

## WORKERS' COMPENSATION.

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No. 18 of 1970.

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### AN ACT to amend the *Workers' Compensation Act, 1912-1967.*

[Assented to 8th May, 1970.]

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

Short title  
and citation.

1. (1) This Act may be cited as the *Workers' Compensation Act Amendment Act, 1970.*

Reprinted as  
approved for  
reprint 15th  
July, 1969.

(2) In this Act the *Workers' Compensation Act, 1912-1967* is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the *Workers' Compensation Act, 1912-1970.*

2. Section 4 of the principal Act is amended— Amendment  
to s. 4.

- (a) by adding after subsection (4) subsections as follow—

(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, 1970 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, 1970, 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. ;

- (b) by substituting for the passage beginning with the word "Where", in line one of paragraph (a) of subsection (5), and ending

with the word "contained" in line thirteen of that paragraph, the passage "Where after the coming into operation of the Workers' Compensation Act Amendment Act, 1970 The Western Australian Industrial Commission alters the male basic wage,";

- (c) by substituting for the passage "subsection (2)", in line twenty-six of paragraph (a) of subsection (5), the passage "subsections (2), (4a), and (4b)",
- (d) by substituting for the figures "1954", in line six of the proviso to paragraph (a) of subsection (5), the figures "1970"; and
- (e) by substituting for the words "the Court of Arbitration", in lines ten and eleven of the proviso to paragraph (a) of subsection (5), the words "The Western Australian Industrial Commission".

**Amendment  
to s. 5.**

**3. Section 5 of the principal Act is amended—**

- (a) by substituting for the interpretation "Basic wage" an interpretation as follows—

"Basic wage" has the same meaning as it has in section 123 of the Industrial Arbitration Act, 1912;
- (b) by substituting for the passage beginning with the word "dependent", in line seven of the interpretation "Dependants", and ending with the word "State", in the last line of that interpretation, the word "dependent";
- (c) by deleting the passage "The worker's remuneration shall not include overtime". in lines sixteen and seventeen of the interpretation "Worker";

- (d) by substituting for paragraph (b) of the interpretation "Worker" a paragraph as follows—
  - (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. ; and
- (e) by deleting paragraph (c) of the interpretation "Worker".

4. Subsection (5) of section 6 of the principal Act is repealed. Amendment  
to s. 6.

5. Subsection (3) of section 7 of the principal Act is amended— Amendment  
to s. 7.

- (a) by adding after the word "Act", in line two of paragraph (a) the passage " , where the worker so elects";
- (b) by substituting for the passage beginning with the word "thereof", in line seven of paragraph (a) and ending with the word "otherwise", being the last word in that paragraph, the word "thereof";
- (c) by substituting for the words "no worker shall", in line two of paragraph (f), the passage "a worker who elects under paragraph (a) of this subsection shall not";
- (d) by adding after the word "thousand", in line six of paragraph (f), the words "eight hundred and eighty-one";

- (e) by substituting for the passage beginning with the word "subsection", in line eleven of paragraph (f), and ending with the word "caused", being the last word in that paragraph the words "subsection until they so elect";
- (f) by deleting paragraph (g); and
- (g) by adding after paragraph (h) paragraphs as follow—
  - (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.

Amendment  
to s. 8.

6. Section 8 of the principal Act is amended—

- (a) by adding after the word "pneumoconiosis" where it occurs in—
    - (i) line three of subsection (1); and
    - (ii) line four of subsection (5),
- the words "or mesothelioma", in each case;

- (b) by substituting for the words "three years", where they occur in—
  - (i) line seven of subsection (1); and
  - (ii) line three of subsection (5),the words "one year", in each case;
- (c) by substituting for the words "three years", where they occur in—
  - (i) line thirteen of subsection (5) ; and
  - (ii) line twenty-seven of subsection (5),the passage "one year, or in the case of pneumoconiosis or mesothelioma, at any time previous to the date of disablement," in each case;
- (d) by repealing subsection (5a); and
- (e) by adding after the word "thousand", in line twelve of subsection (14), the words "eight hundred and eighty-one".

7. Subsection (3) of section 9 of the principal Act is repealed. Amendment  
to s. 9.

8. Section 13 of the principal Act is amended— Amendment  
to s. 13.

- (a) by substituting for the passage beginning with the word "It", in line one of subsection (1), and ending with the word "liability", in line seven of that subsection, the passage "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";

- (b) by adding after the word "exempt", in line eight of the proviso to subsection (1), the passage ", subject to subsection (8) of this section,"; and
- (c) by adding at the end of the section subsections as follow—

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.

Addition of s. 16.

9. The principal Act is amended by adding after section 15 a section as follows —

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

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.

(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;
- (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.

Amendment  
to s. 17.

