

**WORKERS' COMPENSATION.**

## SYNOPSIS.

## Section.

1. Short Title.
2. Commencement.
3. Repeal.
4. Increase of existing payments.
5. Interpretation.  
Reference to worker.  
Local and other authorities.  
Tributers.
6. Application to worker in employment of Crown.  
Reciprocal application.  
Compensation in relation to workers employed partly in and partly out of the State.
7. Liability of employers to workers for injuries.  
Liability independently of Act.  
Injuries due to misconduct of worker.  
Where claim exists elsewhere as well as in this State.  
Compensation for injuries mentioned in the Second Schedule.  
Settlement of questions as to compensation.  
Where action brought for injury for which compensation is payable under this Act.  
Board may refer to Medical Board.  
Penalties not affected.
8. Compensation on worker dying from or affected by certain industrial diseases.  
Certain workers not to benefit under this section.
9. Notification of disease.
10. Compensation for hernia.
11. Permanent partial incapacity.
12. Time for taking proceedings.  
Notice of accident.  
Time for making claim.  
Defect or inaccuracy in notice.  
Claim not within prescribed time.  
Contents of claim.  
Service of claim.  
Where employer is a body of persons.  
Where employer is the Crown.
13. Insurance obligatory.  
Approved insurance office must insure.

## Section.

- Insurance relating to mining operations.  
Saving of existing policies.  
Revocation of exemption and discharge and return of securities.
14. Insurance offices to furnish certain statements.
15. Minister may authorise persons to inquire if employers have obtained insurance.
16. Principal and contractor, and sub-contractor deemed employers.
17. Provision as to cases of bankruptcy of employer.
18. Remedies both against employer and stranger.  
Indemnities.
19. Act to apply as to accidents to persons employed on "Western Australian ships."  
Modifications of Act in case of accident to seamen.  
Crew of fishing vessel.
20. Prohibition of contracting out.
21. Reductions towards compensation not lawful.
- 21A. Medical Board shall prepare and maintain "The Register of Specialists."
22. Order for detention of ship.  
Detention.  
Parties.  
Residence of corporation.  
Penalty for proceeding to sea.  
Officer taken to sea.
23. Agreements and receipts under the Act exempt from stamp duty.
24. Special provision for securing compensation and damages to worker in mine, factory, building, or vessel.
25. Workers' Compensation Board.  
Qualifications of Chairman.  
Term of Office of Chairman.  
Nominee members.  
Appointment on failure of nomination.  
Term of office of nominee member.  
Vacancy in office of nominee member.

*Workers' Compensation.*

## Section.

- Appointments to office of nominee member for remainder of unexpired term.
- Appointment of deputy members.
- Validity of appointments of deputies to fill vacancies.
- Retirement.
- Remuneration allowances and leave.
- Prohibition of other employment for remuneration
- Determination of questions by majority.
- Chairman alone to decide points of law.
- Quorum.
- Board a corporate body.
- 26. Co-operation of Public Service.
- Registrar and staff of Board.
- 27. Workers' Compensation Fund.
- Board to prepare and submit estimate to Minister annually.
- Contributions to fund by insurers.
- Contributions to fund by self insurers.
- Return to be furnished to board by insurers.
- Penalty for failure to furnish return.
- Penalty for false return.
- Audit of Board's accounts.
- 28. Appointment of Registrar.
- Record to be kept.
- Deputy Registrar.
- Proceedings before Board.
- Payment of compensation awarded.
- No deduction from compensation by representative of claimant unless authorised by the Board.
- 29. Jurisdiction of the Board.
- Injunction prohibition certiorari, etc., excluded.
- Board authorised to reconsider its own decisions.
- Board to determine each case on substantial merits.
- Party may appear in person or by representative.
- Board may delegate power to make inquiries and act upon delegates report.
- Provisions relating to delegation to Local Courts.
- Certified copies of Board's records to be prima facie evidence.
- Enumeration of certain matters of jurisdiction.

## Section.

- Orders relating to payment of compensation in respect of persons under legal disability or who are dependants.
- Issue of certificate of Board's finding.
- Case stated on question of law.
- Case stated to be considered and determined by Supreme Court.
- Board to furnish workers and employers with information as to their rights.
- Board to endeavour to conciliate.
- Board may regard illegal contracts of employment as valid.
- Powers of Board.
- Investigation of industrial diseases.
- Computation of statistics.
- Establishment and maintenance of register of medical practitioners authorised to treat injured workers.
- Medical practitioners not on register to be prohibited from charging or receiving professional fees.
- Board may hold inquiries.
- Establishment and maintenance of register of medical practitioners to assess disability in relation to Second Schedule.
- Education in accident prevention, etc., examinations in and certificates of proficiency.
- Certificates of proficiency may be cancelled and recalled.
- 30. Premium Rates Committee.
- Insurers may charge rates lower than those determined by the Premium Rates Committee.
- 31. Annual report.
- 32. Protection of Board and members.
- 33. General penalty.
- 34. Judicial notice.
- 35. Rules and regulations.
- Regulations concerning the functions of the Board.
- Transitional provisions.
- Registration of Certificate at Local Court and provision for enforcement of award, order, etc.

WESTERN AUSTRALIA.

# WORKERS' COMPENSATION.

No. 69 of 1912.

[As amended by Acts No. 43 of 1920 (a); No. 9 of 1923 (b); No. 40 of 1924 (c); No. 14 of 1925 (d); No. 34 of 1927 (e); No. 36 of 1934 (f); No. 50 of 1938 (g); No. 35 of 1939 (h); No. 36 of 1941 (i); No. 42 of 1944 (j); No. 77 of 1948 (k); No. 33 of 1949 (l); No. 48 of 1951 (m); No. 64 of 1952 (n) and No. 88 of 1953 (o) and reprinted for the third time pursuant to the Amendments Incorporation Act, 1938.

In this reprint the numbering of sections as adopted in the 1949 reprint is retained.]

## 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 the 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, 1912-1953*.

Short title.  
No. 69 of  
1912, s. 1;  
No. 88 of  
1953, s. 1 (3).

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

Commence-  
ment.  
No. 69 of  
1912, s. 2.

- (a) Assented to 31st December, 1920. Proclaimed to commence on the 14th March, 1921; see *Gazette* of 4th February, 1921.
- (b) Assented to 22nd February, 1923. Proclaimed to commence on the 2nd April, 1923; see *Gazette* of 12th March, 1923.
- (c) Assented to 16th January, 1925. Proclaimed to commence (except so far as the Third Schedule extends to certain diseases) on the 1st March, 1925; see *Gazettes* of 30th January, 1925, and 27th February, 1925; and footnote § to the Third Schedule of this reprint.
- (d) Assented to 4th November, 1925.
- (e) Assented to 28th December, 1927.
- (f) Assented to 4th January, 1935.
- (g) Assented to 31st January, 1939.
- (h) Assented to 16th December, 1939.
- (i) Assented to 19th December, 1941.
- (j) Assented to 11th January, 1945.
- (k) Assented to 25th January, 1949. Proclaimed to commence on the 8th April, 1949; see *Gazette* of 18th March, 1949.
- (l) Assented to 26th October, 1949.
- (m) Assented to 2nd January, 1952. Proclaimed to commence on the 25th January, 1952; see *Gazette* of 25th January, 1952.
- (n) Assented to 7th January, 1953.
- (o) Assented to 21st January, 1954. Proclaimed to commence on the 12th March, 1954; see *Gazette* of 12th March, 1954.

consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.\*

Repeal.  
No. 69 of  
1912, s. 3.

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.

S. 4 substituted by No. 33 of 1949, s. 3.

4. Any worker who on the 8th day of April, 1949, was receiving or entitled to receive weekly payments for any period of total or partial incapacity in accordance with the provisions of the Workers' Compensation Act, 1912-1944, and whose incapacity continues after that time, or who on or after the 8th day of April, 1949, became or becomes entitled to weekly payments in consequence of an accident which occurred prior to the 8th day of April, 1949, shall as from that date be entitled to payments, whether weekly payments or otherwise, in accordance with the provisions of the Workers' Compensation Act, 1912-1948, provided that nothing in this Act shall be construed so as to entitle any such worker to any increase in weekly payments made or payable before that date.

Interpretation.  
No. 69 of  
1912, s. 4 and re-numbered s. 5 in 1949 reprint†.

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

Inserted by  
No. 77 of  
1948, s. 5 (a).

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

Amended by  
No. 40 of  
1924, s. 3;  
No. 36 of  
1941, s. 2;  
No. 77 of  
1948, s. 5 (b).  
No. 88 of  
1953, s. 2.  
[Cf. Q. Act,  
1916-1939,  
s. 3 (1) and  
s. 18.]  
Cf. s. 6 (5)  
post.

