeding and the application of the subsection shall be suspended, pending the results of that hearing and determination.

(3) On the hearing of the application referred to in subsection (2) of this section the Board—

(a) may dismiss or adjourn the application on such terms as it thinks fit and if it dismisses the application it may make such order as to the modification of the application of subsection (1) of this section as it thinks fit and thereupon subsection (1) of this section shall apply and have effect accordingly; or

Workers' Compensation.

S. 12 A.

- (b) if it considers that a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, may order that subsection (1) of this section shall not apply and thereupon that subsection shall not apply.

(4) Where the first of weekly payments for total or partial incapacity under this Act has not been made in accordance with subsection (1) of this section and the employer has not made an application to the Board in accordance with subsection (2) of this section, the worker may make an application to the Board for such weekly payments to be made and the application shall be heard and determined as an interlocutory proceeding.

(5) On the hearing of an application referred to in subsection (4) of this section the evidence of incapacity provided by the worker to the employer shall be produced to the Board, which—

- (a) if it considers that the evidence is satisfactory for the purposes of subsection (1) of this section, may order that weekly payments including arrears to the date of the hearing shall be paid out of the Fund and shall with an additional ten per cent. of the amount of such payments be recovered by the Board for the Fund from the employer; or
- (b) if it considers that the evidence is not satisfactory for the purposes of subsection (1) of this section, may dismiss or adjourn the application on such terms as it thinks fit.

(6) The fact that an application has been dismissed under subsection (3) or subsection (5), as the case may be, of this section shall not be taken into account by the Board in any other proceedings under this Act.

S. 12B.

12B. (1) Where weekly payments of compensation for total or partial incapacity are made to a worker under this Act they shall not be discontinued or diminished without the consent of the worker except where the worker has returned to work or a medical practitioner registered under the Medical Act, 1894, as amended from time to time, has certified that the worker has wholly or partially recovered or that the incapacity is no longer a result of the injury and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with at least twenty-one clear day's prior notice of the intention of the employer to discontinue the weekly payments or to diminish them by such amount as is stated in the notice has been served by the employer upon the worker and unless within that period the worker has not made an application to the Board under subsection (2) of this section.

Unlawful
discontinu-
ance of
weekly
payments.
Added by
No. 96 of
1973, s. 9.

(2) A worker who disputes the right of his employer to discontinue or diminish the weekly payments referred to in subsection (1) of this section may within the period of twenty-one days referred to in that subsection make an application to the Board for an order that the weekly payments shall not be discontinued or diminished and the application shall be heard and determined as an interlocutory proceeding.

(3) Upon the hearing of an application referred to in subsection (2) of this section the Board may—

- (a) adjourn the application on such terms as it thinks fit;
- (b) dismiss the application in which case the weekly payments may be discontinued or diminished, as the case may be; or
- (c) make such order as to the continuance of the weekly payments as it thinks fit.

Workers' Compensation.

Ss. 12B, 12C, 12D and 12E.

(4) If any weekly payments are discontinued or diminished otherwise than in accordance with this section the employer shall be guilty of an offence against this Act.

Penalty: Two hundred dollars.

(5) A conviction for an offence that is a contravention of subsection (4) of this section shall not affect any liability for the making of weekly payments of compensation under this Act.

Effect on
annual leave
and long
service leave.
Added by
No. 96 of
1973, s. 9.

12C. Compensation shall be payable in accordance with the provisions of this Act to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of such period any payment, allowance, or benefit for annual leave or long service leave under any Act of the Commonwealth or of the State, any award or industrial agreement under any such Act, or any other agreement applicable to his employment, and the amount of compensation so payable shall be the amount which would have been payable to the worker had he not received or been entitled to receive in respect of such period any such payment, allowance or benefit.

Effect on
public
holidays.
Added by
No. 96 of
1973, s. 9.

12D. Notwithstanding any provision that applies to or in relation to the employment of a worker apart from this Act, where during any period in respect of which weekly payments are payable pursuant to this Act a public holiday occurs, an employer shall not be liable to make any payment to the worker in respect of that holiday other than payment for that day as a part of those weekly payments.

Recovery of
cost of
services
rendered.
Added by
No. 96 of
1973, s. 9.

12E. Where a person or authority has rendered to or provided for a worker any services for the cost of which the employer is liable to pay compensation to the worker under this Act—

- (a) the employer may pay to that person or authority the whole or any part of the amount owing to him or it and such a

Ss. 12E and 13.

payment shall to the extent of the amount paid, be a discharge of the liability of the employer to the worker under this Act and of the liability of the worker to that person or authority for the services; and

- (b) if the whole or any part of the amount owing to that person or authority is not paid he or it has, in respect thereof, the same rights and remedies against the employer as the worker has.

13. (1) Except where an insurer is permitted by the Board to refuse insurance of the liability of an employer under this Act, every employer shall obtain from an incorporated insurance office approved by the Minister and keep current a policy of insurance for the full amount of his liability to pay compensation under this Act to all workers employed by him including any increase in that amount, during the currency of the policy, by any amending Act.

Any employer who fails to comply with this section shall be liable to a penalty not exceeding ten dollars in respect of each uninsured worker employed by him; and, after the date of any conviction for a contravention of this section, he shall from time to time be liable to further penalties not exceeding forty dollars for every week during which he fails to comply with this section. For the purpose of this section the term "incorporated insurance office" includes any duly incorporated company carrying on insurance business in Western Australia under the provisions of the Commonwealth Insurance Act, 1932 (No. 4 of 1932).

Provided that if an employer or group of employers proves to the satisfaction of the Minister that such employer or group of employers has established a fund for insurance against such liability, and has deposited at the Treasury securities charged with all payments to become due under such liability, the Governor may, by Order in Council, exempt, subject to subsection (8) of this section, such employer or group of employers from the operation of this section.

Insurance.
Added by
No. 40 of
1924, s. 11 as
s. 8a and
renumbered
s. 10 in 1943
reprint, and
s. 13 in 1949
reprint.
Amended by
No. 50 of
1938, s. 3;
No. 77 of
1948, s. 10;
No. 33 of
1949, s. 6;
No. 74 of
1954, s. 7;
No. 80 of
1958, s. 8;
No. 81 of
1960, s. 6;
No. 60 of
1965, s. 3;
No. 113 of
1965, s. 4(1);
No. 18 of
1970, s. 8;
No. 28 of
1978, s. 6.

Workers' Compensation.

S. 13.

Inserted by
No. 50 of
1938, s. 3, as
subs. (3),
renumbered
subs. (2) in
1943 reprint.

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

- (a) fails or refuses to comply with the requirements of this Act or of the regulations; or
- (b) so requests,

then, in any such, but no other, case, the Minister may revoke or suspend, and thereafter withhold, his approval of that office.

(3) An employer obliged by this section to effect or renew a policy of insurance or indemnity shall, on applying to an incorporated insurance office, for that purpose, furnish to that office an estimate, made to the best of that employer's knowledge, information and belief, of the aggregate amount of wages to be paid to the employer's workers over the period for which the policy is to be effected or renewed; and shall forthwith after the termination of that period furnish a statement of the aggregate amount of those wages paid in fact and shall include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee, and such employer shall, if so requested by the insurer, verify the particulars furnished in such statement by a statutory declaration made by the employer under section one hundred and six of the Evidence Act, 1906.

Approved
insurance
office must
insure.

(4) (a) Any incorporated insurance office which has received the approval of the Minister under the provisions of this section shall, unless permitted by

S. 13.

the Board to refuse insurance, or the continuance of insurance, of that liability, wholly or in part, insure any employer requesting it, for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

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

(c) [*Deleted by No. 60 of 1965, s. 3.*]

Penalty—Two hundred dollars.

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

Insurance relating to mining operations. Cf. No. 40 of 1924, s. 2.

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

Saving of existing policies.

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

Revocation of exemption and discharge and return of securities.

- (i) shall apply to the Minister for a revocation of the exemption referred to in that proviso; and
- (ii) shall apply to the Minister for the return of securities lodged by him or them with the Treasury discharged from the charge referred to in that proviso; and
- (iii) shall prove to the satisfaction of the Minister that the employer or the group, as the case may be, has ceased to employ workers

Workers' Compensation.

S. 13.

or has obtained from an approved insurer within the meaning of this section, a policy of insurance for the full amount of liability to pay compensation under this Act to all workers employed by him or them;

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

(7) The Governor may prescribe the form in which any policy of insurance made obligatory under this Act is to be effected, and upon a form being so prescribed, any policy in respect of which it is prescribed shall, insofar as it relates to insurance or indemnity, under this Act, be effected, or, in the case of an existing policy, renewed in that form.

No
exemptions
from
insurance
relating to
mining
operations.

(8) On and after the coming into operation of the Workers' Compensation Act Amendment Act, 1970 the Governor shall not, subject to subsection (9) of this section, exempt an employer or group of employers from the obligation of an employer of workers in any mining operation carried on in any portion of the State to insure with the State Government Insurance Office for the full amount of his liability to pay compensation under this Act to all those workers.

Saving of
existing
exemptions.

(9) Where, pursuant to the proviso to subsection (1) of this section, an employer or a group of employers was granted an exemption before the coming into operation of the Workers' Compensation Act Amendment Act, 1970 and that exemption has not been revoked, subsection (8) of this section does not affect the rights and liabilities of that employer or group in respect of the exemption or any extension or renewal of it.

S. 14.

14. (1) [*Repealed by No. 48 of 1951, s. 6 (a).*]

Insurance
offices
to furnish
certain
statements.
Added by
No. 35 of
1939, s. 2, as
s. 10A and
renumbered
as s. 11 in
1943 reprint,
and s. 14 in
1949 reprint.
Amended by
No. 48 of
1951, s. 6;
No. 113 of
1965, s. 4 (1).

(2) Every approved insurance office shall within fourteen days of the close of each calendar month transmit to the Minister—

(a) a statement showing the names, addresses, and occupations of each employer who has during the month in question effected a policy or contract of insurance with the insurance office concerned against liability under this Act; and

(b) a statement showing the names, addresses, and occupations of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed a policy of insurance under this Act.

(3) Every such statement shall be signed by a responsible officer of the insurance office concerned.

(4) No person, except with the express authority of the Minister, shall have access to, inspect, or peruse any such statement aforesaid, and the information contained therein shall be treated as strictly confidential and shall not except for the purposes of this Act, be disclosed to any person. Any person who discloses any information contrary to the provisions of this section shall be guilty of an offence against this Act.