10. Subsection (4) of section 17 of the principal Act is amended by adding after the word "company", being the last word in the subsection, a passage as follows—

"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".

Addition  
of s. 17A.

11. The principal Act is amended by adding after section 17 a section as follows—

Death of  
employer,  
corporation  
ceasing to  
exist.

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—

- (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.

(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.

Amendment  
to s. 19.

12. Subsection (1) of section 19 of the principal Act is amended by substituting for the word "and", in line four, the word "or".

13. Section 27 of the principal Act is amended— Amendment  
to s. 27.

- (a) by adding after paragraph (b) of subsection (1) a paragraph as follows—
  - (ba) compensation in accordance with an order made under paragraph (ab) of subsection (7) of section twenty-nine of this Act; ; and
- (b) by adding after paragraph (d) of subsection (5) a paragraph as follows—
  - (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. .

14. Subsection (7) of section 29 of the principal Act is amended by adding after paragraph (a) paragraphs as follows— Amendment  
to s. 29.

- (aa) where the Board considers that an injury to a worker that is compensable under this Act has resulted in his permanent and total incapacity for work, making, except where an order for redemption of weekly payments by payment of a lump sum has been or is made under this Act in respect of the injury, such order as to the total liability of the employer for weekly payments including payments for dependants 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; .

Amendment  
to s. 35.

15. Subsection (1) of section 35 of the principal Act is amended—

- (a) by adding after paragraph (ca) a paragraph as follows—
  - (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; ;
  
- (b) by substituting for subparagraph (ii) of paragraph (g) a subparagraph as follows—
  - (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; ;
  
- (c) by adding after subparagraph (iv) of paragraph (g) a subparagraph as follows—
  - (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 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.

16. The First Schedule to the principal Act is amended—

Amendment  
to First  
Schedule.

(a) by substituting for subparagraph (i) of paragraph (a) of clause 1 a subparagraph as follows —

(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) or (III) of this subparagraph the sum of ten thousand eight hundred and eighty-one dollars less the amount of any weekly payments for the injury under this Act and less the amount of any lump sum paid in redemption thereof;
- (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 three dollars fifty cents weekly, payable from the Fund but recoverable for the Fund by the Board from the employer or his insurer in such manner as may be prescribed 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 three dollars fifty cents weekly, payable from the Fund but recoverable for the Fund by the Board from the employer or his insurer in such

manner as may be prescribed, until the child attains the age of twenty-one years or ceases to be a full time student, whichever is the sooner,

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 two thousand five hundred and thirty-seven dollars;

- (b) by substituting for the words "twenty-four dollars", in line four of subparagraph (i) of paragraph (c) of clause 1, the words "twenty-six dollars ten cents";
- (c) by substituting for the words "eighteen dollars", in line four of subparagraph (ii) of paragraph (c) of clause 1, the words "nineteen dollars sixty cents";
- (d) by substituting for the words "eight dollars", where they occur in lines thirteen and fourteen of subparagraph (iii) of paragraph (c) of clause 1, the words "eleven dollars eighty cents", in each case;
- (e) by substituting for the passage beginning with the word "In", in line thirty-five of paragraph (c) of clause 1, and ending with the word "worker", in line forty-four of that paragraph, a passage as follows—

In addition, while the worker is being paid weekly payments of compensation, there shall be payable—

- (iv) three dollars per week for each dependent child, or step-child, of the worker who has been born at the time of the accident, or is born during the incapacity, and is under the age of sixteen years or has attained that age and is a full time student under the age of twenty-one years;

- (v) six dollars ninety cents per week for a wife of the worker who was at the time of the accident, or who becomes during the incapacity, a dependant of the worker or, where there is not such a wife, for one parent of the worker, or person standing in the place of a parent of the worker, who was, at the time of the accident, or who becomes during the incapacity, a dependant of the worker. ;
- (f) by substituting for the passage beginning with the word "Weekly", in line forty-five of paragraph (c) of clause 1, down to but not including the word "In", in line forty-eight of that paragraph, a passage as follows—
- Weekly payments including payments in respect of dependants shall not exceed average weekly earnings. ;
- (g) by substituting for the word "dollars" in line sixty-seven of paragraph (c) of clause 1 the passage "eight hundred and eighty-one dollars except in the case of a worker whose injury, in the judgment of the Board, results in permanent and total disablement for work in which case the Board may make such determination with respect to that total liability of the employer as the Board thinks proper in the circumstances but in exercising its power to make an order for redemption of weekly payments of compensation by payment of a lump sum the Board shall not in any case take into account any amount which might have become payable beyond the amount of ten thousand eight hundred and eighty-one dollars if the worker had continued to receive compensation by weekly payments throughout the incapacity";

(h) by substituting for subparagraph (i) of paragraph (c) of the proviso to paragraph (c) of clause 1 a subparagraph as follows—