“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

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

† i.e., the Workers' Compensation Act, 1912-1948, approved for reprint on the 2nd February, 1949, and reprinted pursuant to the Amendments Incorporation Act, 1938.

been so dependent, and as are resident in the Commonwealth of Australia or in any part of the Dominions of the Crown or any other country, but does not include such members of the worker's family who do not reside permanently in the State at the time the worker dies or is incapacitated if his death or incapacity occurs after a period of five years of his first residing in the State.

"Employer" includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person, but shall be entitled to be indemnified by that other person to the extent of any compensation paid under this Act by the employer in respect of any injury received by such worker whilst he is working for that other person.

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

Inserted by  
No. 9 of  
1923, s. 2;  
amended  
by No. 48 of  
1951, s. 4(a).

"Fund" means the Workers' Compensation Board Fund.

Inserted by  
No. 77 of  
1948, s. 5 (c).  
Cf. Q. Act,  
1916-1939,  
s. 3 (1).

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister; and with respect

Amended by  
No. 77 of  
1948, s. 5 (d).

to an ex-nuptial worker includes his mother, and his brothers and sisters, whether legitimate or ex-nuptial, by the same father and mother.

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

“Outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or 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.

Amended by  
No. 77 of  
1948, s. 5 (e).

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

Inserted by  
No. 77 of  
1948, s. 5 (f).

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

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

Added by  
No. 48 of  
1951, s. 4 (b).

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

“This Act” includes regulations made under this Act.

“This State” means the State of Western Australia.

\* Now Medical Act, 1894-1952. See No. 65 of 1952, s. 1 (3).

“Worker” does not include any person whose remuneration exceeds one thousand two hundred and fifty 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 except as hereinafter provided in this definition a member of the police force, or an outworker, or except as hereinafter provided in this definition a member of the employer’s family dwelling in his house; but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing: The worker’s remuneration shall not include overtime.

Amended by  
No. 43 of  
1920, s. 2;  
No. 36 of  
1941, s. 2.  
No. 77 of  
1948, s. 5  
(g) (i) (ii);  
No. 48 of  
1951, s. 4 (c).

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

No. 77 of  
1948, s. 5  
(g) (iii).

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

No. 9 of  
1923, s. 2.

- (a) any person to whose service any industrial award or agreement applies;
- (b) any person working in connection with the felling, hewing, hauling, carriage, sawing, or milling of timber

No. 77 of  
1948, s. 5  
(g) (iv).

*Workers' Compensation.*

or firewood, or both for another person who is engaged in the timber industry or firewood industry, or both, 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  
authorities.**

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;  
No. 42 of  
1944, s. 2;  
No. 40 of  
1924, s. 3;  
No. 77 of  
1948, s. 5 (h);  
No. 48 of  
1951, s. 4 (c).**

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 one thousand two hundred and fifty pounds a year, and any wages man employed by the tributer whose rate of remuneration does not exceed one thousand two hundred and fifty 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 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.

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

Application  
to worker in  
employment  
of Crown.  
No. 69 of  
1912, s. 5;  
and re-  
numbered  
s. 6 in 1949  
reprint\*.

(2) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

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

(4) In all claims against the Crown, whether arising out of injuries to workers employed by or under the Crown, or in respect of any other claim under this Act by any other person, proceedings may be taken and prosecuted under this Act by suit

\* See footnote † to s. 5 *ante*.

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.

Reciprocal application.  
Inserted by No. 77 of 1948, s. 6 (b).  
Cf. Q. Act, 1916-1939, s. 18 and s. 5 ante.

(5) If the Governor is satisfied that by the laws, operating similarly to the provisions of this Act, of any other country, whether part of the Dominions of the Crown or not, compensation for injury by accident to a deceased worker is payable to his dependants who are resident in this State, the Governor may, by Order in Council, declare that when a worker is so injured in this State and dies as a result of the injury, his dependants who are not resident in this State shall have the same rights and remedies under the provisions of this Act, as if they were resident in this State and if satisfied that those laws have ceased wholly or partly so to operate the Governor may in like manner revoke or vary such declaration and effect shall be given thereto.

Compensation in relation to workers employed partly in and partly out of the State.  
Inserted by No. 77 of 1948, s. 6 (b).

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

Provided that—

- (a) compensation shall not be payable pursuant to the provisions of this subsection if in respect of the injury the worker has (and

in the case of the death of the worker, his dependants have) received workers' compensation in any part of the Commonwealth of Australia (other than the State) or territory under the authority of the Commonwealth or obtained judgment against his employer in respect of the injury independently of this Act;

- (b) if the worker receives compensation pursuant to the provisions of this subsection in respect of the injury and subsequently in respect of the injury receives workers' compensation in any part of the Commonwealth of Australia (other than the State) or territory under the authority of the Commonwealth or obtains judgment against his employer in respect of the injury independently of this Act the employer shall be entitled to recover from the worker the amount of compensation paid by him pursuant to the provisions of this section.

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

Liability of employers to workers for injuries. No. 69 of 1912, s. 6 and re-numbered s. 7 in 1949 reprint\*; 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;
- (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

No. 40 of 1924, s. 4.

Liability independently of Act. Amended by No. 77 of 1948, s. 7 (a).

\* See footnote † to s. 5 ante.

shall not be liable to pay compensation for injury to a worker by accident arising out of or 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 elsewhere 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.**

Inserted by No. 40 of 1924, s. 4; Amended by No. 77 of 1948, s. 7 (b) (i).

No. 42 of 1944, s. 3; No. 43 of 1951, s. 14; No. 88 of 1953, s. 3.

(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, subject to the provisions of this Act relating to that Second Schedule, be the amounts indicated in the second column thereof;

Nothing in the said table shall limit the amount of compensation payable for such injury during any period of total incapacity resulting from that injury and any sum so paid shall not be deducted from the compensation payable in accordance with the said table except in the case where and then only to the extent that the total of two thousand one hundred pounds would be exceeded otherwise.

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

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

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

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

Inserted by  
No. 77 of  
1948, s. 7 (b)  
(11).

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

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

that part or faculty of the body—

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

(ii) When a worker has received the whole of the amount set out in the second column of the table and indicated as payable in respect of the loss of, or the permanent loss of, the efficient use of any part or faculty of the body referred to in the first column of the table—

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

that part or faculty of the body—

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

that part or faculty of the body, then and in such case, the worker shall not be entitled to any further

payment under the provisions of the table in respect of that part or faculty.

Amended by  
No. 77 of  
1948, s. 7 (b)  
(iii) (v);  
No. 48 of  
1951, s. 14;  
No. 88 of  
1953, s. 3.

(f) 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 two thousand one hundred pounds compensation in addition to payment of such expenses as are provided for in paragraph (c) of the proviso to clause one of the First Schedule, which paragraph is hereby made applicable to workers entitled to compensation under this subsection, and to the proviso that if the principal place of residence of a dependant of a worker is elsewhere than in any part of the Dominions of the Crown, the dependant shall not be entitled to compensation under the provisions of this Act, unless the worker is wholly supporting the dependant when the injury is caused.

Inserted by  
No. 77 of  
1948, s. 7  
(b) (vi);  
amended by  
No. 48 of  
1951, s. 14;  
No. 88 of  
1953, s. 3.

(g) Nothing in the foregoing provisions of this subsection or in the table shall limit the amount of compensation payable for any injury during any period of incapacity due to illness resulting from that injury, and the amount of compensation payable pursuant to the foregoing provisions of this subsection and the table shall be payable in addition to any weekly payments payable in respect of incapacity due to that illness, except in the case where and then only to the extent that the total of two thousand one hundred pounds would be exceeded otherwise.

Inserted by  
No. 77 of  
1948, s. 7  
(b) (vi).

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

(i) In the case of a worker who habitually uses his left hand and arm to perform work, usually performed by a worker with his right hand and arm, the table shall be read, construed and applied as if the word "left" were substituted for the word "right," and the word "right" were substituted for the word "left."

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

(a) that the amount of compensation which would be so payable would be substantially less than the amount of compensation which would be payable under the provisions of the First Schedule to this Act if compensation were assessable under that Schedule; and

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

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

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

Settlement of questions as to compensation. Substituted by No. 77 of 1948, s. 7 (c).

(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

Where action brought for injury for which compensation is payable under this Act.

Amended by No. 77 of 1948, s. 7 (d).

would have been liable to pay compensation under this Act, the Court in which the action is tried shall assess such compensation, or refer the assessment of the compensation to the Board, and shall deduct therefrom all the costs which have been caused by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly.

Board may refer to Medical Board.  
Inserted by No. 77 of 1948, s. 7 (e).

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

Penalties not affected.

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

Compensation on worker dying from or affected by certain industrial diseases.  
Inserted by No. 40 of 1924, s. 5 as s. 6A; renumbered as s. 7 in 1943 reprint† and as s. 8 in 1949 reprint‡.  
Amended by No. 36 of 1934, s. 2.  
Amended by No. 77 of 1948, s. 8 (a).