Penalty—Two hundred dollars.

(5) If any statement required by this section is false in any particular to the knowledge of any person who signs the same, such person shall be guilty of a misdemeanour and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding one year, or to a penalty not exceeding two hundred dollars.

S. 15.

Minister may authorise persons to inquire if employers have obtained insurance. Added by No. 35 of 1939, s. 2, as s. 10B, and renumbered s. 12 in 1943 reprint and s. 15 in 1949 reprint. Amended by No. 48 of 1951, s. 7; No. 113 of 1965, s. 4 (1).

15. (1) Any person authorised in writing by the Minister in that behalf may make such inquiry from any employer whose name does not appear in any statement required under section fourteen (1) or fourteen (2) (a) or whose name does appear on any statement required under section fourteen (2) (b) (unless in the latter case the employer's name appears in any statement required under section fourteen (2) (a)), as may be necessary, to ascertain whether any such employer has obtained a policy of insurance as required by the provisions of section thirteen of this Act.

(2) Every person authorised by the Minister under the provisions of this section shall produce his written authority from the Minister, when interrogating any such employer in the execution of his duties under this Act.

(3) Every person aforesaid shall, before entering on the performance of his duties under this Act, take and subscribe before a justice of the peace an oath or affirmation to the effect that he will not, except for the purposes of this Act and the exercise of his duties hereunder, disclose to any person any information acquired by him in his official capacity, and every person who wilfully acts in contravention shall be guilty of an offence against this Act.

Penalty—Two hundred dollars.

(4) Any person who obstructs, hinders, prevents, or interferes with any person so authorised in the exercise of the powers conferred upon him by this section, or who refuses or fails to produce for the inspection of any person so authorised as aforesaid any policy or contract of insurance when requested by such person, and obliged under this section so to do, shall be guilty of an offence under this Act.

Penalty—Two hundred dollars.

[Former s. 16 repealed by No. 81 of 1960, s. 7.]

S. 16.

16. (1) Where a person (in this section referred to as the principal) contracts with another person (in this section referred to as the contractor) for the execution of any work by or under the contractor and, in the execution of the work, a worker is employed by the contractor, both the principal and the contractor are, for the purposes of this Act, deemed to be employers of the worker so employed and are 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.

Principal,
and
contractor,
and sub-
contractors
deemed
employers.
Added by
No. 18 of
1976, s. 9.

(2) The principal is entitled to indemnity from the contractor for the principal's liability under this section.

(3) The principal is not liable under this section unless the work on which the worker is employed at the time of the accident is directly a part or process in the trade or business of the principal.

(4) Where the principal and the contractor are jointly and severally liable under this section, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

(5) Where compensation is claimed from or proceedings are taken against the principal, in the application of this Act a reference to the employer shall be read as a reference to the principal except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of a worker, the reference shall be read as a reference to the earnings of the worker under the contractor.

(6) For the purposes of this section, where sub-contracts are made—

- (a) "principal" includes the original principal for whom the work is being done and 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;

Ss. 16 and 17.

(b) "contractor" includes the original contractor and each sub-contractor; and

(c) a principal's right to indemnity is a right against each contractor standing between the principal and the worker.

(7) Where the accident does not occur on or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management the other provisions of this section do not apply.

[Former s. 17 repealed by No. 77 of 1948, s. 11.]

Provision as to cases of bankruptcy of employer. No. 69 of 1912, s. 10, and renumbered s. 14 in 1943 reprint and s. 17 in 1949 reprint. Amended by No. 113 of 1965, s. 4 (1); No. 18 of 1970, s. 10.

17. (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.

(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, 1892,¹ in the distribution of the property of a bankrupt, and under the Companies Act, 1893,² in the distribution of the assets of a company being wound up are to be paid

¹ See now the Bankruptcy Act 1966, as amended (Commonwealth).

² See now Companies Act, 1961.

Ss. 17 and 17A.

in priority to all other debts, the amount not exceeding in any individual case three hundred dollars, 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 purpose of reconstruction or of amalgamation with another company but the liability of the company shall attach to the reconstructed company or the other company with which the company wound up is amalgamated, as the case requires.

(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.

17A. (1) Where during the currency of a contract between an employer and an insurer in respect of the employer's liability under this Act to a worker the employer dies or, in the case of a corporation other than a company that has commenced to be wound up, ceases to exist—

Death of employer, corporation ceasing to exist.
Added by No. 18 of 1970, s. 11.

- (a) the worker has the same rights and remedies against the insurer; and
- (b) the insurer has, to the extent of his liability under the contract, the same liability to the worker and the same rights and remedies in respect of the liability,

that the employer would have had under the contract if he had not died or ceased to exist.

Workers' Compensation.

Ss. 17A and 18.

(2) Where, under subsection (1) of this section, the liability of the insurer of an employer who has died is less than what the liability of the employer to the worker would have been if the employer had lived, the worker may proceed for the balance against the personal representative of the employer.

Remedies
both against
employer
and
stranger.

No. 69 of
1912, s. 11.
renumbered
s. 15 in 1943
reprint, and
s. 18 in 1949
reprint.

Amended by
No. 50 of
1938, s. 4;
No. 48 of
1951, s. 8.

18. 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

Added by
No. 50 of
1938, s. 4 as
subs. (1a),
renumbered
subs. (2) in
1943 reprint.

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

Ss. 18 and 19.

- (3) 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 subcontracting,¹ 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.

Indemnities.
No. 69 of
1912, s. 11
(2).
Cf. No. 23 of
1947, s. 6.

- (4) If the worker has been successful in such proceedings to recover damages as is mentioned in paragraph (2) of this section and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of such damages then the employer shall be entitled at his own expense and in the name of the worker and upon giving the worker an indemnity against all costs and expenses to take any proper steps for the purpose of enforcing payment by such third person of the amount of the damages awarded to the worker of any balance of such damages then remaining unpaid. Provided always that any damages so recovered from such third person in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker.

Added by
No 50 of
1938, s. 5 as
subs. (3),
renumbered
as subs. (4)
in 1943
reprint.
Cf. No. 23 of
1947, s. 6.

19. (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 or in the course of his employment, whether or not the accident occurs within the State.

Act to apply
as to
accidents
to persons
employed
on Western
Australian
ships.
No. 69 of
1912, s. 12,
renumbered
s. 16 in 1943
reprint and
s. 19 in 1949
reprint.

¹ Refers to s. 16 repealed by Act No. 81 of 1960.

Amended by
No. 18 of
1970, s. 12;
No. 28 of
1978, s. 7.

Workers' Compensation.

s. 19.

(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.

Modifica-
tion of Act
in case of
accidents
to seamen.

(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:—

- (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 the news of the death has been received by the claimant.
- (c) In the case of the death of the 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.
- (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.

Crew of
fishing
vessel.

Prohibition of contract-
ing out.
No. 69 of
1912, s. 14,
repealed and
re-enacted
by No. 40 of
1924, s. 9,
renumbered
s. 18 in
1943 reprint
and s. 20 in
1949 reprint.

Deductions
towards
compensa-
tion not
lawful.
No. 69 of
1912, s. 15,
and
renumbered
s. 19 in
1943 reprint
and s. 21 in
1949 reprint.
Amended by
No. 40 of
1924, s. 10.

Ss. 20, 21 and 21A.

20. From and after the commencement of this section, the provisions of this Act shall apply and have effect in all cases, notwithstanding any contract to the contrary heretofore or hereafter made or entered into.

21. (1) 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.

Medical
Board shall
prepare and
maintain
"The
Register of
Specialists."
Added by
No. 48 of
1951, s. 9.
Amended by
No. 80 of
1956, s. 9.

21A. (1) (a) The Medical Board appointed pursuant to the provisions of the Medical Act, 1894-1950,¹ shall, for the purposes of this Act, prepare and maintain a register to be called "The Register of Specialists," containing the names of all qualified medical practitioners practising in Western Australia who have made a special study of some particular branch of medicine or surgery and who are recognised by the Medical Board as specialists in that particular branch, and shall furnish the Board with a list containing the names of specialists recorded in the register and the particular branch of the profession in which each has specialised, and shall also immediately advise the Board of any name added to or removed from the register.

(b) Where the Medical Board is of the opinion that a medical practitioner, whose name appears in The Register of Specialists as a specialist in a particular branch of medicine or surgery, has ceased to be a specialist in that branch, the Board may remove his name from the register.

¹ Now Medical Act, 1894-1976.

Ss. 21A and 22.

(2) No action shall be maintained or brought against the Medical Board or any member thereof by reason of any thing done or omitted in good faith in the discharge of the duties imposed by the last preceding subsection.

22. (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. No. 69 of 1912, s. 16, renumbered s. 20 in 1943 reprint, and s. 22 in 1949 reprint. Amended by No. 113 of 1965, s. 4 (1).

(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.

Penalty for proceeding to sea.

Ss. 22, 23 and 24.

(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 two hundred dollars.

Officer taken 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 twenty dollars 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.

[Former sections 23 to 32, both inclusive, repealed by No. 77 of 1948, s. 11.]

Agreements and receipts under the Act exempt from stamp duty.
No. 69 of 1912, s. 17, renumbered s. 21 in 1943 reprint, and s. 23 in 1949 reprint.

23. 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, 1882,¹ or any Act amending or substituted for that Act.

Special provision for securing compensation or damages to worker in mine, factory building or vessel.
No. 69 of 1912, s. 18, Amended by No. 40 of 1924, s. 12, renumbered s. 22 in 1943 reprint, and s. 24 in 1949 reprint.

24. 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, or any other premises or property of an employer where an industry is carried on by him:—

- (1) At and from the time when the accident occurred, the amount of compensation or damages to which he may become entitled,

¹ Now Stamp Act, 1921.

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, vessel, premises, or property, 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, or on which the industry is carried on.
- (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.

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

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

(3) Of the three members—

- (a) one shall be chairman;
- (b) two shall be nominee members.

Workers' Compensation Board.
Added by No. 77 of 1948, s. 11, as s. 33, renumbered s. 25 in 1949 reprint.
Amended by No. 88 of 1964, s. 6; No. 96 of 1973, s. 10. No. 28 of 1978, s. 8. Cf. Vic. Act, No. 4524 of 1937, s. 2(1).

Qualifica-
tions of
chairman.

