

THE WORKERS' COMPENSATION ACT, 1912-1934

No. 69 of 1912

(as amended by Acts No. 43 of 1920, No. 9 of 1923, No. 40 of 1924, No. 14 of 1925, No. 34 of 1927, and No. 36 of 1934).

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WORKERS' COMPENSATION.

No. 69 of 1912.

(as amended by Acts Nos. 43 of 1920,* No. 9 of 1923,† No. 40 of 1924,‡ No. 14 of 1925,§ No. 34 of 1927,|| and No. 36 of 1934.¶)

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

[Assented to 21st December, 1912.]

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

1. This Act may be cited as the *Workers' Compensation Act, 1912-1934*.

Short title.
No. 36 of
1934, s. 4.

Proclaimed to commence 14th February, 1913; see *Government Gazette* of 24th December, 1912.

* Assented to 31st December, 1920. Proclaimed to commence on the 14th March, 1921; see *Gazette* of 4th February, 1921.

† Assented to 22nd February, 1923. Proclaimed to commence on the 2nd April, 1923; see *Gazette* of 12th March, 1923.

‡ Assented to 16th January, 1925. Proclaimed to commence (except so far as the Third Schedule extends to certain mining diseases) on the 1st March, 1925; see *Gazette* of 30th January, 1925, and 27th February, 1925.

§ Assented to 4th November, 1925.

|| Assented to 28th December, 1927.

By section 2 of the Act No. 40 of 1924 it was enacted as follows:—

2. (1.) It shall not be necessary to proclaim that the whole of this Act shall come into operation on one date, but the several sections and schedules may be proclaimed to come into operation on such dates as are respectively fixed by proclamation:

Provided that, notwithstanding that a date has been so fixed for the coming into operation of any section or schedule, such date may, at any time prior to that date, be postponed to such later date as is fixed by proclamation.

(2.) The Governor may, by such proclamation, limit the operation of section five [Section 7 in this compilation] so far as it extends to the diseases mentioned in the first column of the Third Schedule set opposite the words "mining or quarrying, or stone crushing or cutting" as the description of process, to any defined portion of the State; and may, by any subsequent proclamation, extend the operation as aforesaid of that section to any other defined portion of the State.

¶ Assented to 4th January, 1935.

Commence-
ment.

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

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.

Interpreta-
tion.

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

No. 40 of
1924, s. 3.

“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;

“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;

No. 9 of
1923, s. 2.

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;

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, illegitimate

son, illegitimate daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister; and with respect to an illegitimate worker includes his mother, and his brothers and sisters, whether legitimate or illegitimate, by the same father and mother;

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

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

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

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

“This Act” includes regulations made under this Act;

“This State” means the State of Western Australia;

“Worker” does not include any person whose remuneration exceeds four hundred pounds a year, or 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 a member of the police force, or an outworker, or a member of the employer’s family dwelling in his house; but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing.

No. 43 of
1920.
(Sec. 2).

The term “worker,” save as aforesaid, also includes—

(a) any person to whose service any industrial award or agreement applies;

No. 9 of
1923, s. 2.

- (b) any person working in connection with the felling, hewing, hauling, carriage, sawing, or milling of timber for another person who is engaged in the timber industry, for the purpose of such 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) any person engaged in manual labour under the Controller of Group Settlements under a scheme for group settlement of Crown lands: Provided that insurance against liability under this Act shall be charged to the cost of the work done under the scheme, and apportioned by the Controller between the several blocks comprised within each group.

Reference to
worker.

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.

Local and
other auth-
orities.

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

Tributers.
No. 43 of
1920, s. 2.

A tributer within the meaning of the word in the Mining Act, 1904, and its amendments, and the regulations thereunder, whose earnings do not exceed four hundred pounds a year, and any wages man employed by the tributer whose rate of remuneration does not exceed four hundred pounds per year, 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

No. 40 of
1924, s. 3.

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.