\*8. (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 three years 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

|| Now Medical Act, 1894-1952. See No. 65 of 1952, s. 1 (3).

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

† i.e., the Workers' Compensation Act, 1912-1941, and reprinted pursuant to the Amendments Incorporation Act, 1938, and contained in the Reprinted Acts of the Parliament of Western Australia, Vol. 2.

‡ See footnote † to s. 5 *ante*.



accordance with this Act as if the disease were a personal injury by accident within the meaning of section seven, suffered by the worker at the place of his employment, and the provisions of this Act shall apply thereto accordingly, subject, however, to the provisions of this section.

(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 three years in the employment to the nature of which the disease was due.

Amended by  
No. 77 of  
1948, s. 8 (b).

Provided that—

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

Amended by  
No. 77 of  
1948, s. 8 (c).

Amended by  
No. 77 of  
1948, s. 8 (d).

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.

Amended by  
No. 77 of  
1948, s. 8 (e).

(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 period of three years 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.

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

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

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

Provided that before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either House of

Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within fourteen sitting days of such House after the said Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

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

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

(13) Subject to the provisions of this section, if a worker, disabled by disease from earning full wages at the work at which he was employed, is found to be suffering from a disease to which this section does not apply, and also from 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.

No. 34 of  
1927, s. 4.

(14) Notwithstanding any of the provisions of the Mine Workers' Relief Act, 1932-1943††, or of this Act, the compensation payable to any worker in respect of any period or periods of total or partial incapacity due or deemed due solely to silicosis, whether early or advanced, pneumoconiosis, or miner's phthisis, arising or deemed to arise out of or in the course of employment in any of the processes described in the second column of the Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting, or stone or metal screening, or to any of those diseases in combination with any other disease, shall not in any case exceed two thousand one hundred pounds. The provisions of this subsection shall apply whether the period or

Inserted by  
No. 77 of  
1948, s. 8 (1)  
as (13a) and  
renumbered  
as (14) in  
1949 reprint.  
Amended by  
No. 33 of  
1949, s. 5  
(b) (1);  
No. 48 of  
1951, s. 14;  
No. 88 of  
1953, s. 4 (a).

† See footnote † to s. 5 *ante*.

†† Now Mine Workers' Relief Act, 1932-1953. See No. 7 of 1953, s. 1 (3).

periods of incapacity occur or result while the worker is employed by the same or different successive employers.

Amended by  
No. 33 of  
1949, s. 5  
(b) (ii);  
No. 48 of  
1951, s. 14;  
No. 88 of  
1953, s. 4 (b).

A worker who has received the full amount of compensation—

- (a) of seven hundred and fifty pounds prior to the coming into operation of the Workers' Compensation Act Amendment Act, 1948;
- (b) of one thousand two hundred and fifty pounds prior to the coming into operation of the Workers' Compensation Act Amendment Act, 1951;
- (c) of one thousand seven hundred and fifty pounds prior to the coming into operation of the Workers' Compensation Act Amendment Act, 1953; or
- (d) after the coming into operation of the Workers' Compensation Act Amendment Act, 1953, of the sum of two thousand one hundred pounds in respect of such period or periods of incapacity or, in the case of a worker whose disease has resulted in an injury also entitling him to compensation under the Second Schedule of the Act, of the appropriate maximum amount in respect of such period or periods of incapacity and such injury

and who is subsequently employed in any of the processes described in the second column of the Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting, or stone or metal screening, by the same employer or different successive employers, shall not be entitled in any circumstances whatever to any further compensation or benefit for any period of incapacity, due to any of those diseases or combination of any of them, or with any other disease or aggravation or acceleration of any of them, or any combination of any of them with any other disease arising or deemed to arise from the subsequent employment in any of those processes.

For the purpose of this section, aggravation or acceleration includes the development of pneumoconiosis or early silicosis into advanced silicosis.

(15) Where in any proclamation made under section two of Act No. 40 of 1924 reference is made to the diseases mentioned in the Third Schedule to this Act set opposite the description of the process mentioned therein as mining, quarrying, or stone crushing or cutting, or stone or metal screening, the reference shall, subject to any proclamation to the contrary, from the date of the coming into operation of the Workers' Compensation Act Amendment Act, 1948, be deemed as regards those diseases, to include silicosis, and, as regards that description of the process, to include stone or metal screening, notwithstanding that when the proclamation was made under the provisions of that section the Third Schedule did not include among those diseases silicosis, and did not include among those processes stone or metal screening.

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

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

- (a) is or was employed or was last employed in, on, or about a mine within the meaning of the Mines Regulation Act, 1906<sup>‡</sup>; and
- (b) the disease by which he is or was disabled is one of the diseases by reason whereof he would be liable, if found to be suffering from the same, to be prohibited under or by virtue of the regulations made under the Mines Regulation Act, 1906<sup>‡</sup>, 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

Certain workers not to benefit under this section. Inserted by No. 36 of 1934, s. 2, and numbered s. 7 (14) in 1943 reprint<sup>††</sup> and s. 8 (16) in 1949 reprint.\*

\* See footnote † to s. 5 ante.

†† See footnote † to this section ante.

‡ See No. 54 of 1946.

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.

Inserted by No. 40 of 1924, s. 6, as s. 6B and numbered s. 8 in 1943 reprint† and renumbered s. 9 in 1949 reprint.\*

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

Penalty—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.

† See footnote † to s. 8 *ante*.

†† Now Mine Workers' Relief Act, 1932-1953. See No. 7 of 1953, s. 1 (3).

‡ See No. 54 of 1946.

\* See footnote † to s. 5 *ante*.

(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 seven, 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.

10. (1) For the purposes of this Act a worker's incapacity resulting from hernia shall be deemed to be incapacity resulting from injury by accident arising out of or in the course of his employment only if—

Compensation for hernia.  
Added by No. 77 of 1948, s. 9 as s. 8A, and renumbered s. 10 in 1949 reprint.\*  
Amended by No. 48 of 1951, s. 5.  
Cf. N.Z. Act, No. 23 of 1943, s. 6.

(a) the hernia is—

- (i) clinical hernia of disabling character appearing to have recently occurred for the first time; or
- (ii) an aggravation or strangulation of a pre-existent hernia resulting in immediate pain and disablement; and

(b) in either case the onset of the hernia is immediately preceded by an accident arising out of or in the course of the employment and of such a nature as to be likely to cause the hernia; and

(c) when the employer or his agent or other representative is immediately available, the worker reports his condition to his employer or his agent or other representative

\* See footnote † to s. 5 ante.

*Workers' Compensation.*

immediately after the occurrence of the accident, or when the employer or his agent or other representative is not immediately available, ceases work at the time of the accident and reports his condition to his employer or his agent or other representative so soon as practicable, but within forty-eight hours of the accident and no later, the provisions of paragraph (a) of the proviso to subsection (1) of section twelve of this Act notwithstanding, unless the Board is of opinion that, owing to circumstances beyond the worker's control, he was unable so to cease work and report within that time, the intention being that every such case of hernia shall be reported so soon as is practicable; and

- (d) the worker obtains a certificate from a duly qualified medical practitioner within seventy-two hours of the accident, or within such longer period as may be justified only by the distance between the place where the accident is sustained and the surgery of the nearest medical practitioner, or the impossibility of obtaining a duly qualified medical practitioner to give such a certificate, that the hernia is of recent development or an aggravation or strangulation of a pre-existing hernia and is consistent with the nature of the accident, unless the Board is of opinion that owing to circumstances beyond the worker's control he was unable so to obtain the certificate, the intention being that the certificate shall be obtained so soon after the accident as is practicable.

Notwithstanding anything contained in the preceding paragraphs of this section, the Board, on application by the worker, shall decide whether the worker is entitled to have his hernia accepted as an injury within the meaning of the Act, and the decision of the Board shall be final.

(2) Where the Board is satisfied that it is reasonable so to do, the Board may order that a worker's right to compensation under this section



shall cease on a date to be specified in the order, being not less than four weeks from and after the date of the order, unless the worker undergoes a surgical operation for a cure of the hernia.

(3) Where an order is made under the last preceding subsection, the following provisions shall apply:—

- (a) If the worker does not submit himself to the operation before the date so specified or before such later date as the Board may specify in any subsequent order, the weekly payments of compensation payable to the worker shall cease on that date or later date, as the case may be.
- (b) If the worker submits himself to the operation, the weekly payments of compensation payable to him shall continue for a period of twelve weeks from the date of the operation and shall then cease:

Provided that if the worker is not wholly recovered at the end of that period the Board may extend his right to receive weekly payments of compensation for such further period or periods as the Board thinks fit.

(4) The failure of a worker to make any report to his employer in pursuance of the foregoing provisions of this section shall not deprive the worker of any compensation to which he may be otherwise entitled in respect of hernia if the Board considers that the failure was excusable.