S. 25.

(4) A person shall not be eligible for appointment to the office of chairman unless he is a practitioner as defined by the Legal Practitioners Act, 1893-1946,¹ of not less than eight years' practice and standing.

Term of
office of
chairman.

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

Nominee
members.

(6) Of the two nominee members—

(a) one shall be a person nominated in the prescribed manner by the body known as The Confederation of Western Australian Industry (Incorporated);

(b) one shall be a person nominated in the prescribed manner by the body known as the Trades and Labour Council of Western Australia.

Appoint-
ment on
failure of
nomination.

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

Term of
office of
nominee
member.
Cf. ch. 4 of
the statutes
of Alberta,
1943-45, s. 4.

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

Vacancy in
office of
nominee
member.

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

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

¹ Now Legal Practitioners Act, 1893-1978.

- (b) becoming of unsound mind or being declared under any law for the time being relating to mental infirmity, incapable of managing his affairs;
- (c) becoming bankrupt or availing himself as a debtor of any law for the relief of bankrupt debtors;
- (d) resigning, attaining the age of sixty-five years, or dying;
- (e) being removed from office on the ground of misbehaviour or incapacity.

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

*Appoint-
ments to
office of
nominee
member for
remainder of
unexpired
term.*

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

*Appoint-
ment of
deputy
members.*

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

*Validity of
appoint-
ments of
deputies to
fill
vacancies*

(13) The Chairman shall retire from his office upon attaining the age of seventy years, and each nominee member of the Board shall retire on the day on which he attains the age of sixty-five years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave,

Retirement.

Workers' Compensation.

S. 25.

or unless the Governor directs that he shall be at liberty to continue in office at the Governor's pleasure.

(13a) On and after the date of the coming into operation of the Workers' Compensation Act Amendment Act, 1973 the Chairman—

(a) shall be entitled to such salary, travelling and other allowances or reimbursements, leave of absence, pension, and rights under the Superannuation and Family Benefits Act, 1938 as he would be if service as Chairman of the Workers' Compensation Board on and after that date were service as a District Court Judge, other than the Chairman of Judges, appointed pursuant to the District Court of Western Australia Act, 1969; and

(b) shall be entitled to the designation "Judge".

Remuneration, allowances and leave.

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

Prohibition of other employment for remuneration.

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

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

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

Quorum.

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

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

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

Board, a corporate body.

25A. (1) The Governor may from time to time appoint a Supplementary Worker's Compensation Board if he is satisfied that the Board is unable to deal expeditiously with all its business.

Power to constitute and appoint Supplementary Board.
Added by No. 28 of 1978, s. 9.

(2) The Supplementary Board shall be appointed and constituted in the same manner on the same terms and subject to the same conditions as the Board is constituted under this Act except that the chairman and the nominee members of the Supplementary Board shall hold office for such term not exceeding five years as is specified respectively in their instruments of appointment, but shall be eligible for re-appointment.

(3) The Supplementary Board appointed under this section shall perform such of the duties of the Board as are assigned to it by the Chairman of the Board.

(4) In performing any duties so assigned the Supplementary Board and the chairman thereof shall have the same jurisdiction, powers, duties, rights and immunities and shall be subject to the same rules and conditions as the Board or its chairman respectively would have or would be subject to in carrying out such duties.

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Ss. 25A and 26.

(5) The Registrar and the other officers and staff of the Board shall be the registrar and the other officers and staff of the Supplementary Board and shall have the same powers, duties, rights and immunities in relation to any matter assigned to the Supplementary Board that they respectively would have had if such matter had been dealt with by the Board.

(6) All salaries, allowances and expenses payable to or in respect of the Supplementary Board shall be paid out of the same fund as the similar salaries, allowances and expenses payable to or in respect of the Board are paid.

(7) The Governor may appoint deputies for the chairman and members of the Supplementary Board in the same manner and on the same terms and conditions as he may appoint deputies for the Chairman and members of the Board.

(8) A member of the Board may with the consent of the Chairman of the Board act as and in the place of the corresponding member of the Supplementary Board and a member of the Supplementary Board may with the consent of the Chairman of the Board act as and in the place of the corresponding member of the Board.

Co-operation
of Public
Service.

Added by
No. 77 of
1948, s. 11,
as s. 34,
renumbered
s. 26 in 1949
reprint.
Cf. Act No.
15 of 1926,
N.S.W., s. 33.

26. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Board by this Act or any other Act, the Board, with the approval of the Public Service Commissioner¹ appointed under the provisions of the Public Service Act, 1904-1947¹, may make use of the services of any of the officers and employees of the Public Service.

Registrar
and staff
of Board.

(2) The Registrar and other members of the staff of the Board shall be appointed under and be subject to the provisions of the Public Service Act, 1904-1947.¹

¹ Now Public Service Board, see s. 5 (2) of Public Service Act, 1904-1977.

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

Workers' Compensation Board Fund.

Added by No. 77 of 1948, s. 11, as s. 35, renumbered s. 27 in 1949 reprint.

Amended by No. 33 of 1949, s. 8; No. 48 of 1951, s. 10; No. 81 of 1960, s. 8; No. 113 of 1965, s. 4 (1); No. 18 of 1970, s. 13.

Cf. Act No. 15 of 1926, N.S.W., s. 41 (4).

- (a) all moneys required for the salaries of the members of the Board and its staff;
- (b) compensation in accordance with the provisions of the Act to any worker (other than a worker in respect of whom refusal of insurance is permitted by the Board pursuant to the provisions of this Act) whose employer has not effected insurance against his liability to pay compensation under the provisions of this Act and who does not pay the compensation due within thirty days of the obtaining of an award by the worker or his representative;
- (ba) compensation in accordance with an order made under paragraph (ab) of subsection (7) of section twenty-nine of this Act;
- (c) costs of prosecutions instituted by the Board under the provisions of this Act;
- (d) all other moneys required by the Board for carrying out the provisions of this Act.

(1a) (a) Upon payment of compensation being made by the Board pursuant to the provisions of the last preceding subsection, the Board may immediately institute proceedings against such employer for the recovery of the amount of compensation paid and any costs incurred in the settlement of the claim, or in the recovery action against the employer, by issuing a certificate showing particulars of the amount and lodging the certificate in the appropriate court of competent jurisdiction.

(b) The certificate, when so lodged, shall, by virtue of the provisions of this subsection, be regarded as a judgment of the Court and, as such, may be enforced accordingly.

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Board to
prepare and
submit
estimate to
Minister,
annually.

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

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

Contribu-
tions to
Fund by
insurers.

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

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

Contribu-
tions to
Fund by
self-
insurers.

(4) A self-insurer shall, in respect of any period for which contributions to the Fund are payable by insurers, pay such contribution to the Fund as the Board may deem reasonable, assessed upon the wages paid by the self-insurer to workers during that period, having regard to the premium payable

for insurance by employers engaged in the same or any similar trade, occupation, calling or industry, and the employer shall upon demand supply the Board with such particulars of the wages paid by him during that period as are required by the Board.

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

Returns to be furnished to Board by insurers.

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

Penalty for failure to furnish return.

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

Penalty for false return.

(d) (i) In any one year the Board may levy contributions to the Fund of an amount equal to the amount of compensation estimated as hereinafter provided as payable in that year pursuant to the provisions of paragraph (b) of subsection (1) of section 27 of this Act plus such amount as shall appear in the estimate referred to in section twenty-seven, subsection (2), paragraph (a), and be approved by the Minister for the payment of the remuneration, expenses and allowances of any

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inspector to be appointed pursuant to section twenty-nine, subsection (13), paragraph (h) of this Act plus—

a sum of sixteen thousand dollars or such other sum as is for the time being prescribed by the regulations

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

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

(iii) Notwithstanding the provisions of subparagraph (ii) of this paragraph, the Board shall, after the coming into operation of the Workers' Compensation Act Amendment Act, 1960, estimate annually the amount to be levied in each succeeding year to make provision for the compensation mentioned in paragraph (b) of subsection (1) of this section.

(e) for the purposes of paragraph (ba) of subsection (1) of this section and paragraph (ab) of subsection (7) of section twenty-nine of this Act the Board, in any one year, may levy contributions to the Fund the total amount of which is equal to such sum as is for the time being prescribed by the regulations but shall not levy contributions in excess of that amount unless authorised by resolutions of both Houses of Parliament.

Audit of
Board's
accounts.

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

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

Appointment of Registrar. Added by No. 77 of 1948, s. 11, as s. 36 and renumbered s. 28 in 1949 reprint. Records to be kept.

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

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

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

Deputy Registrar.

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

Proceedings before the Board.

(b) The Board may—

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

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

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

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

Payment of compensation awarded.

(4) No legal practitioner or other agent representing any person claiming compensation under this Act shall be entitled to recover from that person any costs in respect of any proceedings before the Board, or to claim a lien in respect of those costs, or to deduct those costs from the sum awarded or agreed as compensation, except such sum as may be

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

Ss. 28 and 29.

awarded by the Board on an application made by the person claiming compensation, or by his representative, to determine the amount of costs to be paid to the representative of the person claiming compensation, and that sum shall be awarded subject to the prescribed scale of fees, costs and rules.

Jurisdiction
of the
Board.

Added by
No. 77 of
1948, s. 11,
as s. 37,
renumbered
s. 29 in
1949 reprint.

Amended by
No. 33 of
1949, s. 9;
No. 48 of
1951, s. 11;
No. 88 of
1953, s. 6;
No. 80 of
1956, s. 10;
No. 81 of
1960, s. 9;
No. 113 of
1965, s. 4 (1);
No. 18 of
1970, s. 14;
No. 98 of
1973, s. 11.
Cf. s. 7 (4)
ante.

Cf. Chap. 4
of the
Statutes
of Alberta,
1943-45, s. 10.
Injunction,
prohibition,
certiorari,
etc.,
excluded.

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

Board to
determine
each case
on the
substantial
merits.
Cf. No. 57 of
1912, s. 69.

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

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

(3) (a) In the hearing and determination of every question, the Board and the chairman, and any member, and the Registrar and any person or Court, acting pursuant to any power delegated by the Board under the provisions of this Act, shall act according to equity and a good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by legal precedent or its own decisions and rulings in any other question, nor by any rules of evidence,

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but may inform its or his mind on any matter in such a way as it or he regards as just but in considering a question as to whether a person who resides outside the State is a dependant of a worker, the Board shall require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and shall not accept as sufficient proof a statutory declaration of affidavit unsupported by documentary evidence to that effect.