No. 14 of
1925, s. 2.

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

Application
to worker in
employment
of Crown.

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

Section 8
repeated by
No. 40 of
1924, s. 11
(2).

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

6. (1.) If in any employment personal injury by accident arising out of 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:

Liability of
employers to
workers for
injuries.
No. 40 of
1924, s. 4.

Schedule 1.

(2.) Provided that—

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

No. 40 of
1924, s. 4.

Liability in-
dependently
of Act.

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

Injuries due
to misconduct
of worker.

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

Where claim
exists else-
where as well
as in this
State.

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

Compensation
for injuries
mentioned in
the Second
Schedule.

No. 40 of
1924, s. 4.

(3.) (a) Notwithstanding the provisions of the First Schedule to this Act, the compensation payable for the injuries mentioned in the first column of the table set out in the Second Schedule to this Act shall be the amounts indicated in the second column thereof;

Nothing in the said table shall limit the amount of compensation payable for any such injury during any period of total incapacity resulting from that injury, but any sum so paid shall be deducted from the compensation payable in accordance with the said table;

- (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) The provisions of this subsection are subject to the proviso that no worker shall 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 seven hundred and fifty pounds compensation in addition to payment of such expenses as are provided for in paragraph (c) of the proviso to section one of the First Schedule, which paragraph is hereby made applicable to workers entitled to compensation under this subsection.

No. 40 of
1924, s. 20.

Settlement of
questions as
to compensa-
tion.

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

Schedules I.
and II.

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

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

by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly.

Penalties not affected.

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

Compensation on worker dying from or affected by certain industrial diseases.

No. 40 of 1924, s. 5.

See note to the Third Schedule.

Amended by No. 36 of 1934, s. 2.

*7. (1.) Where—

- (a) a worker is suffering from any of the diseases mentioned in the first column of the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed; or
- (b) the death of a worker is caused by any of the diseases 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 twelve months 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 six, 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.

(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 said period of twelve months in the employment to the nature of which the disease was due.

* See No. 40 of 1924, s. 2 (page 1 of this compilation), 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, and 24th December, 1926.

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

(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 death or disablement is to be given shall be the employer who last employed the worker during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the worker has voluntarily left his employment.

(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.

No. 34 of
1927, s. 2.

(9.) If an employer disputes the medical certificate as set out in subsection (8), the matter shall in accordance with regulations under this Act, be referred to a board consisting of one medical practitioner to be appointed by the Governor, who shall be Chairman, and two medical practitioners registered under the Medical Act, 1894, one to be nominated by the employer and the other by the worker; and the decision of the board, or any two members thereof, shall be final.

(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.) A worker coming to Western Australia after the commencement of this section of this Act, and the dependants of such worker, shall not be entitled to benefit under this section in so far as it refers to pneumoconiosis and miner's phthisis, until he has lodged with the Registrar a certificate from a medical referee appointed under this Act certifying him to be free from pulmonary tuberculosis, pneumoconiosis, and miner's phthisis.

(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.

No. 34 of
1927, s. 4.

(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 suffer-

ing from a disease to which this section does not apply, and also from silicosis, pneumoconiosis, or miner's phthisis, and his disability is partially caused by such industrial disease due to the nature of his employment, the worker shall be entitled to a proportionate part of the compensation payable under this section apportioned to the degree to which such disability is caused by silicosis, pneumoconiosis, or miner's phthisis, as the case may be.

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

Certain workers not to benefit under 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, 1906; and

Inserted by No. 36 of 1934, s. 2.

(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, 1906, 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 first proviso to regulation six (e) of the regulations made under the Mines Regulation Act, 1906; 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 Commonwealth Health 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 Commonwealth Health Laboratory so certifies in writing,

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, 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.

Notification of
disease.
No. 40 of
1924, s. 6.

8. (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: Fifty pounds.

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.

(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: Fifty pounds.