11. (1) When permanent partial incapacity of a worker results from personal injury by accident within the meaning of section seven of this Act, the liability of the employer to pay compensation in accordance with the First Schedule, pursuant to section seven or pursuant to section eight of this Act, as the case may be, shall be proportionate to the degree of that incapacity, the ratio of that

Permanent partial incapacity. Added by No. 77 of 1948, s. 9, as s. 8B, and renumbered s. 11 in 1949 reprint.\*

\* See footnote † to s. 5 ante.

liability to liability for permanent total incapacity being the same as the ratio of that permanent partial incapacity to the permanent total incapacity.

(2) For the purposes of this section partial incapacity includes the degree to which the disability referred to in section eight, subsection (13), is caused by silicosis, pneumoconiosis or miner's phthisis due to the nature of the worker's employment.

Amended by  
No. 48 of  
1951, s. 14;  
No. 88 of  
1953, s. 5.

(3) Nothing in subsections (1) or (2) of this section shall limit the amount of compensation payable for such injury during any period of total incapacity resulting from that injury and any sum so paid shall not be deducted from the compensation payable in accordance with subsections (1) and (2) of this section except in the case where and then only to the extent that the total of two thousand one hundred pounds would be exceeded otherwise.

Time for  
taking  
proceedings.  
No. 69 of  
1912, s. 7, and  
renumbered  
s. 9 in 1943  
reprint\* and  
s. 12 in 1949  
reprint.†

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

Amended by  
No. 40 of  
1924, s. 7.

Notice of  
accident.

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

Time for  
making  
claim.

(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:

Provided always that—

Defect or  
inaccuracy  
in notice.

(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

\* See footnote † to s. 8 ante.  
† See footnote † to s. 5 ante.

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

- (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.  
Amended by 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.

(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.

Where employer is the Crown.

[S. 8 of No. 69 of 1912 repealed by No. 40 of 1924.]

Insurance obligatory.  
 Inserted by No. 40 of 1924, s. 11 as s. 8a and renumbered s. 10 in 1943 reprint,\* and s. 13 in 1949 reprint.†  
 Amended by No. 77 of 1948, s. 10 (a).

13. (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, except when an insurer is permitted by the Board to refuse insurance of that liability.

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. For the purpose of this section the term "incorporated insurance office" includes any duly incorporated company carrying on insurance business in Western Australia under the provisions of the Commonwealth Insurance Act, 1932 (No. 4 of 1932).

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

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

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

Inserted by No. 50 of 1938, s. 3, as subs. (4); renumbered subs. (3) in 1943 reprint.\*

(3) Where by virtue of the conditions of any policy or contract of insurance obtained by an employer in compliance with this section the amount of premium payable for such policy or contract of insurance, or for a renewal thereof, is ascertained by reference

\* See footnote † to s. 8 ante.  
 † See footnote † to s. 5 ante.

to, or upon the basis of the aggregate amount of, wages paid by such employer to his employees during a specified period as disclosed by a statement to be furnished by the employer to the insurer, such employer shall, if so requested by the insurer, verify the particulars furnished in such statement by a statutory declaration made by the employer under section one hundred and six of the Evidence Act, 1906.

(4) (a) Any incorporated insurance office which has received the approval of the Minister under the provisions of this section shall, subject to the provisions of paragraph (d) of this subsection, and unless permitted by the Board to refuse insurance of that liability wholly or in part in respect of a member of an employer's family who is dwelling in his house and is referred to in the definition "Worker" in section five of this Act, insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

Approved insurance office must insure.

Inserted by No. 77 of 1948, s. 10 (b).

Amended by No. 33 of 1949, s. 6 (a).

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

(c) Subject to the provisions of paragraph (d) of this subsection, any such insurer as is referred to in this subsection, failing to comply with or contravening the provisions of this section, commits an offence.

Penalty—One hundred pounds.

(d) The provisions of this subsection shall not apply to a refusal by any such insurer, as is referred to in this subsection, to issue a policy of insurance for the liability of any employer to pay compensation under this Act in respect of silicosis, pneumoconiosis or miner's phthisis (or any of those diseases in combination with any other disease) which may arise or may be deemed to arise out of or in the course of employment of any worker in any of the processes described in the second column of the

Third Schedule to this Act as mining, or quarrying, or stone crushing or cutting, or stone or metal screening.

Insurance relating to mining operations. Inserted by No. 77 of 1948, s. 10 (b).  
Amended by No. 33 of 1949, s. 6 (b).  
Cf. No. 40 of 1924, s. 2.

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

Saving of existing policies.

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

Revocation of exemption and discharge and return of securities. Inserted by No. 77 of 1948, s. 10 (b).

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

- (i) shall apply to the Minister for a revocation of the exemption referred to in that proviso; and
- (ii) shall apply to the Minister for the return of securities lodged by him or them with the Treasury discharged from the charge referred to in that proviso; and
- (iii) shall prove to the satisfaction of the Minister that the employer or the group, as the case may be, has ceased to employ workers or has obtained from an approved insurer within the meaning of this section, a policy of insurance for the full amount of liability to pay compensation under this Act to all workers employed by him or them;

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

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

Insurance offices to furnish certain statements. Inserted by No. 35 of 1939, s. 2, as s. 10A, and renumbered as s. 11 in 1943 reprint,\* and s. 14 in 1949 reprint.†

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

Amended by No. 48 of 1951, s. 6 (b).

- (a) a statement showing the names, addresses, and occupations of each employer who has during the month in question effected a policy or contract of insurance with the insurance office concerned against liability under this Act; and
- (b) a statement showing the names, addresses, and occupations of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed a policy of insurance under this Act.

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

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

Penalty—One hundred pounds.

(5) If any statement required by this section is false in any particular to the knowledge of any person who signs the same, such person shall be guilty of a misdemeanour and, being convicted thereof,

\* See footnote † to s. 8 *ante*.

† See footnote † to s. 5 *ante*.

shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding one year, or to a penalty not exceeding one hundred pounds.

Minister may authorise persons to inquire if employers have obtained insurance. Inserted by No. 35 of 1939, s. 2, as s. 10B, and renumbered s. 12 in 1943 reprint\* and s. 15 in 1949 reprint.† Amended by No. 48 of 1951, s. 7.

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

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

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

Penalty—One hundred pounds.

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

Penalty—One hundred pounds.

\* See footnote † to s. 8 *ante*.

† See footnote † to s. 5 *ante*.



16. (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.

Principal, and contractor, and sub-contractors deemed employers. No. 69 of 1912, s. 9, and renumbered s. 13 in 1943 reprint\* and s. 16 in 1949 reprint.† Amended by No. 33 of 1949, s. 7.

(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:—

Amended by No. 40 of 1924, s. 19.

(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.

(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.

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

(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 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.

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

Provision as to cases of bankruptcy of employer. No. 69 of 1912, s. 10; and renumbered s. 14 in 1943 reprint,\* and s. 17 in 1949 reprint.†

17. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any worker, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding any statutory enact-

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

ment 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 is 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.

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\* Now the Bankruptcy Act, 1924, as amended (Commonwealth).

† Now the Companies Act, 1943 as amended.

Remedies  
both against  
employer  
and  
stranger.  
No. 69 of  
1912, s. 11;  
renumbered  
s. 15 in  
1943 reprint,\*  
and s. 18 in  
1949 reprint.†

18. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

- (1) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and
- (2) payment by the employer of any compensation due or proceedings taken by the worker against the employer to recover compensation due under this Act, whether successful or otherwise, shall not operate, by way of election, estoppel or otherwise, as a bar to proceedings by the worker to recover damages from such other person liable to pay damages as in this section hereinbefore referred to: Provided that where the worker is successful in such proceedings to recover damages the employer's liability to pay compensation under this Act shall thereupon cease and be forever determined to the extent of all such damages actually recovered by the worker from such other person and any amount paid by the employer to the worker as compensation under this Act whether voluntarily or by order of the Court shall be a charge upon and shall be refunded out of such damages actually recovered by the worker from such other person liable as aforesaid.
- (3) If the worker has recovered compensation under this Act the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under this section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay

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

Indemnities.  
No. 69 of  
1912, s. 11 (2).

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

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.

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

Inserted by No. 50 of 1938, s. 5 as subs. (3); renumbered as subs. (4) in 1943 reprint.\* Amended by No. 48 of 1951, s. 8.

19. (1) This Act applies in respect of an accident happening to a worker employed on a Western Australian ship, as defined in this section, if the accident happens out of 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." No. 69 of 1912, s. 12; renumbered s. 16 in 1943 reprint,\* and s. 19 in 1949 reprint.†

(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

\* See footnote † to s. 8 ante.  
 † See footnote † to s. 5 ante.

- (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 the worker leaving no dependants, no compensation shall be payable if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial.
- (d) Where incapacity for work results from the injury, the owner of the ship may deduct from the payments due to the injured worker under this Act any expenses of maintenance which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment or otherwise, liable to defray and has, in fact, defrayed.