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

(c) Any person who is a party to any question for hearing and determination under the provisions of this Act, may appear in person or by a legal practitioner authorised to practise as such by the provisions of the Legal Practitioners Act, 1893-1946,¹ or by other agent duly appointed in writing for that purpose, and subject to the provisions of this Act, every party appearing by a representative shall be bound by the acts of his representative.

Party may appear in person or by representative.
Cf. Local Courts Act, 1904-1931, s. 29, and Cf. s. 36 (4) ante.

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

Board may delegate its power to make inquiries and act upon the delegate's report.

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

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

Provisions relating to delegation to Local Courts.
Cf. s. 35 post.
Cf. No. 51 of 1904, s. 10.

(i) relating to the determination of questions and matters arising for determination under the provisions of this Act, to the magistrate for the time being to whom a Local Court is assigned under the provisions of the Local Courts Act, 1904-1931,² but the

¹ Now Legal Practitioners Act, 1893-1978.

² Now Local Courts Act, 1904-1976.

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

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

(ii) relating to such corresponding matters as are referred to in sections fourteen and fifteen of the Local Courts Act, 1904-1931,¹ which relate to procedural matters, to the clerks of Local Courts, and such delegation may be either specific or general;

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

(iii) relating to such corresponding matters as are referred to in sections seventeen to twenty-two of the Local Courts Act, 1904-1931,¹ which relate to the service of processes and the execution of warrants and the functions of bailiffs generally, to bailiffs appointed under that Act, and such delegation may be either specific or general.

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

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

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

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

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

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

(a) determining—

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

¹ Now Local Courts Act, 1904-1976.

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

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- (xii) whether the circumstances of any particular case justify the making of an order for redemption of weekly payments of compensation by payment of a lump sum;
- (xiii) whether an insurer shall be permitted to—
 - (I) refuse the insurance of an employer against all or any liability under this Act and, if so, upon what terms;
 - (II) cancel a policy of insurance and, if so, upon what terms and, in any event, upon the term that the cancellation be effective as between the parties to the policy, irrespective of the terms of the policy and whether or not the policy was effected prior to the coming into operation of this item; or
 - (III) declare a policy void or refuse payment of any claim which is, or might be, made thereunder, by reason that the employer, worker or any person has failed to comply with any term of the policy;
- (xiv) liability of any person in respect of the expenses of medical or surgical attendance on an injured worker at the suit of any person by whom they have been incurred or at the suit of any person entitled to receive payment in respect of them;
- (aa) where the Board considers that an injury to a worker that is compensable under this Act has resulted in his permanent total incapacity for work, making, unless an order for redemption of weekly payments

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by payment of a lump sum has already been made under this Act in respect of the injury, such order as to the total liability of the employer for weekly payments as the Board thinks proper in the circumstances;

- (ab) ordering, on the application of a worker who has sustained permanent or temporary disablement from an injury that is compensable under this Act, that compensation shall be paid to him out of the Fund for reasonable expenses incurred in respect of his rehabilitation and re-employment;

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

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

(8) Within a period of thirty days after the Board makes or delivers an order, ruling or decision on any matter in dispute, the Board shall cause a copy of the order, ruling or decision, as the case may be, and the reasons therefor, to be sent to every insurer approved by the Minister under section thirteen of this Act, and the Board may in any case where it is deemed necessary, and shall, on the application of any employer or worker interested in any order, ruling or decision of the Board, issue a certificate in the prescribed form or to the like effect embodying the substance of any such order, ruling or decision.

Issue of certificate of Board's finding.
Cf. Chap. 4 of the Statutes of Alberta, 1943-45, s. 11.
Cf. s. 43 (2) (d) (ii) *post*.

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

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

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(9a) Where, pursuant to subsection (9) of this section, the Board has stated a case for the decision of the Full Court of the Supreme Court, the Board may, in its absolute discretion, indemnify the parties or any of them against the costs, or part of the costs, of any proceedings resulting from a case being so stated, and any moneys payable to a party by reason of that indemnity shall be paid by the Board out of the Workers' Compensation Board Fund.

Case stated to be considered and determined by Supreme Court.

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

Board to furnish workers and employers with information as to their rights.

Cf. Act No. 15 of 1926, N.S.W., s. 39 (a).

(11) The Registrar shall—

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

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

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

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

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

Powers of the Board.

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

Investigation of industrial diseases.

(a) To investigate all matters relating to industrial diseases of any nature whatsoever and to cause to be made a study of the causes,

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and the results of varying methods of treatment, of such accidents and diseases, and to publish from time to time such findings and information as, in the opinion of the Board, is in the interests of the proper administration of this Act, and for all or any of such purposes may co-opt not more than three qualified medical practitioners registered under the Medical Act, 1894-1946¹.

- (b) To obtain from all insurers and self-insurers returns necessary for the compilation of statistics for the purposes of recording such information as, in the opinion of the Board, is essential for the proper administration of this Act. Compilation of statistics.
- (c) To establish and maintain a register of medical practitioners registered under the Medical Act, 1894-1946,¹ and authorised by the Board to carry out medical or surgical treatment of or in attendance on any worker with respect to any injury for which the worker is receiving or is entitled to receive compensation under this Act. Establishment and maintenance of register of medical practitioners authorised to treat injured workers.
- (d) To preclude a medical practitioner whose name is not for the time being on the register from charging, receiving, recovering or retaining any medical expenses or fees for medical or surgical treatment of or attendance on any worker with respect to any injury for which the worker is receiving or entitled to receive, or has received compensation under this Act, unless, in the opinion of the Board that treatment or attendance has been rendered or bestowed in a case of sudden emergency, or the medical practitioner had reasonable grounds for believing that the injury was not an injury for which the person treated had received or was receiving or entitled to receive compensation under this Act. Medical practitioners not on register to be prohibited from charging or receiving professional fees.

¹ Now Medical Act, 1894-1976.

Board may
hold
inquiries.

- (e) (i) Of its own motion, or upon a complaint in writing made within twelve months after the occurrence, giving rise to such complaint, by—

(I) the worker; or

(II) the employer; or

(III) a near relative of the worker, when for any reason deemed sufficient by the Board the worker is unable to make the complaint himself;

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

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

When holding any inquiry under this paragraph, the Board shall comprise as well as at least its quorum, two medical practitioners who shall be registered under the provisions of the Medical Act, 1894-1946,¹ nominated by the Western Australian Branch of the British Medical Association and appointed by the Governor, and shall be entitled to such fees and allowances as shall be prescribed while acting as members of the Board.

¹ Now Medical Act, 1894-1976.

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

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

and effect shall be given to the order.

- (iii) The amount of any fine imposed, or of any restitution ordered under subparagraph (ii) of this paragraph may be recovered summarily before Justices sitting in a court of petty sessions.
- (iv) The Board may allow a complaint made under this subsection to be amended at any time before the completion of its inquiry into the matter of the complaint upon such terms as the Board may deem just.
- (v) Subject as in this subsection provided, the Board upon the holding of the inquiry may make such order as to costs against the person making the complaint or against the medical practitioner concerned or, when the Board holds an inquiry of its own motion, in favour of or against the medical practitioner concerned as in the opinion of the Board is warranted by the circumstances of the case, and with respect to

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any such order the following provisions shall apply—

- (I) the Board may itself determine and fix the amount of the costs to be paid pursuant to its order; or direct that the costs to be paid shall be taxed by the Master of the Supreme Court;
- (II) where the Board directs that the costs shall be taxed, the Master of the Supreme Court shall tax them and give his allocatur in relation to them;
- (III) the order for payment of costs may be enforced and the amount of the costs as fixed by the Board or allowed in taxation by the Master of the Supreme Court, as the case may be, may be recovered by execution or otherwise as if the order were a judgment of the Supreme Court for the payment of a liquidated sum of the amount at which the costs have been fixed by the Board or taxed and allowed by the Master of the Supreme Court: Provided that the Board shall not make any order for payment of costs against the person making the complaint when that person has been authorised so to do by the Board pursuant to the provisions of item (IV) of subparagraph (i) of this paragraph.

(vi) For the purposes of this subsection—

- (I) the phrase "treatment of or attendance on any worker" means medical or surgical treatment of or attendance on any worker with respect to any injury for

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which the worker is receiving or is entitled to receive or has received compensation under this Act;

(II) the expression "compensation" includes not only money payable to a worker in lieu of earnings but also all monetary benefits and benefits of monetary value to which a worker is entitled under this Act; and

(III) the expression "near relative" means a person who is either the wife, husband, mother, father, sister, brother or child of the worker, and, in respect of a child wholly or partly dependent upon the earnings of the worker, the guardian of that child.

- (f) To establish and maintain a register of medical practitioners to be selected from time to time from a panel of names of medical practitioners supplied to the Board by the Medical Board constituted pursuant to the provisions of the Medical Act, 1894-1946,¹ authorised by the Board to assess the degree of disability for the purpose of determining the amount of compensation payable under the Second Schedule to this Act.
- (g) To take such measures and make such expenditure as is deemed necessary or expedient by the Board with a view to—
- (i) providing facilities for pre-employment medical examination and occupational guidance to workers;
 - (ii) formulating recommendations and preparing estimates for submission to Parliament of the cost of providing facilities for rehabilitation and

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

¹ Now Medical Act, 1894-1976.

re-employment of workers who have sustained permanent or temporary disablement from personal injury by accident within the meaning of the Act so as to minimise or remove any handicap resulting from the injury;

- (iii) providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from personal injury by accident within the meaning of the Act in accordance with the recommendations and estimates referred to in the last preceding subparagraph when those recommendations and estimates have been approved by resolution of both Houses of Parliament.

Inspection
of wage and
salary
declarations.

- (h) (i) To appoint from time to time in its discretion, inspectors for the purpose of investigating the aggregate amount of wages, salary and other forms of remuneration paid by, and the number of employees engaged by, any employer who has been exempted pursuant to section thirteen, subsection (1) of this Act, or by any employer required by the conditions of any policy or contract of insurance as referred to in section thirteen, subsection (3) of this Act to disclose such information during any specified period.
- (ii) An inspector appointed under the provisions of this section shall produce written authority from the Chairman of the Board when making investigations in the execution of his duties under this Act, and upon production thereof may make any such inquiries and require production of, and inspect, any books, accounts and records as may be necessary to ascertain the

aggregate amount of wages paid by the employer and the number of employees engaged.