(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, one thousand six hundred and thirty two dollars, unless the Board finds that in the particular circumstances of the case, that amount is inadequate;

(i) by substituting for the word “fifty”, in line five of subparagraph (ii) of paragraph (c) of the proviso to paragraph (c) of clause 1, the word “sixty-three”;

(j) by substituting for subparagraph (iii) of paragraph (c) of the proviso to paragraph (c) of clause 1 a subparagraph as follows—

(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, 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; ;

- (k) by substituting for the word "fifty", in line eleven of subparagraph (iv) of paragraph (c) of the proviso to paragraph (c) of clause 1, the word "sixty-three";
- (l) by adding after the word "shall", in line ten of subparagraph (ii) of paragraph (d) of the proviso to paragraph (c) of clause 1, the passage ", subject to subparagraph (iv) of this paragraph,";
- (m) by adding after subparagraph (iii) of paragraph (d) of the proviso to paragraph (c) of clause 1, a subparagraph as follows—
  - (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. ;
- (n) by substituting for the passage "two dollars per day, but not exceeding the sum of twelve dollars per week", in lines thirteen to fifteen inclusive of paragraph (e) of the proviso to paragraph (c) of clause 1, the words "four dollars per day";

(o) by adding after paragraph (d) of clause 1, a paragraph as follows—

(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. ;

(p) by adding after clause 1 a clause as follows—

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 (a), shall be apportioned in such manner as the Board thinks fit.

(q) by substituting for the passage “two dollars per day, but not exceeding the sum of twelve dollars per week,” in lines seven to nine inclusive of paragraph (b) of clause 4, the words “four dollars per day”; and

(r) by adding after the word “thousand”, in line five of paragraph (i) of clause 11, the words “eight hundred and eighty-one”.

17. The principal Act is amended by substituting for the Second Schedule a Schedule as follows—

Substitution  
for Second  
Schedule.

### SECOND SCHEDULE.

TABLE.

Item.	Nature of Injury.	Amount of Compensation Payable. \$
1	Total loss of the sight of both eyes	10,881
2	Total loss of the sight of an only eye	10,881
3	Loss of both hands ....	10,881
4	Loss of both feet ....	10,881
5	Loss of a hand and a foot ....	10,881
6	Total and incurable loss of mental powers involving inability to work	10,881
7	Total and incurable paralysis of the limbs or of mental powers ....	10,881
	and, in addition, when a medical practitioner certifies the injury to be total and incurable paralysis of the limbs, an attendant's remuneration at a rate not exceeding seven dollars per week.	
8	Total loss of the right arm or of the greater part of the right arm ....	8,705
9	Total loss of the left arm or of the greater part of the left arm ....	8,145
10	Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	7,616
11	Total loss of the same for the left hand and arm ....	7,058
12	Total loss of a leg ....	8,145
13	Total loss of a foot or the lower part of the leg ....	6,528
14	Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye ....	8,145
15	Total loss of hearing ....	6,528
16	Partial deafness of both ears ..	Such percentage of \$6,528 as is equal to the percentage of diminution of hearing.
17	Complete deafness of one ear ..	2,176
18	Total loss of the sight of one eye ....	4,352
19	Loss of binocular vision ....	4,352
20	Total loss of the thumb of the right hand ....	3,265
21	Total loss of the thumb of the left hand ....	2,829
22	Total loss of the forefinger of the right hand ....	2,176

Item.	Nature of Injury.	Amount of
		Compensation Payable.
		\$
23	Total loss of the forefinger of the left hand ....	1,725
24	Total loss of a joint of the thumb ....	1,725
25	Total loss of the first joint of the forefinger of either hand ....	855
26	Total loss of the middle finger of the hand ....	1,290
27	Total loss of the little or ring finger of the hand ....	1,181
28	Total loss of a joint of a finger ....	637
29	Total loss of the great toe of either foot ....	2,176
30	Total loss of a joint of the great toe of either foot ...	1,088
31	Total loss of any other toe ....	637
32	Total loss of a joint of any other toe	203
33	Partial loss of the sight of both eyes or an only eye ....	Such percentage of \$10,881 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
34	Partial loss of the sight of one eye	Such percentage of \$4,352 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

Amendment  
to Third  
Schedule.

18. The Third Schedule to the principal Act is amended by adding at the end of the column "Description of Disease" a description of disease as follows—

Primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or of the peritoneum—in this Act called mesothelioma

and by adding, so as to appear directly opposite that description of disease, in the column "Description of Process" a description of process as follows—

Any process entailing substantial exposure to blue asbestos (Crocidolite) dust. .

Repeal of  
Fourth  
Schedule.

19. The Fourth Schedule to the principal Act is repealed.