- (e) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury.
- (f) Subsections two and three of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

(4) This Act does not apply in respect of accidents to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

Crew of  
fishing  
vessel.

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

Prohibition  
of  
contracting  
out.  
No. 69 of  
1912, s. 14  
repealed  
and  
re-enacted  
by No. 40 of  
1924, s. 9;  
renumbered  
s. 18 in 1943  
reprint\*  
and s. 20 in  
1949 reprint.†

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

Deductions towards compensation not lawful. No. 69 of 1912, s. 15, and re-numbered s. 19 in 1943 reprint\* and s. 21 in 1949 reprint.† Amended by No. 40 of 1924, s. 10.

21. (1) It shall not be lawful for any employer or any person on his behalf, or for any insurers or any person on their behalf, to directly or indirectly take or receive any money from any worker whether by way of deduction from wages or otherwise howsoever, in respect of any liability of an employer to pay compensation under this Act.

(2) All money so taken or received as aforesaid from any worker, whether with the consent of such worker or not, may be recovered in any court of competent jurisdiction as a debt due to him by the employer, insurers, or person who took or received it.

Medical Board shall prepare and maintain "The Register of Specialists." Inserted by No. 48 of 1951, s. 9.

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

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

Order for detention of ship. No. 69 of 1912, s. 16; renumbered s. 20 in 1943 reprint,\* and s. 22 in 1949 reprint.†

22. (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in this State or in any waters within the territorial jurisdiction of this State, a Judge of the Supreme Court may, upon its being

\* See footnote † to s. 8 *ante*.

† See footnote † to s. 5 *ante*.

‡ Now Medical Act, 1894-1952. See No. 65 of 1952, s. 1 (3).



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.

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

Detention.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

Parties.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State of Western Australia if it has an office in the said State at which service of process can be effected.

Residence of corporation.

(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.

Penalty for proceeding 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

Officer taken to sea.

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

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

23. Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or any Act hereby repealed, and any receipt given for or upon the payment of any money payable under this Act, or any Act hereby repealed, or under any such agreement aforesaid, shall be exempt from all stamp duties chargeable under the Stamp Act, 1882,<sup>‡</sup> 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; renumbered s. 21 in 1943 reprint,\* and s. 23 in 1949 reprint.†

24. For the purpose of securing to the worker the full benefit of his claim for compensation under this Act, or for damages or compensation independently of this Act, the following provisions shall apply in every case where the accident in respect whereof the claim arises occurred in or about a mine, factory, building, or vessel, or any other premises or property of an employer where an industry is carried on by him:—

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

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

‡ Now Stamp Act, 1921, as amended.

- (2) As between themselves, all such charges shall have priority according to the priority of the time when they accrue (being the time when the accident occurred), but such of them as accrue on the same day shall be deemed to accrue at the time when the earliest of them accrued, and shall rank equally one with another.
- (3) The Governor may from time to time, by regulations under this Act prescribe the mode in which such charges may be enforced.

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

Workers' Compensation Board. Added by No. 77 of 1948, s. 11, as s. 33; renumbered s. 25 in 1949 reprint.\* Cf. Vic. Act, No. 4524 of 1937, s. 2 (1).

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

(3) Of the three members—

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

(4) A person shall not be eligible for appointment to the office of chairman unless he is a practitioner as defined by the Legal Practitioners Act, 1894-1946, of not less than seven years' practice and standing.

Qualifications of chairman.

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

Term of office of chairman.

(6) Of the two nominee members—

Nominee members.

- (a) one shall be a person nominated in the prescribed manner by the governing body of the association known as The Employers' Federation (W.A.);
- (b) one shall be a person nominated in the prescribed manner by the governing body of the Australian Labour Party, Western Australian Branch.

\* See footnote † to s. 5 ante.

† Now Legal Practitioners Act, 1893-1950. See No. 49 of 1950, s. 2.

Appointment  
on failure of  
nomination.

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

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

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

Vacancy in  
office of  
nominee  
member.

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

- (a) being absent from his duties for a period of one month or longer without the consent of the Board;
- (b) becoming of unsound mind or being declared under any law for the time being relating to mental infirmity, incapable of managing his affairs;
- (c) becoming bankrupt or availing himself as a debtor of any law for the relief of bankrupt debtors;
- (d) resigning; attaining the age of sixty-five years, or dying;
- (e) being removed from office on the ground of misbehaviour or incapacity.

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

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

Appointment  
of deputy  
members.

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

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

Validity of appointments of deputies and to fill vacancies.

(13) Each member of the Board shall retire on the day on which he attains the age of sixty-five years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave, or unless the Governor directs that he shall be at liberty to continue in office at the Governor's pleasure.

Retirement.

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

Remuneration allowances and leave.

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

Prohibition of other employment for remuneration.

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

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

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

Quorum.

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

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

Board, a corporate body.

Co-operation  
of Public  
Service.

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

Registrar  
and staff of  
Board.

Workers'  
Compensa-  
tion Board  
Fund.

Inserted by  
No. 77 of  
1948, s. 11,  
as s. 35;  
renumbered  
s. 27 in 1949  
reprint.\*  
Cf. Act No. 15  
of 1926,  
N.S.W., s. 41  
(4).

Amended by  
No. 48 of  
1951, s. 10 (a).

Added by  
No. 48 of  
1951, s. 10  
(b).

26. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Board by this Act or any other Act, the Board, with the approval of the Public Service Commissioner appointed under the provisions of the Public Service Act, 1904-1947†, may make use of the services of any of the officers and employees of the Public Service.

(2) The Registrar and other members of the staff of the Board shall be appointed under and be subject to the provisions of the Public Service Act, 1904-1947†.

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

(a) all moneys required for the salaries of the members of the Board and its staff;

(b) compensation in accordance with the provisions of the Act to any worker (other than a worker in respect of whom refusal of insurance is permitted by the Board pursuant to the provisions of this Act) whose employer has not effected insurance against his liability to pay compensation under the provisions of this Act and is unable to pay that compensation and who does not pay the compensation due within thirty days of the obtaining of an award by the worker or his representative;

(c) costs of prosecutions instituted by the Board under the provisions of this Act;

(d) all other moneys required by the Board for carrying out the provisions of this Act.

(1a) (a) Upon payment of compensation being made by the Board pursuant to the provisions of the last preceding subsection, the Board may immediately institute proceedings against such employer for the recovery of the amount of compensation paid and any costs incurred in the settlement of the

\* See footnote † to s. 5 *ante*.

† Now Public Service Act, 1904-1950. See No. 16 of 1950, s. 4 (2).

claim, or in the recovery action against the employer, by issuing a certificate showing particulars of the amount and lodging the certificate in the appropriate court of competent jurisdiction.

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

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

Board to prepare and submit estimate to Minister annually.

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

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

Contribution to Fund by insurers.

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

Contributions to Fund by self insurers.

(4) A self-insurer shall, in respect of any period for which contributions to the Fund are payable by insurers, pay such contribution to the Fund as the Board may deem reasonable, assessed upon the wages paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling or industry, and the employer shall upon demand supply the Board with such particulars of the wages paid by him during that period as are required by the Board.

Returns to be furnished to Board by insurers.

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

Penalty for failure to furnish return.

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

Penalty for false return.

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

Amended by No. 33 of 1949, s. 8. No. 48 of 1951, s. 10 (c).

(d) (i) In any one year the Board may levy contributions to the Fund of an amount equal to the amount of compensation estimated as hereinafter provided as payable in that year pursuant to the provisions of paragraph (b) of subsection (i) of



section 27 of this Act plus such amount as shall appear in the estimate referred to in section twenty-seven, subsection (2), paragraph (a), and be approved by the Minister for the payment of the remuneration, expenses and allowances of any inspector to be appointed pursuant to section twenty-nine, subsection (13), paragraph (h) of this Act plus—

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

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

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

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

Audit of Board's accounts.

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

Appointment of Registrar.

Inserted by No. 77 of 1948, s. 11, as s. 36; and renumbered s. 28 in 1949 reprint.\*

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

Records to be kept.

\* See footnote † to s. 5 ante.

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

Deputy Registrar.

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

Proceedings before the Board.

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

(b) The Board may—

- (i) adjourn the proceedings to any time or place;
- (ii) summon a medical referee to sit with the Board as an assessor; and
- (iii) submit to a medical referee or a medical board for report any matter which seems material to any question arising out of the proceedings.

Payment of compensation awarded.

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

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

(4) No legal practitioner or other agent representing any person claiming compensation under this Act shall be entitled to recover from that person any costs in respect of any proceedings before the Board, or to claim a lien in respect of those costs, or to deduct those costs from the sum awarded or agreed as compensation, except such sum as may be awarded by the Board on an application made by the person claiming compensation, or by his representative, to determine the amount of costs to be paid to the representative of the person claiming compensation, and that sum shall be awarded subject to the prescribed scale of fees, costs and rules.