- (iii) Every inspector shall, before entering on the performance of his duties under this Act, take and subscribe before a justice of the peace an oath or affirmation to the effect that he will not, except for the purposes of this Act, and the exercise of his duties hereunder, disclose to any person any information acquired by him in his official capacity, and every inspector who wilfully acts in contravention shall be guilty of an offence against this Act and liable on summary prosecution to a penalty of two hundred dollars.
- (iv) Any employer, his servant or agent, or any person whatsoever who obstructs, hinders, prevents, or interferes with any inspector in the exercise of the powers conferred upon him by this section, or who refuses or fails to produce for the inspection of any inspector any books, accounts or records when requested by such inspector, and obliged under this section so to do, shall be guilty of an offence under this Act and liable on summary prosecution to a penalty of two hundred dollars.
- (v) Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to his insurer the aggregate amount of wages paid or the number of employees engaged, whereby he has become liable to pay by way of premium a lesser amount than he would otherwise, then the Board may sue and recover from such employer the full amount of the premium which could have been charged, less any amount already paid to the insurer in respect of such insurance and shall pay

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any moneys so recovered less any reasonable costs incurred in the recovery, to the insurer.

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

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

Certificates of proficiency may be cancelled and recalled.

(b) Certificates issued by the Board under the provisions of the last preceding paragraph may be cancelled and recalled by the Board at any time when, in its opinion, the holder thereof does not continue to have the necessary qualifications in accident prevention and first aid work.

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

Premium Rates Committee. Added by No. 77 of 1948, s. 11, as s. 38, and renumbered s. 30 in 1949 reprint. Amended by No. 33 of 1949, s. 10; No. 64 of 1952, s. 2; No. 88 of 1953, s. 7; No. 74 of 1954, s. 8; No. 81 of 1960, s. 10; No. 88 of 1964, s. 7; No. 113 of 1965, s. 4(1); No. 96 of 1973, s. 12; No. 70 of 1977, s. 4; No. 28 of 1978, s. 10.

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

- (a) by a committee to be called the Premium Rates Committee, consisting of the Auditor General as Chairman, the three members of the Board, the General Manager of the State Government Insurance Office, a person who shall be nominated by all other insurers approved by the Minister under the provisions of section thirteen of this Act, other than that section of such insurers known as the non-tariff companies, and also a person who shall be nominated by the non-tariff companies as aforesaid, both of whom shall be appointed by the Governor

and entitled while acting on the Committee to such remuneration and allowances as shall be prescribed;

- (b) on a basis which shall be formulated by the Board from time to time and which shall include consideration of—
 - (i) the duration of the particular period in respect of which the basis is formulated;
 - (ii) the total amount of premiums received and owing to all insurers for that period in respect of insurance of employers against their liability to pay compensation under the provisions of this Act;
 - (iii) the total amount of payments made, due, and which may become due for that period by all insurers in respect of that insurance;
 - (iv) the total amount of premiums which would be payable for that period by self-insurers on the basis of wages paid by them to their workers during that period if the self-insurers were not self-insurers but were employers effecting insurance with the State Government Insurance Office against their liability to pay compensation under the provisions of this Act in the same or any similar trade, occupation, calling or industry as that carried on by the self-insurers;
 - (v) the total amount of payments made, due, and which may become due for that period by self-insurers pursuant to their liability to pay compensation under the provisions of this Act;

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- (vi) the total amount of payments made during that period or which may be made subsequent to that period by the Board pursuant to the provisions of this Act to workers who have sustained personal injury by accident during that period in respect of the employer's liability for which no insurance exists;
- (vii) the total cost of the administration reasonably incurred during that period by insurers and self-insurers in relation to the matters referred to in subparagraphs (ii) to (v) of this paragraph;
- (viiia) the total amount of payments which may subsequent to the expiration of that period be made by all insurers in respect of injuries by accident received by workers during or prior to that period by reason of amendment to the rates or amounts of payments to workers under this Act and the total liability of employers in respect thereof; and
- (viii) all such other circumstances and factors, whether of the same or a different kind from the foregoing as in the opinion of the Board are just and proper.

Of. No. 64 of
1952, s. 2 (b).

(1a) (a) In this subsection—

“initial determination” means the first determination made by the Premium Rates Committee after the coming into operation of the Workers' Compensation Act Amendment Act, 1953, in respect of the rate;

“rate” means the premium rate to be charged for insurance by employers against liability under this Act in respect of pneumoconiosis

arising out of or in the course of employment in a process described in the second column of the Third Schedule to this Act as, any process entailing exposure to mineral dusts harmful to the lungs;

“recommendation” means a recommendation made by a qualified actuary as the result of investigation made by him as to the rate which should be charged; and

“triennial determination” means a determination made by the Premium Rates Committee in respect of the rate of the expiration of any period of three years from the initial determination.

(b) As soon as is practicable after the coming into operation of the Workers' Compensation Act Amendment Act, 1953, the Premium Rates Committee shall obtain a recommendation.

(c) If by his recommendation the actuary recommends an alteration of a rate the Premium Rates Committee shall give effect to the recommendation by the initial determination.

(d) Until the Premium Rates Committee receives the recommendation, the Committee shall not alter the rate already determined without the approval of the Minister.

(e) After the initial determination the Premium Rates Committee shall not alter the rate except at a triennial determination or pursuant to subsection (1b) of this section.

(1b) As soon as is practicable after any alteration in the prescribed amount, the Premium Rates Committee shall consider the effect of the alteration on the maximum premium rates determined pursuant to this section and may, on the basis mentioned in paragraph (b) of subsection (1) of this section, make such alterations to those maximum premium rates as the Committee thinks necessary or desirable.

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Ss. 30, 31, 32, 33 and 34.

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

(2) Nothing herein contained shall be interpreted to preclude any insurer referred to in the last preceding subsection from charging or accepting premiums at rates lower than those determined whether by a reduction of rates, the granting of bonuses or by any other means.

Annual report. Added by No. 77 of 1948, s. 11, as s. 39, renumbered s. 31 in 1949 reprint.

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

Protection of Board and members. Added by No. 77 of 1948, s. 11, as s. 40, renumbered s. 32 in 1949 reprint.

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

General penalty. Added by No. 77 of 1948, s. 11, as s. 41, renumbered s. 33 in 1949 reprint, amended by No. 113 of 1965, s. 4 (1).

33. Any person who commits an offence against this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding one hundred dollars.

Judicial notice. Added by No. 77 of 1948, s. 11, as s. 42, renumbered s. 34 in 1949 reprint. Cf. No. 28 of 1906 s. 56.

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

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

Rules and regulations.
Added by No. 77 of 1948, s. 11, as s. 43, renumbered s. 35 in 1949 reprint.
Amended by No. 33 of 1949, s. 11; No. 80 of 1956, s. 11, No. 113 of 1965, s. 4 (1); No. 18 of 1970, s. 15; No. 111 of 1976, s. 11.

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act so far as the same relate to the Board or the Registrar of any proceedings of or before the Board;
- (b) fixing scales of fees to be paid to the Board and scales of fees, costs and expenses to be paid to counsel, medical practitioners and witnesses in proceedings before the Board;
- (c) fixing scales of fees to be paid to medical specialists and general practitioners for attendance on and treatment of injured workers when those fees are not determined by agreement between the Western Australian Branch of the British Medical Association and insurers approved under the provisions of this Act.
- (ca) fixing scales of fees to be paid to physiotherapists for attendance on and treatment of injured workers in cases where those fees are not determined by agreement between the Western Australian Branch of the Physiotherapists Association and insurers approved under the provisions of this Act;
- (cb) fixing scales of fees to be paid to chiropractors for attendance on and treatment of injured workers in cases where those fees are not determined by agreement between the Chiropractors Registration Board and insurers approved under the provisions of this Act;

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- (d) fixing fees to be paid to public and private hospitals in various parts of the State for treatment and maintenance of injured workers;
- (e) matters of general or special application, which may apply to both employers and workers, for the prevention of diseases in employments or places of employment within the State;
- (f) prescribing the manner in which payment of compensation whether in the case of death or otherwise may be made and the person to whom payment may be made;
- (g) regulating the practice and procedure of the Board or any person or court authorised by delegation by the Board under the provisions of this Act and providing for the effective exercise of jurisdiction by the Board or person or court so authorised and especially, but without limiting the general power to make rules and regulations under the provisions of this Act, with reference to—
 - (i) the times and places for sittings of the Board and any person or court so authorised;
 - (ii) the issue of a summons to a party to proceedings before the Board, or to any other person, requiring him to attend and give evidence before the Board and, where required in the summons, to bring documents to the Board;
 - (iii) the allowances to witnesses;
 - (iv) the enforcement of awards, orders and judgments;
 - (v) provisions, in respect of parties to proceedings and matters in issue before the Board, for the discovery and inspection of documents, the admission and production of documents, the delivery of and answers to

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interrogatories, and the request for and supply of further and better particulars, for regulating the practice of those procedures, and for the Board, upon the application of a party to the proceedings, making an order to compel, another party to the proceedings to comply with those provisions;

- (vi) provisions for matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of the expert evidence, and in relation thereto—
 - (I) provisions for the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
 - (II) provisions for conferring a discretionary authority.
- (h) prescribing penalties not exceeding twenty dollars for any non-compliance with or any contravention of the provisions of any rule or regulation;
- (i) generally carrying into effect the provisions of this Act so far as the same relate to the Board and the Registrar and any proceedings of or before the Board;

Regulations
concerning
the
functions of
the Board.

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- (j) regulating the meetings and proceedings of the Board when exercising its power of inquiry under the provisions of paragraph (e) of subsection (13) of section twenty-nine of this Act and the conduct of the business thereof;
- (k) enabling the Board to establish a register providing for the registration of medical practitioners, the removal from the register of the name of any medical practitioner as a consequence of any decision of the Board, and the re-registration of any medical practitioner whose name has been removed;
- (l) providing for the fees and expenses payable with respect to establishing and maintaining the register;
- (m) carrying into effect the functions of the Board under the provisions of subsection (13) of section twenty-nine of this Act;
- (n) the basis on, and manner in which, self-insurers shall contribute to the Fund.

Transitional
Provisions.