(3.) Every employer shall forthwith send written notice to the Registrar whenever it comes to his knowledge that any worker employed by him has suffered personal injury by accident, within the meaning of section six, and such notice shall state the name and address of the worker and the time when, the nature of, and the cause of the accident.

Penalty: Fifty pounds.

Time for taking
proceedings.

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

Notice of
accident.
No. 69 of
1912, s. 7.
No. 40 of
1924, s. 7.

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

- (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 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

Defect or inaccuracy in notice.

- (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.

Claim not within prescribed time.
No. 40 of 1924. s. 7.

(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.

Contents 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.

Service of claim.

(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 a body of persons.

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.

Insurance obligatory.
No. 40 of
1924, s. 11.

10. (1.) It shall be obligatory for every employer to obtain from an incorporated insurance office approved by the Minister a policy of insurance for the full amount of the liability to pay compensation under this Act to all workers employed by him.

Any employer who fails to comply with this section shall be liable to a penalty not exceeding five pounds 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 twenty pounds for every week during which he fails to comply with this section:

Provided that if an employer proves to the satisfaction of the Minister that such employer 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 such employer from the operation of this section.

Repeal of s. 8.
No. 40 of
1924, s. 11.

(2.) Section eight of the principal Act is repealed.

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

No. 69 of
1912, s. 9.

11. (1.) In any case where any person (hereinafter referred to as the principal) contracts with any other person (hereinafter referred to as the contractor) for the execution of any work by or under the contractor, and the contractor employs any worker therein, both the principal and the contractor shall, for the purposes of this Act, be deemed to be employers of the worker so employed, and shall be jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

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

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

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

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

Fourth
Schedule.

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

No. 40 of
1924, s. 19.

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

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

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

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

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

Provision as
to cases of
bankruptcy
of employer.
No. 69 of
1912, s. 10.

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

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

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

13. 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—

Remedies
both against
employer and
stranger.
No. 69 of
1912, s. 11.

(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

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

Indemnities.

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

Act to apply
as to accidents
to persons
employed on
"Western
Australian
ships."

(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.

Modifications
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 a worker leaving no dependants, no compensation shall be payable if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;
- (d) Where incapacity for work results from the injury, the owner of the ship may deduct from the payments due to the injured worker under this Act any expenses of maintenance which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment or otherwise, liable to defray and has, in fact, defrayed;
- (e) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury;
- (f) Subsections two and three of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of

seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

(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.

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

Appointment and remuneration of medical referees and practitioners.

No. 69 of 1912, s. 13.

No. 40 of 1924, s. 8.

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

Referee not to act if previously employed.

16. 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.

Prohibition of contracting out.

No. 40 of 1924, s. 9.

17. (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.

Deductions towards compensation not lawful.

No. 69 of 1912, s. 15.

No. 40 of 1924, s. 10.

(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.

Order for
detention of
ship.

No. 69 of
1912, s. 16.

18. (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.

Detention.

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

Parties.

(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.

Residence of
corporation.

(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.

Penalty for
proceeding to
sea.

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

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 ten pounds for every day until such person

returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

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

Agreements and receipts under the Act exempt from stamp duty.
No. 69 of 1912, s. 17.

20. 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:—

Special provision for securing compensation or damages to worker in mine, factory, building, or vessel.
No. 69 of 1912, s. 18.
No. 40 of 1924, s. 12.

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

Regulations.
No. 69 of
1912, s. 19.

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

Penalties.

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

Publication
and effect.

(3.) Such regulations shall—

- (a) be published in the *Government Gazette*;
- (b) take effect from the date of such publication, or from a later date, to be specified therein; and
- (c) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

Disapproval
by Parlia-
ment.

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

Rules of Local
Courts.
No. 69 of
1912, s. 20.

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

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

SCHEDULES.