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

Jurisdiction of the Board.

Inserted by No. 77 of 1948, s. 11, as s. 37; renumbered s. 29 in 1949 reprint.\* Cf. s. 7 (4) *ante*. Cf. Chap. 4 of the Statutes of Alberta, 1943-45, s. 10.

Injunction, prohibition, *certiorari*, etc., excluded.

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

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

(3) (a) In the hearing and determination of every question, the Board and the chairman, and any member, and the Registrar and any person or Court, acting pursuant to any power delegated by the Board under the provisions of this Act, shall act according to equity and a good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by legal precedent or its own decisions and rulings in any other question, nor by any rules of evidence, but may inform its or his mind on any matter in such a way as it or he regards as just but in considering a question as to whether a person who resides outside the State is a dependant of a worker, the Board shall require proof by or including documentary evidence that the worker has, wholly or in part, as the case may be, supported the person and shall not accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

Board to determine each case on the substantial merits. Amended by No. 88 of 1953, s. 6. Cf. No. 57 of 1912, s. 69.

\* See footnote † to s. 5 *ante*.

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

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

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

Chap. 4 of the Statutes of Alberta, s. 10 (6) (a) and (b). Board may delegate its power to make inquiries and act upon the delegate's report.

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

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

Provisions relating to delegation to Local Courts. Cf. s. 43 post.

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

(i) relating to the determination of questions and matters arising for determination under the provisions of this Act, to the magistrate for the time being to whom a Local Court is assigned under the provisions of the Local Courts Act, 1904-1931,\* but the delegation shall in each case be of a specific and not a general nature, and may be enlarged from time to time, if the Board shall deem it expedient;

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

Cf. No. 51 of 1904, s. 10.

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

\* Now Local Courts Act, 1904-1953. See No. 10 of 1953, s. 1 (3).  
† Now Legal Practitioners Act, 1893-1950. See No. 49 of 1950, s. 2.

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

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

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

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

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

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

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

Enumeration of certain matters of jurisdiction.

(a) determining—

- (i) whether an injury has arisen out of or in the course of an employment within the meaning of this Act;
- (ii) the existence and degree of disability by reason of the injury;
- (iii) the permanence of disability by reason of any injury;
- (iv) the degree of diminution of earning capacity by reason of any injury;
- (v) the amount of average earnings of a worker;
- (vi) the amounts of any refunds or adjustments of assessments which in its discretion it may deem proper to make;

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

\* Now Local Courts Act, 1904-1953. See No. 10 of 1953, s. 1 (3).

*Workers' Compensation.*

- (vii) the existence and extent of dependency;
- (viii) whether any person or aggregation of persons is or is not an employer of a worker within the meaning of the Act and if so whether such worker is or is not entitled to compensation under the Act;
- (ix) the existence, for the purpose of the Act, of any relationship of any member of the family of a worker as defined by the Act;
- (x) all cases of permanent partial or total incapacity, and making awards of compensation within the limits prescribed by the Act as may appear proper after taking into consideration all the circumstances of the case;
- (xi) the modification of weekly payments when a partially incapacitated worker resumes or is capable of resuming any employment other than his former employment;
- (xii) whether the circumstances of any particular case justify the making of an order for redemption of weekly payments of compensation by payment of a lump sum;
- (xiii) whether an insurer shall be permitted to refuse the insurance of an employer against any liability under this Act;
- (xiv) liability of any person in respect of the expenses of medical or surgical attendance on an injured worker at the suit of any person by whom they have been incurred or at the suit of any person entitled to receive payment in respect of them;

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

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

(8) The Board may in any case where it is deemed necessary, and shall, on the application of any employer or worker interested in any order, ruling or decision of the Board, issue a certificate in the prescribed form or to the like effect embodying the substance of any such order, ruling or decision.

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

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

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

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

Case stated to be considered and determined by Supreme Court.

(11) The Registrar shall—

- (a) when requested furnish workers and employers with information as to their rights and liabilities in respect of injuries sustained by workers in connection with their employment;
- (b) make all reasonable efforts to conciliate and bring parties to agreement where dispute has arisen concerning compensation claims of injured workers.

Board to furnish workers and employers with information as to their rights.  
Amended by No. 48 of 1951, s. 11.  
Cf. Act No. 15 of 1926, N.S.W., s. 39 (a).  
Board to endeavour to conciliate.  
Cf. Act No. 15 of 1926, N.S.W., s. 39 (b).

\* Now Public Trustee Act, 1941-1953. See No. 19 of 1953, s. 1 (3).

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

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

Powers of the Board.

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

Investigation of industrial diseases.

(a) To investigate all matters relating to industrial diseases of any nature whatsoever and to cause to be made a study of the causes, and the results of, varying methods of treatment, of such accidents and diseases, and to publish from time to time such findings and information as, in the opinion of the Board, is in the interests of the proper administration of this Act, and for all or any of such purposes may co-opt not more than three qualified medical practitioners registered under the Medical Act, 1894-1946.\*

Compilation of statistics.

(b) To obtain from all insurers and self-insurers returns necessary for the compilation of statistics for the purpose of recording such information as, in the opinion of the Board, is essential for the proper administration of this Act.

Establishment and maintenance of register of medical practitioners authorised to treat injured workers.

(c) To establish and maintain a register of medical practitioners registered under the Medical Act, 1894-1946,\* and authorised by the Board to carry out medical or surgical treatment of or in attendance on any worker with respect to any injury for which the worker is receiving or is entitled to receive compensation under this Act.

\* Now Medical Act, 1894-1952. See No. 65 of 1952, s. 1 (3).



(d) To preclude a medical practitioner whose name is not for the time being on the register from charging, receiving, recovering or retaining any medical expenses or fees for medical or surgical treatment of or attendance on any worker with respect to any injury for which the worker is receiving or entitled to receive, or has received compensation under this Act, unless, in the opinion of the Board that treatment or attendance has been rendered or bestowed in a case of sudden emergency, or the medical practitioner had reasonable grounds for believing that the injury was not an injury for which the person treated had received or was receiving or entitled to receive compensation under this Act.

Medical practitioners not on register to be prohibited from charging or receiving professional fees.

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

Board may hold inquiries.

(I) the worker; or

(II) the employer; or

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

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

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

*Workers' Compensation.*

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

- (ii) If upon the inquiry the matter of the complaint is proved to its satisfaction, the Board may—
  - (I) order the name of the medical practitioner to be erased from the register either absolutely or for a specified period;
  - (II) order the medical practitioner to pay a fine not exceeding fifty pounds;
  - (III) order the medical practitioner to make restitution of such amount with respect to the fees charged by him as the Committee deems just; and effect shall be given to the order.
- (iii) The amount of any fine imposed, or of any restitution ordered under subparagraph (ii) of this paragraph may be recovered summarily before Justices sitting in a court of petty sessions.
- (iv) The Board may allow a complaint made under this subsection to be amended at any time before the completion of its inquiry into the matter of the complaint upon such terms as the Board may deem just.
- (v) Subject as in this subsection provided, the Board upon the holding of the inquiry may make such order as to costs against the person making the complaint or against the medical practitioner concerned or, when

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\* Now Medical Act, 1894-1952. See No. 65 of 1952, s. 1 (3).

the Board holds an inquiry of its own motion, in favour of or against the medical practitioner concerned as in the opinion of the Board is warranted by the circumstances of the case, and with respect to any such order the following provisions shall apply—

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

ance on any worker with respect to any injury for which the worker is receiving or is entitled to receive or has received compensation under this Act;

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

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

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

(f) To establish and maintain a register of medical practitioners to be selected from time to time from a panel of names of medical practitioners supplied to the Board by the Medical Board constituted pursuant to the provisions of the Medical Act, 1894-1946,\* authorised by the Board to assess the degree of disability for the purpose of determining the amount of compensation payable under the Second Schedule to this Act.

(g) To take such measures and make such expenditure as is deemed necessary or expedient by the Board with a view to—

(i) providing facilities for pre-employment medical examination and occupational guidance to workers;

(ii) formulating recommendations and preparing estimates for submission to Parliament of the cost of providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary

\* Now Medical Act, 1894-1952. See No. 65 of 1952, s.1 (3).

disablement from personal injury by accident within the meaning of the Act so as to minimise or remove any handicap resulting from the injury;

- (iii) providing facilities for rehabilitation and re-employment of workers who have sustained permanent or temporary disablement from personal injury by accident within the meaning of the Act in accordance with the recommendations and estimates referred to in the last preceding subparagraph when those recommendations and estimates have been approved by resolution of both Houses of Parliament.
- (h) (i) To appoint from time to time in its discretion, inspectors for the purpose of investigating the aggregate amount of wages, salary and other forms of remuneration paid by, and the number of employees engaged by, any employer who has been exempted pursuant to section thirteen, subsection (1) of this Act, or by any employer required by the conditions of any policy or contract of insurance as referred to in section thirteen, subsection (3) of this Act to disclose such information during any specified period.
- (ii) An inspector appointed under the provisions of this section shall produce written authority from the Chairman of the Board when making investigations in the execution of his duties under this Act, and upon production thereof may make any such inquiries and require production of, and inspect, any books, accounts and records as may be necessary to ascertain the aggregate amount of wages paid by the employer and the number of employees engaged.