- (2) (a) Subject to the provisions of this Act; and
- (b) without prejudice to the operation of the provisions of sections fifteen and sixteen of the Interpretation Act, 1918-1934,¹ in so far as they relate to the amendment of the Workers' Compensation Act, 1912-1944, by the Workers' Compensation Act Amendment Act, 1948, in general, and in so far as they relate to the operation of section seven subsection (4) of the lastmentioned Act (relating to the conferring and imposing upon the Board of certain powers and duties formerly conferred upon the Local Court), in particular; and

- (c) notwithstanding the provisions of section thirty-six of the Interpretation Act, 1918-1934,¹ and

¹ Now Interpretation Act, 1918-1975.

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

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

- (ii) any person in whose favour an award or order has been promulgated by the Board may file or cause to be filed the certificate issued under the provisions of subsection (8) of section twenty-nine of this Act in any Local Court established under the provisions of the Local Courts Act, 1904-1931,¹ having jurisdiction within the district where the debtor mentioned in the certificate resides when the clerk of the Local Court shall enter judgment for that person for the sum of the certificate, together with any fees paid for the certificate to the Registrar and the fees paid for filing the certificate and entering judgment and when entered the judgment shall, subject to the provisions of this Act, be enforceable and be regarded for all purposes as a judgment of the Local Court.

Registration of certificate in Local Court and provision for enforcement of award, order, etc.
Cf. Act No. 15 of N.S.W., 1926, s. 36 (5) (b).
Cf. s. 37 (2).

¹ Now Local Courts Act, 1904-1976.

SCHEDULES.

Section 7.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Amount of compensation.

In case of death.

Clause 1.

Amended by

No. 43 of 1920, s. 4;
No. 40 of 1924, s. 13;
No. 34 of 1927, s. 3;
No. 50 of 1938, s. 6;
No. 36 of 1941, s. 4;
No. 42 of 1944, s. 4;
No. 77 of 1948, s. 12;
No. 48 of 1951, s. 12;
No. 64 of 1952, s. 4;
No. 88 of 1953, s. 8;
No. 74 of 1954, s. 9;
No. 80 of 1956, s. 12;
No. 81 of 1960, s. 11;
No. 80 of 1963, s. 3;
No. 88 of 1964, s. 8;
No. 60 of 1965, s. 4;
No. 113 of 1965, s. 4(1);
No. 50 of 1966, s. 5;
No. 18 of 1970, s. 16;
No. 43 of 1970, s. 5;
No. 96 of 1973, s. 13;
No. 94 of 1972, s. 4
(as amended by No. 42 of 1975);
No. 28 of 1978, s. 11.

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

(a) where death results from the injury—

(i) if the worker leaves any dependants wholly dependent upon his earnings—

(I) in respect of all those dependants, if any, who are not of the kind referred to in item (II), (III), or (IV) of this subparagraph a sum equal to eighty-five per cent of the prescribed amount, less the amount of any weekly payments made under this Act and less the amount of any lump sum paid in redemption of weekly payment for the injury under this Act;

(II) in respect of each of those dependants, if any, who is a child, or step child, under the age of sixteen years, the sum of seven dollars fifty cents weekly until the child attains that age;

(III) in respect of each of those dependants, if any, who is a full time student child, or step child, and has attained the age of sixteen years but is under the age of twenty-one years, the sum of seven dollars fifty cents weekly until the child attains the age of twenty-one years or ceases to be a full time student, whichever is the sooner.

- Cl. 1(a) and 1(b).
- (IV) in respect of each of those dependants who is a child, or step child, of any age, whether a full time student or otherwise who, by reason of circumstances the Board in its absolute discretion decides, should receive continued support, the sum of seven dollars fifty cents weekly until such time as the Board orders,

but if a worker dies leaving a widow or mother wholly dependent upon his earnings or a dependant of the kind referred to in item (II) or (III) of this subparagraph wholly dependent on his earnings the minimum amount payable under this subparagraph shall be a sum equal to twenty-five per cent. of the prescribed amount;

- (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, the cost of which may be awarded to and upon the application of any person by whom the expenses were properly incurred, or to whom the whole or any part of the expenses is owed.
- (b) Subject to the provisions of the proviso to this paragraph where a worker has been in receipt of, or was entitled to receive, weekly payments for not less than six months and no application for redemption has been made under and in accordance with the provisions of this Schedule, and the worker dies leaving dependants but the death does not result from the injury—
- (1) in the case of dependants wholly dependent upon his earnings, the sum, if any, which would have been paid as

Added by
No. 42 of
1944, s. 4
as (aa), and
in 1949
reprint
re-lettered
(b).

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Cl. 1(b) and 1(c).

a lump sum if the worker had made an application for redemption in his lifetime;

- (ii) in the case of dependants in part dependent upon his earnings, such sum not exceeding in any case the amount payable under the foregoing provisions of this paragraph 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:

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

- (c) when total or partial incapacity for work results from the injury, a weekly payment during the incapacity—

- (i) in the case of total incapacity, an amount equal to the weekly earnings of the worker computed in accordance with clause 2 of this Schedule; or
- (ii) in the case of partial incapacity, the amount by which the weekly earnings as so computed exceed the weekly amount which he is earning or is able to earn in some suitable employment or business after the accident,

but the total liability of the employer in respect of weekly payments shall not exceed the prescribed amount unless the Board so orders under paragraph (aa) of subsection (7) of section 29 of this Act.

Provided that—

- (a) [*Deleted by No. 74 of 1954, s. 10.*]

- (b) where the remuneration of a worker consists of wages with board or board and lodging, the wages or the earnings of the worker shall, for the purposes of this Act, be deemed to be the amount

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CL 1(c).

of the wages with the addition of the value of such board or board and lodging to be assessed, but such board or board and lodging shall not be assessed at a sum exceeding four dollars fifty cents per week;

- (c) in addition to the compensation payable under this clause, a sum is payable equal to the reasonable expenses incurred in respect of—

- (i) first aid and ambulance or other service to carry the worker to hospital or other place for treatment; medicines and medical requisites; medical or surgical attendance, including where necessary, treatment by specialists; physiotherapy or chiropractic attendance and treatment; charges for hospital treatment and maintenance, in accordance with the provisions of paragraph (d) of this proviso; the provision of hearing aids, artificial teeth, artificial eyes, and where the injury renders their use necessary, spectacles or contact lenses, but not exceeding, in the aggregate, a sum equal to ten per cent. of the prescribed amount, unless the Board finds that in the particular circumstances of the case, that amount is inadequate;
- (ii) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding the sum of five hundred dollars;
- (iii) the repair or replacement, including such services by way of consultations, examinations, or prescriptions as are reasonably rendered by medical practitioners, dentists, or other qualified persons in connection with the repair or replacement, of a hearing aid, an artificial limb,

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Cl. 1(e).

artificial teeth, artificial eyes, spectacles, or contact lenses damaged or destroyed by accident arising out of or in the course of the worker's employment, whether or not, except in the case of artificial teeth, personal injury is caused to the worker within the meaning of section seven of this Act;

- (iv) the purchase or supply of a wheeled chair or similar appliance, where the worker has suffered the loss of both legs or is paralysed in both legs by reason of an accident or accidents arising out of or in the course of the worker's employment, but not exceeding an amount of two hundred and fifty dollars; and
- (v) the cost of any surgical appliance or of an artificial limb that complies with the standards laid down by the Commonwealth Repatriation Artificial Limb and Appliance Centre, if such an appliance or artificial limb is capable of relieving any disablement incurred by the worker by reason of an accident arising out of or in the course of his employment.

(d) (i) In this paragraph—

“area” means the area within an imaginary circle having a radius of twenty-five kilometres from the General Post Office at Perth;

“public hospital” means a public hospital administered under the Hospitals Act, 1927.

- (ii) The hospital charges mentioned in paragraph (c) of this proviso for treatment and maintenance of the worker—

in a public hospital within the area;

in a public hospital outside the area;

in a private hospital;

shall, subject to subparagraph (iv) of this paragraph, be at the respective rates determined by the Board as the equivalent of the general rate chargeable for treatment of cases other than workers' compensation cases in

a public ward bed in a public hospital within the area;

a public ward bed in a public hospital outside the area;

a ward bed in a private hospital

(iii) The Board is authorised from time to time to determine the rates mentioned in subparagraph (ii) of this paragraph and a determination so made shall have effect on publication of the determination in the *Gazette*.¹

(iv) Where, on reasonable medical advice in the interests of the health of the worker or where by reason of the unavailability of hospital accommodation, the worker occupies more expensive hospital accommodation than that of a kind referred to in subparagraph (ii) of this paragraph the Board may, on the application of the worker, determine that a rate higher than those determined by the Board pursuant to that subparagraph shall be the rate for the hospital charges mentioned in paragraph (c) of this proviso.

(e) where a worker is required by his employer, his employer's duly authorised agent or medical adviser, or is advised by his own medical adviser, to travel from the place where he resides to a hospital or other place for treatment, massage, or medical examination, then, in addition to the compensation payable to such worker under this section, the employer shall pay all reasonable

¹ See G.G. 24/9/76, p. 3531.

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Cl. 1(c), 1(d), 1(e) and 1A.

fares and expenses incurred by the worker in such travelling and return, and also a sum not exceeding fifteen dollars per day to cover the cost of meals and lodging necessarily incurred by the worker whilst away from his home for the purpose of such treatment, massage or examination.

In any case where no medical adviser is available and a worker travels for treatment, massage, or examination without being so required or advised, the employer shall be liable as hereinbefore prescribed, if the worker proves such travelling was necessary in the circumstances of the case:

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

- (d) where a total or partial incapacity for work does not result from the injury but the worker is obliged to obtain medical advice or treatment, the provisions of paragraphs (c), (d) and (e) of the proviso to paragraph (c) of clause (1) and the provisions of clause (4) of this Schedule shall apply in so far as they may be made applicable.

Added by
No. 42 of
1944, s. 4(f)
as para. (c)
to cl. 1;
and
re-lettered
para. (d) in
1949 reprint.

- (e) where absence from work arises from a necessary attendance for a medical or like purpose that is authorised or required under this Act or from an unavoidable delay in the provision, repair, or replacement of any artificial aid of the kinds referred to in paragraph (c) of the proviso to paragraph (c) of this clause and without which the worker is unable to work, a weekly payment or portion thereof at a rate equivalent to the rate that applies under paragraph (c) of this clause for total or partial incapacity including payments for dependants.

Added by
No. 18 of
1970, s. 16(o).