Section 6.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

- | | |
|--|---|
| <p>1. The amount of compensation under this Act shall be --</p> <p>(a) Where death results from the injury --</p> <p>(i.) If the worker leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of Four Hundred Pounds, whichever of those sums is the larger, but not exceeding in any case Six Hundred Pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the worker's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;</p> <p>(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</p> <p>(iii.) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding One Hundred Pounds.</p> <p>(b) When total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings during the previous twelve months if the worker has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, together in either case with seven shillings and sixpence per week for each child under the age of sixteen years; such weekly payment not to exceed three pounds ten shillings, and the total liability of the employer in respect thereof not to exceed seven hundred and fifty pounds:</p> | <p>Amount of compensation.</p> <p>In case of death.</p> <p>No. 43 of 1920, s. 4.</p> <p>No. 40 of 1924, s. 13 (1).</p> <p>Amended by No. 36 of 1924, s. 3.</p> <p>In case of incapacity for work.</p> <p>No. 40 of 1924, s. 13 (2).</p> |
| <p>Provided that --</p> | |
| <p>(a) Where the amount of the average weekly earnings on which the weekly payment is to be assessed is thirty shillings or less, the weekly payment shall be an amount equal to the average weekly earnings; and when the amount of the average weekly earnings on which the weekly payment is to be assessed exceeds thirty shillings, but is such that fifty per centum thereof would not equal thirty shillings, the weekly payment shall be thirty shillings;</p> <p>(b) Where the remuneration of a worker consists of wages with board or board and lodging, the earnings of the worker shall, for the purposes of this Act, be deemed to be the amount 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 thirty shillings per week:</p> <p>(c) In addition to the compensation payable under this section there shall be payable a sum equal to the reasonable expenses incurred in respect of medicines, medical or surgical requisites, and the medical or surgical attendance (including first aid and ambulance or other service to carry the worker to a hos-</p> | <p>No. 40 of 1924, s. 13 (3).</p> <p>No. 40 of 1924, s. 13 (6).</p> <p>No. 40 of 1924, s. 13 (5).</p> <p>No. 34 of 1927, s. 3.</p> |

pital or other place for treatment, hospital charges for treatment and maintenance not exceeding ten shillings and sixpence per day, and also including treatment by specialists when their services are found necessary) on the worker in respect of his injury, and the provision of artificial limbs, but not exceeding in the aggregate one hundred pounds; and in the case of death, funeral expenses not exceeding twenty pounds.

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

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

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

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

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

Medical examination.

4. Where a worker has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he

refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

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

Payment in case of death.

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

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

Transfer of money from one Court to another.

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

Payment of weekly sum due to person under disability.

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

Questions as to dependants.

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

Power to vary order.

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

Investment in insurance society.

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

Deposit in Savings Bank.

12. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended

Periodical medical examinations.

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.

Regulations
as to such
examinations.

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

Reference to
medical
referee.

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

No. 40 of
1924, s. 14.

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

No. 40 of
1924, s. 14.

(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.

Rules of
Court as to
this para-
graph.

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

No. 34 of
1927, s. 3.

(f) Provided that, where a medical certificate produced under the provisions of subsection eight of section seven of this Act is disputed by the employer, the reference shall be to a board of three members as prescribed by subsection nine of that section.

Inserted by
No. 36 of
1934, s. 3.

(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.

Inserted by
No. 36 of
1934, s. 3.

14A. (i) Where any question arises between a worker and his employer as to the worker's condition or fitness for employment, 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.

(ii) The decision of such medical board 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 court 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 of Friendly Societies, and upon receipt of such application the regulations relating to the appointment and sitting of medical boards appointed under the authority of this Act, and to the determination of the questions referred to it, shall apply in the same manner as if the said application were an appeal from the decision of a medical referee to a medical board under and as provided for in clause fourteen of this Schedule.

(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 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.

(v) Clause twenty 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.

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

Review of weekly payment.

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

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

Lump sum in redemption of weekly payments.

Amended by No. 43 of 1920 (section 5).

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 magistrate shall take into consideration the ability of the employer to make compensation in that form.