Inspection  
of wage and  
salary  
declarations.  
Added by  
No. 33 of  
1949, s. 9.

*Workers' Compensation.*

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

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

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

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

Certificates of proficiency may be cancelled and recalled.

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

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

Premium Rates Committee. Inserted by No. 77 of 1948, s. 11, as s. 38, and renumbered s. 30 in 1949 reprint.\* Amended by No. 33 of 1949, s. 10; No. 64 of 1952, s. 2 (a).

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

\* See footnote † to s. 5 ante.

- (b) on a basis which shall be formulated by the Board from time to time and which shall include consideration of—
- (i) the duration of the particular period in respect of which the basis is formulated;
  - (ii) the total amount of premiums received and owing to all insurers for that period in respect of insurance of employers against their liability to pay compensation under the provisions of this Act;
  - (iii) the total amount of payments made and due for that period by all insurers in respect of that insurance;
  - (iv) the total amount of premiums which would be payable for that period by self-insurers on the basis of wages paid by them to their workers during that period if the self-insurers were not self-insurers but were employers effecting insurance with the State Government Insurance Office against their liability to pay compensation under the provisions of this Act in the same or any similar trade, occupation, calling or industry as that carried on by the self-insurers;
  - (v) the total amount of payments made and due for that period by self-insurers pursuant to their liability to pay compensation under the provisions of this Act;
  - (vi) the total amount of payments made during that period by the Board pursuant to the provisions of this Act, to workers who have sustained personal injury by accident, in respect of the employers' liability for which no insurance exists;
  - (vii) the total cost of the administration reasonably incurred during that period by insurers and self-insurers



in relation to the matters referred to in subparagraphs (ii) to (v) of this paragraph;

(viii) and all such other circumstances and factors, whether of the same or a different kind from the foregoing as in the opinion of the Board are just and proper.

(1a) (a) In this subsection—

Inserted by  
No. 88 of  
1953, s. 7.  
Cf. No. 64 of  
1952, s. 2 (b).

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

“rate” means the premium rate to be charged for insurance by employers against liability under this Act in respect of silicosis, pneumoconiosis, and miner's phthisis arising out of or in the course of employment in any of the processes mentioned in the Third Schedule to this Act as mining, quarrying, or stone crushing or cutting, or stone or metal screening;

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

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

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

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

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

(e) After the initial determination the Premium Rates Committee shall not alter the rate except at a triennial determination.

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

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

Annual report. Inserted by No. 77 of 1948, s. 11, as s. 39; renumbered s. 31 in 1949 reprint.\*

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

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

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

General penalty. Inserted by No. 77 of 1948, s. 11, as s. 41; renumbered s. 33 in 1949 reprint.\*

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

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

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

\* See footnote † to s. 5 ante.

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

Rules and regulations. Inserted by No. 77 of 1948, s. 11, as s. 43; renumbered s. 35 in 1949 reprint.\*

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act so far as the same relate to the Board or the Registrar of any proceedings of or before the Board;
- (b) fixing scales of fees to be paid to the Board and scales of fees, costs and expenses to be paid to counsel, medical practitioners and witnesses in proceedings before the Board;
- (c) fixing scales of fees to be paid to medical specialists and general practitioners for attendance on and treatment of injured workers when those fees are not determined by agreement between the Western Australian Branch of the British Medical Association and insurers approved under the provisions of this Act;
- (d) fixing fees to be paid to public and private hospitals in various parts of the State for treatment and maintenance of injured workers;
- (e) matters of general or special application, which may apply to both employers and workers, for the prevention of diseases in employments or places of employment within the State;
- (f) prescribing the manner in which payment of compensation whether in the case of death or otherwise may be made and the person to whom payment may be made;

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\* See footnote † to s. 5 ante.

- (g) regulating the practice and procedure of the Board or any person or court authorised by delegation by the Board under the provisions of this Act and providing for the effective exercise of jurisdiction by the Board or person or court so authorised and especially, but without limiting the general power to make rules and regulations under the provisions of this Act, with reference to—
- (i) the times and places for sittings of the Board and any person or court so authorised;
  - (ii) the summoning of parties and witnesses;
  - (iii) the allowances to witnesses;
  - (iv) the enforcement of awards, orders and judgments;
- (h) prescribing penalties not exceeding ten pounds for any non-compliance with or any contravention of the provisions of any rule or regulation;
- (i) generally carrying into effect the provisions of this Act so far as the same relate to the Board and the Registrar and any proceedings of or before the Board;
- (j) regulating the meetings and proceedings of the Board when exercising its power of inquiry under the provisions of paragraph (e) of subsection (13) of section twenty-nine of this Act and the conduct of the business thereof;
- (k) enabling the Board to establish a register providing for the registration of medical practitioners, the removal from the register of the name of any medical practitioner as a consequence of any decision of the Board, and the re-registration of any medical practitioner whose name has been removed;
- (l) providing for the fees and expenses payable with respect to establishing and maintaining the register;

Regulations concerning the functions of the Board.

(m) carrying into effect the functions of the Board under the provisions of subsection (13) of section twenty-nine of this Act.

(n) the basis on, and manner in which, self-insurers shall contribute to the Fund.

(2) (a) Subject to the provisions of this Act; and Transitional provisions.

(b) without prejudice to the operation of the provisions of sections fifteen and sixteen of the Interpretation Act, 1918-1934\*, in so far as they relate to the amendment of the Workers' Compensation Act, 1912-1944, by the Workers' Compensation Act Amendment Act, 1948, in general, and in so far as they relate to the operation of section seven subsection (4) of the lastmentioned Act (relating to the conferring and imposing upon the Board of certain powers and duties formerly conferred upon the Local Court), in particular; and Amended by No. 33 of 1949, s. 11.

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

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

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

(ii) any person in whose favour an award or order has been promulgated by the Board may file or cause to be filed the certificate issued under the provisions of subsection (8) of section twenty-nine of this Act in Registration of certificate at Local Court and provision for enforcement of award, order, etc.  
Cf. Act No. 15 of N.S.W., 1926, s. 38  
(5) (b).  
Cf. s. 37 (2).

\* Now Interpretation Act, 1918-1948. See No. 8 of 1948, s. 2.

any Local Court established under the provisions of the Local Courts Act, 1904-1931,† having jurisdiction within the district where the debtor mentioned in the certificate resides when the clerk of the Local Court shall enter judgment for that person for the sum of the certificate, together with any fees paid for the certificate to the Registrar and the fees paid for filing the certificate and entering judgment and when entered the judgment shall, subject to the provisions of this Act, be enforceable and be regarded for all purposes as a judgment of the Local Court.

## Section 7.

SCHEDULES.

## First Schedule.

*Scale and Conditions of Compensation.*

Amount of compensation.  
In case of death.  
No. 69 of 1912, First Schedule.  
Amended by No. 43 of 1920, s. 4; No. 40 of 1924, S. 13 (1) subpara. (1) of para. (a) repealed and re-enacted by No. 50 of 1938, s. 6 (a).  
Amended by No. 77 of 1948, s. 12 (a); No. 48 of 1951, (a) (b) and (c); No. 88 of 1953, s. 8.

1. The amount of compensation under this Act shall be—
  - (a) where death results from the injury—
    - (i) if the worker leaves any dependants wholly dependent upon his earnings, the sum of one thousand eight hundred pounds and an additional sum of sixty pounds, in respect of each dependent child and dependent step-child of the worker under the age of sixteen years, but not in respect of any ex-nuptial child, less the amount of any weekly payments made under this Act and less the amount of any lump sum paid in redemption thereof. Provided that if the worker dies leaving a widow or mother wholly dependent upon his earnings or a dependent child or dependent step-child under the age of sixteen years wholly dependent upon his earnings, the amount payable under this subparagraph shall be not less than six hundred pounds, plus sixty pounds for each dependent child;

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† Now Local Courts Act, 1904-1953. See No. 10 of 1953, s. 1 (3).