1A. Any amount payable by an employer or his insurer under paragraph (a) or (b) of clause 1 of this Schedule in respect of the dependants of a deceased worker shall be paid into the custody of the Board and, after provision for payment of any amounts required for the purposes of item (II) or (III) of subparagraph (i) of that paragraph

Clause 1A
Added by
No. 18 of
1970, s. 16(p).

Amended by
No. 28 of
1978, s. 12.

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Cl. 1A, 2(a) and 2(b).

(a), shall be apportioned in such manner as the Board thinks fit and may be apportioned so that amounts payable to dependants of the deceased worker, or classes of dependants of the deceased worker, or both, differ to such extent as, in the opinion of the Board, the interests of justice require.

2. For the purposes of this Act "weekly earnings" means—

Clause 2.
Substituted
by No. 76
of 1975, s. 2.

Amended by
No. 28 of
1978, s. 13.

(a) where the work performed by the worker in the employment in which the injury occurs is subject to an industrial award or industrial agreement or, if it is not so subject, where a relevant industrial award or industrial agreement pertaining to that type of work can be fairly applied, the total wages, salary, or other remuneration payable, at the time of the incapacity, for a week's work in such employment, under the industrial award or industrial agreement; or

(b) where a person is working under an agreement to perform—

(i) a specified quantity of work for a specified sum;

(ii) work on piece rates;

(iii) work on a bonus or commission system;
or

(iv) work under any other system for payment by results,

the wages, salary, or other remuneration that is, at the time of the incapacity, prescribed, apart from that agreement, for a week's work in the employment in which the injury occurs, under an industrial award or industrial agreement relevant to such employment or, if there is no industrial award or industrial agreement so relevant, under a relevant industrial award or industrial agreement pertaining to that type of work which can be fairly applied,

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Cl. 2(c), 2(d), 2(e) and 2(f).

but excluding in each case referred to in paragraphs (a) and (b) of this clause—

- (c) overtime, being any payment for the hours in excess of the number of hours stated in the industrial award or industrial agreement as ordinary hours which constitute a week's work; and
- (d) any bonus or incentive (except over award payment), shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance,

and, in the case of a part time worker employed solely in the employment in which the injury occurs, making a proportionate deduction in such weekly earnings to the extent that the hours worked by him per week are less than the number of hours stated in the industrial award or industrial agreement as ordinary hours which constitute a week's work;

and in the case of a worker who 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 and

- (e) under which the total number of hours worked per week by him are less than the number of hours stated in the industrial award or agreement relating to the employment in which the injury occurs as ordinary hours which constitute a week's work, making a proportionate deduction in such weekly earnings to the extent the total number of hours worked by him are so less; or
- (f) under which the total number of hours worked by him, discounting in respect of each of the employments the exclusions referred to in paragraphs (c) and (d) of this clause, are equal to or more than the number of hours stated in the industrial award or industrial agreement relating to the employment in which the injury occurs as ordinary hours which constitute a week's work, making no such proportionate deduction.

Cl. 3(b), 4 and 5.

3. [Paragraph (a) deleted by No. 96 of 1973, s. 13.]

Regard to be had to payments, allowances, etc., to worker.
Clause 3 amended by No. 36 of 1941, s. 4; No. 77 of 1948, s. 12; No. 50 of 1966, s. 5; No. 96 of 1973, s. 13.

(b) Where a worker who has so far recovered from his injury as to be fit for employment of a certain kind satisfies the Board that he has taken all reasonable steps to obtain, and has failed to obtain, that employment and that the failure is a consequence, wholly or mainly, of the injury, the Board may, without limiting its powers of review, order that the worker's incapacity be treated, or continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

4. (a) 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.

Medical examination.
Clause 4 amended by No. 50 of 1938, s. 7; No. 77 of 1948, s. 12; No. 64 of 1952, s. 6; No. 88 of 1953, s. 11; No. 74 of 1954, s. 12; No. 113 of 1965, s. 4; No. 18 of 1970, s. 16.

(b) Where a worker, in order to submit himself for examination by a medical practitioner in compliance with this clause, is required to travel from the place he resides to another place then, in addition to the compensation payable to such worker under any preceding section of this Act, the employer shall pay all reasonable expenses incurred by the worker in such travelling and also the sum of four dollars per day to cover the cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such medical examination:

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

[Former clauses 5 to 11, both inclusive, repealed by No. 77 of 1948, s. 12 (k).]

5. 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.
No. 69 of 1912, First Schedule, cl. 12, and renumbered cl. 5 in 1949 reprint.

Cl. 6 and 7.

Regulations
as to such
examina-
tions.
No. 69 of 1912,
First
Schedule,
cl. 13, and
renumbered
cl. 6 in 1949
reprint.

6. A worker shall not be required to submit himself for examination by a medical practitioner under paragraph 4 or paragraph 5 of this Schedule otherwise than in accordance with regulations made by the Governor, nor at more frequent intervals than are prescribed by those regulations.

Reference to
medical
referee.

No. 69 of
1912, First
Schedule,
cl. 14 and
renumbered
cl. 7 in
1949 reprint.
Clause 7
amended by
No. 40 of
1924, s. 14;
No. 36 of
1934, s. 3;
No. 50 of
1938, s. 7(b);
No. 36 of
1941, s. 4(g);
No. 77 of
1948, s.
12 (1);
No. 80 of
1956, s. 13;
No. 113 of
1965, s. 4(1).

7. (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, the employer or the worker, as the case may be, shall within fourteen days after such examination furnish the other with a copy of the report of that practitioner as to the worker's condition, and, after the copy of the report is so furnished, 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 Registrar on application being made in manner prescribed by either party, may, on payment by the applicant of such fee, not exceeding four dollars, as is prescribed, refer the matter to a medical referee.

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

(b) The medical referee to whom the matter is so referred shall, in manner prescribed, 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 (subject to an appeal to a medical board consisting of three members, which shall have jurisdiction to hear and determine such appeal) 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.

Cl. 7 and 8.

(da) Where following a clinical examination and or an examination of X-ray films, a specialist is of the opinion that specialist treatment is desirable an injured worker shall, if required by his employer obtain treatment from a specialist selected by the worker from those whose names appear on The Register of Specialists maintained by the Medical Board under the provisions of section twenty-one A of this Act, and the employer shall be liable for the full cost of the specialist treatment and for necessary hospital charges incurred by the worker in connection with that treatment.

[Former paragraphs (e) and (f) repealed by No. 77 of 1948, s. 12 (1).]

(g) The provisions of this clause shall apply, so far as the same can be made applicable, to questions arising in respect of any injury mentioned in the Second or Third Schedule to this Act.

8. (i) Where any question arises between a worker and his employer as to the worker's condition or fitness for employment or as to whether or to what extent the incapacity of the worker is due to the accident, and the worker and his employer are unable by mutual agreement to determine such question between themselves, and the determination of such question is necessary for the purposes of this or the Second or Third Schedule to this Act, then the worker and the employer may at any time by mutual agreement, evidenced in writing, signed by both of them, refer such question and any other question incidental or ancillary thereto direct to a medical board appointed under and for the purposes of this Act for determination.

Added by
No. 36 of
1934, s. 3 (b)
as 14A, and
renumbered
cl. 15 in 1943
reprint and
cl. 8 in 1949
reprint.
Amended by
No. 77 of
1948, s.
12(m).

(ii) The decision of such medical board or any two members of it upon the question or questions referred as aforesaid shall be final and conclusive, and shall be binding upon the worker and the employer, and upon any tribunal hearing any matter in which such decision is relevant.

(iii) Where the reference is made under this clause direct to a medical board, the employer shall make application in writing to the Registrar.

(iv) The worker and the employer may agree between themselves which one of them shall bear and pay the costs and fees (other than the remuneration of the members of the medical board) incurred by the reference under this clause. Failing any such agreement, the party against whom the decision lies shall bear and pay such costs and fees, and the person entitled to payment thereof may recover the same as a debt owing by such party in any Court of competent jurisdiction.

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Cl. 8, 9 and 10.

(v) Clause fifteen of this Schedule shall not apply to any agreement for a reference made or entered into between a worker and his employer under this clause.

Review of weekly payment. No. 69 of 1912, First Schedule, cl. 15, renumbered cl. 16 in 1943 reprint and cl. 9 in 1949 reprint. Amended by No. 74 of 1954, s. 13.

9. Any weekly payment may be reviewed by the Board 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 Board, having regard to the past or present condition of the worker, may see fit.

Provided that where the worker was at the date of the accident under twenty-one years of age and his average weekly earnings were less than the basic wage at that date and the review takes place more than twelve months after the accident the weekly payment may be increased to any amount not exceeding the amount to which the worker would probably have been entitled at the date of review by way of weekly payments including payments for dependants in accordance with the provisions of paragraph (c) of clause one of the Schedule.

Lump sum in redemption of weekly payment. No. 69 of 1912, First Schedule, cl. 16, renumbered cl. 17 in 1943 reprint, and cl. 10 in 1949 reprint. Amended by No. 43 of 1920 s. 5; No. 77 of 1948, s. 12(o); No. 96 of 1973, s. 13.

10. Where permanent total or permanent partial incapacity has resulted from an accident and 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 or the worker, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Board, and such lump sum may be ordered by the Board 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.

Provided also, that on exercising the jurisdiction to order redemption by payment of a lump sum on the application of a worker, the Board shall be satisfied that the worker has special need of the lump sum instead of the continuance of the weekly payments or that any other circumstances of the case justify the making of an order for that redemption and, where the Board has ordered that the total liability of the employer in respect of weekly payments shall exceed the prescribed amount, the Board shall be satisfied that the employer consents to redemption by payment of a lump sum, the intention being that an order for redemption shall be made not as a matter of course but only when the special circumstances of the case commend themselves to the Board as justifying the making of an order for redemption.

Cl. 11, 12, 13 and 14.

11. When the Board orders redemption as provided for in clause 10 of this Schedule—

- (i) in the case of permanent total incapacity the lump sum shall be the sum ascertained by deducting the total amount received by the worker as weekly payments from the prescribed amount unless the Board orders, under paragraph (aa) of subsection (7) of section twenty-nine of this Act, that the total liability of the employer shall exceed the prescribed amount, in which case the lump sum shall be such a sum as the Board thinks proper in the circumstances.
- (ii) in any other case the lump sum shall be assessed upon a calculation or estimate by the Board of the compensation payable or likely to be payable under the provisions of this Act;
- (iii) no deduction of any nature or kind shall be made by the Board from any lump sum ascertained or assessed as hereinbefore provided.