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

Worker ceasing to reside in the State.

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

Payments not assignable.

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

Suspension of payment.

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

Registration of memorandum of agreement.

No. 40 of 1924, s. 15.

Workers' Compensation.

Provided that—

- (a) No such memorandum shall be recorded before seven days after the despatch by the Clerk of the Court of notice to the parties interested:
- (b) Where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with Rules of Court, proves that the worker has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Magistrate, under the circumstances, may think just:
- (c) The Magistrate may at any time rectify the register:
- (d) Where it appears to the Clerk of the Court on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the Magistrate, who shall, in accordance with Rules of Court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just:
- (e) The Magistrate may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

Effect of non-registration of agreement.

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

Registration obligatory.
No. 40 of
1924, s. 16.

22. From and after the commencement of this section, no agreement to which section twenty 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 section.

What Court or Magistrate to have jurisdiction.

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

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

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

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

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

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

SECOND SCHEDULE.

TABLE.

Nature of Injury.	Amount Payable.		
	£	s.	d.
Loss of both eyes	750	0	0
Loss of both hands	750	0	0
Loss of both feet	750	0	0
Loss of a hand and a foot	750	0	0
Total and incurable loss of mental powers; involving inability to work	750	0	0
Total and incurable paralysis of limbs or mental powers	750	0	0
Loss of either arm, or of the great part thereof	675	0	0
Loss of lower part of either arm, either hand, or five fingers of either hand	600	0	0
Loss of a leg	600	0	0
Loss of the lower part of a leg	562	10	0
Loss of a foot	525	0	0
Loss of one eye, with serious diminution of the sight of the other	675	0	0
*Loss of sight of one eye	375	0	0
Loss of hearing	600	0	0
Complete deafness of one ear	200	0	0
Loss of a thumb	225	0	0
Loss of a forefinger	150	0	0
Loss of part of a thumb	112	10	0
Loss of a little finger, middle finger, or ring finger	112	10	0
Loss of a toe or the joint of a finger	90	0	0
Loss of a joint of a toe	75	0	0

Section 6.

No. 40 of 1924, s. 17.

*For the partial loss of the sight of one eye there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

Section 7.

THIRD SCHEDULE:

No. 40 of
1924. s. 18.

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.
Zymotic diseases	Medical officer, nurse, orderly, or other person employed in a hospital or quarantine station or in an ambulance brigade.
*Poisoning by benzol or its nitro and amido derivatives (dinitrobenzol, anilin, and others)	Any process involving the use of a nitro or amido derivative of benzol or its preparations or compounds.
*Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its preparations or compounds.
*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.
*Chromic ulceration	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium or their preparations.
Eczematous ulceration of the skin produced by dust, or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust	Any industrial process.
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to mineral oils, pitch, tar or tarry compounds	Handling of mineral oils, pitch, tar or tarry compounds.
Scrotal epithelioma (Chimney sweep's cancer)	Chimney sweeping.
*Compressed air illness	Any process carried on in compressed air.
*Trade spasms and cramps	Mining, or quarrying, or stone crushing or cutting.†
*Pneumoconiosis	
*Miners' phthisis	
*Ankylostomiasis	
*Nystagmus	
Subcutaneous cellulitis of the hand (beat hand)	
Subcutaneous cellulitis over the patella (miner's beat knee)	
Acute bursitis over the elbow (miner's beat elbow)	
Inflammation of the synovial lining of the wrist joint and tendon sheath	
*Dermatitis	

† As to the operation of Section 7 and this schedule with respect to these diseases, see Section 2 of the Act No. 40 of 1924, printed on page 1 of this compilation, and Proclamations in the *Gazette* of 30th January, 1925, 27th February, 1925, 4th June, 1926, 11th June, 1926, 10th December, 1926, and 24th December, 1926.

FOURTH SCHEDULE.

Section 11.

No. 40 of
1924, s. 15.

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