12. Subject to the provisions of this Act, 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 a manner and at such intervals as may be prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

13. 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 an other person by operation of the law, nor shall any claim be set off against the same, except in respect of voluntary advances of future compensation made by an employer or insurer with the approval of the Board.

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

Substituted by No. 42 of 1944, s. 4 (g) as cl. 18, renumbered cl. 11 in 1949 reprint.
Amended by No. 77 of 1948, s. 12(p); No. 64 of 1952, s. 7; No. 88 of 1953, s. 12; No. 74 of 1954, s. 14; No. 80 of 1956, s. 14; No. 88 of 1964, s. 8; No. 113 of 1965, s. 4(1); No. 55 of 1967, s. 2; No. 18 of 1970, s. 16; No. 96 of 1973, s. 13.

Worker ceasing to reside in the State.
No. 69 of 1912, First Schedule, cl. 17, renumbered cl. 19 in 1943 reprint, and cl. 12 in 1949 reprint.
Amended by No. 77 of 1948, s. 12 (q).

Payments not assignable.
No. 69 of 1912, First Schedule, cl. 18, renumbered cl. 20 in 1943 reprint, and cl. 13 in 1949 reprint.
Amended by No. 28 of 1973, s. 14.

Suspension of payment.
No. 69 of 1912, First Schedule, cl. 19, renumbered cl. 21 in 1943 reprint, and cl. 14 in 1949 reprint.

¹ Deemed to have come into operation on 5th December, 1966, see section 3 of Act No. 55 of 1967.

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CL. 15(1).

Registration of memorandum of agreement. No. 69 of 1912, First Schedule, cl. 20, renumbered cl. 22 in 1943 reprint, and cl. 15 in 1949 reprint. Amended by No. 40 of 1924, s. 15; No. 50 of 1938, s. 7(d) and (e); No. 77 of 1948, s. 12(r) and (s); No. 80 of 1956, s. 15.

15. (1) 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 or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound for any claim or right to compensation under this Act, a memorandum thereof shall be sent, in manner prescribed, by any party interested, to the Registrar, who shall, on being satisfied as to its genuineness, and, where the agreement provides for the payment of compensation or other moneys, as to the adequacy of the amount thereof, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as an award or order promulgated by the Board:

Provided that—

- (a) no such memorandum shall be recorded before seven days after the despatch by the Registrar of notice to the parties interested;
- (aa) no agreement between a worker and an employer shall have any force or validity if it exempts the employer wholly or partially from any liability for compensation to which the worker is or may subsequently become entitled under the provisions of this Act, and notwithstanding any such agreement, a worker may recover from his employer any compensation to which he is, or subsequently becomes, so entitled. Provided that this paragraph shall have no application to agreements for the redemption of future weekly payments duly recorded under the provisions of this clause.
- (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 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 Board, under the circumstances, may think just;
- (c) the Board may at any time rectify the register;
- (d) (i) upon receipt of a memorandum for registration, the Registrar shall examine the same in order to satisfy himself as to the genuineness of the agreement and as to the adequacy of the amount of any compensation or other moneys payable thereunder,

Cl. 15(1).

and if it appears to the Registrar as the result of such examination or as the result of any information which he considers sufficient that an agreement as to the redemption of weekly payments by a lump sum or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he shall refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the Board, which shall make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board may think just;

- (ii) for the purpose of carrying out his duties under subparagraph (i) of this paragraph, the Registrar may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation payable under the agreement the Registrar may require the employer to have the worker examined by a medical practitioner nominated by the Registrar, at the expense of the employer, in any case where the Registrar is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation aforesaid;
- (e) the Board may, upon application being made 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 the Board's satisfaction that the agreement was obtained by fraud or undue influence or other improper means, or that the amount of compensation payable under

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Cl. 15, 16, 17 and 18.

the agreement is inadequate, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board may think just.

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

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

Effect of non-registration of agreement. No. 69 of 1912, First Schedule, cl. 21, renumbered cl. 23 in 1943 reprint and cl. 16 in 1949 reprint.

16. 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.

Registration obligatory. Added by No. 40 of 1924, s. 16 and numbered cl. 24 in 1943 reprint, and cl. 17 in 1949 reprint. Amended by No. 77 of 1948, s.12(t).

17. From and after the commencement of this clause, no agreement to which clause fifteen of this Schedule is applicable shall be binding on or enforceable against the parties or admitted to be good or valid unless it is registered as provided in that clause.

[*Clauses 25 to 28, both inclusive, repealed by No. 77 of 1948, s. 12 (u).*]

Worker not to be prejudiced by resuming work. No. 69 of 1912, First Schedule, cl. 26, renumbered cl. 29 in 1943 reprint, and cl. 18 in 1949 reprint.

18. 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.

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SECOND SCHEDULE.

Second
Schedule
substituted
by No. 96 of
1973, s. 14.

TABLE.

Item.	Nature of Injury.	Ratio which the sum payable herein bears to the prescribed amount per centum.
	EYES	%
1.	Total loss of sight of both eyes	100
2.	Total loss of sight of an only eye	100
3.	Total loss of sight of one eye	50
4.	Total loss of sight of one eye and serious diminution of the sight of the other eye	75
5.	Loss of Binocular vision	50
	HEARING	
6.	Total loss of hearing	75
	SPEECH	
7.	Total loss of power of speech	75
	BODY AND MENTAL	
8.	Permanent and incurable loss of mental capacity resulting in total inability to work	100
9.	Total and incurable paralysis of the limbs or of mental powers	100
	SENSORY	
10.	Total loss of sense of taste and smell	50
11.	Total loss of taste	25
12.	Total loss of smell	25

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SECOND SCHEDULE—continued.

Item.	Nature of Injury.	Ratio which the sum payable herein bears to the prescribed amount per centum.
	ARM	%
13.	Loss of arm at or above elbow	90
14.	Loss of arm below elbow	80
	HAND	
15.	Loss of both hands	100
16.	Loss of a hand and a foot	100
17.	Loss of hand or thumb and four fingers	80
18.	Loss of thumb	35
19.	Loss of forefinger	25
20.	Loss of middle finger	20
21.	Loss of ring finger	20
22.	Loss of little finger	14
23.	Total loss of movement of joint of thumb	15
24.	Total loss of distal phalanx of thumb	17
25.	Total loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
26.	Total loss of distal phalanx of forefinger	11
27.	Total loss of distal phalanx of any other finger	9
	LEG	
28.	Loss of leg at or above knee	90
29.	Loss of leg below knee	80

SECOND SCHEDULE—continued.

Item.	Nature of Injury.	Ratio which the sum payable herein bears to the prescribed amount per centum.
	FEET	%
30.	Loss of both feet	100
31.	Loss of foot	75
32.	Loss of great toe	25
33.	Loss of any other toe	10
34.	Loss of two phalanges of any other toe	8
35.	Loss of phalanx of great toe	11
36.	Loss of phalanx of any other toe	7
	MISCELLANEOUS	
37.	Loss of genitals	50
38.	Severe facial scarring or disfigurement to a maximum of	80
39.	Severe bodily, other than facial scarring or disfigurement to a maximum of	50

Provided that in the application of the Table the following shall apply—

- (a) If an eye or foot or other member be deemed lost or permanently and wholly useless or a finger has lost two joints then it constitutes the total loss of the eye, foot, member or finger.
- (b) Except in the case of eyes, determination of a percentage of loss should not be made while using artificial aids.
- (c) Determination of loss of sight shall be made on a corrective basis except in the case of binocular vision.

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Section 8.
Third
Schedule
Added by
No. 40 of
1924, s. 18.
Amended by
No. 50 of
1938, s. 8;
No. 77 of
1948 s. 14;
No. 88 of
1964, s. 10;
No. 18 of
1970, s. 18;
No. 96 of
1973, s. 15.

THIRD SCHEDULE.¹

Description of Disease.	Description of Process.
*Arsenic, phosphorus, lead, mercury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds.
*Anthrax	Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles or carcases; loading and unloading or transport of merchandise containing Anthrax organisms.
Communicable diseases ..	Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed.
*Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, anilin and others)	Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds.
Poisoning by a homologue of benzol	Any process involving the use of a homologue of benzol.
*Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	Any process involving the use of a halogen derivative of a hydrocarbon of the aliphatic series.
*Poisoning by fluorine	Any process in which fluorine is used.
*Poisoning by nitrous fumes	Any process in which nitrous fumes are evolved.
*Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used.
*Poisoning by carbon monoxide	Any process in which carbon monoxide is used, or evolved.

¹ As to the operation of s. 8 and this Schedule with respect to these diseases, see s. 2 of the Act No. 40 of 1924, and proclamations in the *Gazette* of 30th January, 1925; 27th February, 1925; 4th June, 1926; 11th June, 1926; 10th December, 1926; 24th December, 1926; 16th August, 1929; 31st March, 1939; 14th August, 1953, and 16th August, 1957. See also s. 8 (15) of this reprint.

* Referred to in s. 9 (1).

Description of Disease.	Description of Process.
*Leptospirosis; endemic typhus, scrub typhus, brills' disease, swineherds' disease, plague, mite dermatitis and scrub itch	Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.
*Chrome ulceration 	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium or their preparations.
Effects of insolation 	Work entailing prolonged exposure to sunlight.
Effects of electrical currents 	Workers exposed to electrical currents.
Effects of vibration (including Raynaud's phenomenon and dead hand)	Use of vibratory tools, implements and appliances.
Any dermatosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn	Any industrial process.
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances 	Handling of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.
Scrotal epithelioma (Chimney sweep's cancer)	Chimney sweeping.
*Compressed air illness 	Any process carried on in compressed air.
*Pneumoconiosis 	Any process entailing exposure to mineral dusts harmful to the lungs.
Primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or of the peritoneum—in this Act called mesothelioma 	Any process entailing substantial exposure to blue asbestos (Crocidolite) dust.

* Referred to in s. 9 (1).

Workers' Compensation.

Description of Disease.	Description of Process.
Noise induced hearing loss	Any process involving exposure to noise.
Pathological manifestation due to—	Any process involving exposure to the action of radium,
(a) radium and other radioactive substances;	radioactive substances, or X-rays.
(b) X-rays.	

[Fourth Schedule Repealed by No. 18 of 1970, S.19.]