- (ii) if the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or in default of agreement may be determined, by proceedings under this Act, to be reasonable and proportionate to the injury to the said dependants; and
- (iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding one hundred pounds all or any part or parts of which may be awarded to and upon the application of any person by whom the expenses were properly incurred or to whom the whole or any part of the expenses is owed, and where claims for expenses exceed that sum, may be awarded in such proportions as to ensure a just distribution among claimants.
- (b) Subject to the provisions of the proviso to this paragraph where a worker has been in receipt of weekly payments for not less than six months and no application for redemption has been made under and in accordance with the provisions of this Schedule, and the worker dies leaving dependants but the death does not result from the injury—
- Amended by  
No. 48 of  
1951, s. 12  
(d).
- Inserted by  
No. 42 of  
1944, s. 4 as  
(aa), and in  
1949 reprint\*  
re-lettered  
(b).  
Amended by  
No. 77 of  
1948, s. 12  
(b) (1).
- (i) in the case of dependants wholly dependent upon his earnings, the sum, if any, which would have been paid as a lump sum if the worker had made an application for redemption in his lifetime;
- (ii) In the case of dependants in part dependent upon his earnings, such sum not exceeding in any case the amount payable under the foregoing provisions of this paragraph as may be agreed upon, or in default of agreement, may be determined by proceedings under this Act to be reasonable and proportionate to the injury to the said dependants:
- Proviso  
added by  
No. 77 of  
1948, s. 12  
(b) (11).
- Provided that if a worker dies leaving dependants and his death does not result from the injury, and at the

\* See footnote † to s. 5 *ante*.

*Workers' Compensation.*

time of his death he had been receiving compensation in respect of silicosis, pneumoconiosis, or miner's phthisis, by weekly payments, but for less than six months, then nevertheless, the preceding provisions of this paragraph shall apply in all respects as if, in fact, he had been receiving compensation by weekly payments for not less than six months;

(c) when total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding—

(i) sixty-six and two-thirds per centum of the wages of the worker in the week immediately preceding the accident. If the worker has not been so long employed, his wages, for the purpose of this paragraph, shall be deemed to be a full working week's wages (exclusive of overtime), at the rate of pay for the work at which he was employed at the time of the accident, and the compensation shall be computed and assessed accordingly; or

(ii) sixty-six and two-thirds 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,

whichever is the larger sum.

In addition, twelve shillings and sixpence per week shall be payable for each dependent child under the age of sixteen years while the worker is being paid compensation, notwithstanding that the child was not so dependent when the incapacity occurred, and one pound sixteen shillings per week for a dependent wife or, if there be no dependent wife, for one dependent parent of the worker or person standing in the place of a parent of the worker.

Weekly payments, where there are no dependants wholly dependent shall not exceed the average weekly earnings or eight pounds, whichever is the lesser amount and where there are dependants wholly dependent weekly payments including payments for dependants,

No. 69 of 1912, First Schedule, cl. 1 (b); re-lettered (c) in 1949 reprint.\*  
Amended by No. 36 of 1941, s. 4 (a), No. 77 of 1948, s. 12 (c).

Amended by No. 48 of 1951, s. 12 (e).

Amended by No. 48 of 1951, s. 12 (e); No. 88 of 1953, s. 9 (a) and (b).

Amended by No. 33 of 1949, s. 12; No. 48 of 1951, s. 12 (f) and (g); No. 64 of 1952, s. 3. No. 88 of 1953, s. 9 (c).



shall not exceed the average weekly earnings or ten pounds whichever is the lesser amount, and the total liability of the employer in respect thereof shall not exceed two thousand one hundred pounds.

Provided that—

(a) where the amount of the wages or the average weekly earnings on which the weekly payment is to be assessed is three pounds twelve shillings or less, the weekly payment shall be an amount equal to the average weekly earnings; and when the amount of the wages or the average weekly earnings on which the weekly payment is to be assessed exceeds three pounds twelve shillings, but is such that sixty-six and two-thirds per centum thereof would not equal three pounds twelve shillings the weekly payment shall be three pounds twelve shillings.

Inserted by  
No. 40 of  
1924, s. 13 (3).  
Amended by  
No. 36 of  
1941, s. 4 (b);  
No. 77 of  
1948, s. 12  
(d).  
No. 48 of  
1951, s. 12 (h)  
No. 88 of  
1953,  
s. 10 (a).

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

Inserted by  
No. 40 of  
1924, s. 13  
(5).  
Amended by  
No. 36 of  
1941, s. 4 (c).

(c) in addition to the compensation payable under this clause 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 hospital or other place for treatment, and also including treatment by specialists when their services are found necessary) on the worker in respect of his injury, and the provision of hearing aids, artificial limbs, including artificial teeth,

No. 69 of 1912,  
First  
Schedule,  
cl. 1, proviso  
(d);  
re-lettered  
(c) in 1943  
reprint.\*  
Amended by  
No. 40 of  
1924, s. 13  
(5).  
No. 34 of  
1927, s. 3.  
No. 50 of  
1938, s. 6 (b)  
No. 36 of  
1941, s. 4 (d).  
No. 42 of  
1944, s. 4 (e).  
No. 77 of  
1948, s. 12 (e)  
No. 48 of  
1951, s. 12 (1)  
(j) (k) (l)  
(m) (n) and  
(o).  
No. 64 of  
1952, s. 4.

\* See footnote † to s. 8 ante.

artificial eyes, glasses or spectacles as an aid to vision, where an injury to an eye renders the use of glasses or spectacles necessary, but not exceeding in the aggregate one hundred pounds. In addition to such amount there shall be payable charges for hospital treatment and maintenance in accordance with the provisions of paragraph (d) of this proviso but not exceeding a total of one hundred and fifty pounds, and in the case of death, reasonable funeral expenses including all cemetery board charges, but not exceeding forty pounds and where damage or destruction of an artificial limb, artificial teeth, or artificial eyes or eye glasses or spectacles results from an accident arising out of or in the course of the worker's employment and, except in the case of artificial teeth, whether the worker suffers personal injury within the meaning of section seven of this Act or not, he shall be entitled to the cost of repair or replacement thereof; and in the case of a worker who has suffered the loss of both legs or who is paralysed in both legs by reason of an accident or accidents arising in the course of the worker's employment he shall be entitled to the cost of a wheeled chair or other similar contrivance up to the sum of fifty pounds and further, if a worker has been disabled by reason of any such accident or accidents and any surgical appliance or mechanical contrivance can be procured to relieve such disablement, he shall be entitled to the cost of the same up to the sum of fifteen pounds, or in the case of an artificial limb, up to the sum of fifty pounds;

(d) (i) In this paragraph—

“area” means the area within an imaginary circle having a radius of 15 miles from the General Post Office at Perth;

Para. (d)  
repealed and  
re-enacted  
by No. 64 of  
1952, s. 5.  
Amended by  
No. 88 of  
1953, s. 10 (b).

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

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

in a public hospital within the area;

in a public hospital outside the area;

in a private hospital;

shall be at the respective rates determined by the Board as the equivalent of the general rate chargeable for treatment of cases other than workers' compensation cases in

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

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

a ward bed in a private hospital.

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

- (e) where a worker is required by his employer, his employer's duly authorised agent or medical adviser, or is advised by his own medical adviser, to travel from the place where he resides to a hospital or other place for treatment, massage, or medical examination, then, in addition to the compensation payable to such worker under this section, the employer shall pay all reasonable fares and expenses incurred by the worker in such travelling and return, and also a sum not exceeding fifteen shillings and six pence per day, but not

Inserted by  
No. 36 of 1941,  
s. 4 (e).  
Amended by  
No. 42 of  
1944, s. 4 (e).  
No. 77 of  
1948, s. 12  
(h).  
No. 48 of  
1951, s. 12  
(p).  
No. 88 of  
1953, s. 10,  
(c) and (d).

exceeding the sum of four pounds sixteen shillings per week, to cover the cost of meals and lodging necessarily incurred by the worker whilst away from his home for the purpose of such treatment, massage or examination.

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

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

Added by  
No. 77 of  
1948, s. 12  
(h).

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

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

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:—

No. 69 of  
1912.  
First  
Schedule,  
cl. 2.

- (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

\* See footnote † to s. 5 ante.

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 death as well as to cases of incapacity.

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 sixty-six and two-thirds per centum of the difference between the amount of the wages or of the average weekly earnings of the worker before the accident and the average weekly amount which

Regard to be had to payments, allowances, etc., to worker.  
No. 69 of 1912.  
First Schedule, cl. 3.  
Amended by No. 36 of 1941, s. 4.  
No. 77 of 1948, s. 12 (1).

he is earning or 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. No. 69 of 1912. First Schedule, cl. 4.

4. (a) Where a worker has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

Inserted by No. 50 of 1938, s. 7. Amended by No. 77 of 1948, s. 12 (j) (1) and (ii); No. 64 of 1952, s. 6; No. 88 of 1953, s. 11.

(b) Where a worker, in order to submit himself for examination by a medical practitioner in compliance with this clause, is required to travel from the place where he resides to another place then, in addition to the compensation payable to such worker under any preceding section of this Act, the employer shall pay all reasonable expenses incurred by the worker in such travelling and also the sum of fifteen shillings and six pence per day, but not exceeding the sum of four pounds sixteen shillings per week, to cover the cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such medical examination:

Added by No. 77 of 1948, s. 12 (j) (iii).

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

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

Periodical medical examinations. No. 69 of 1912. First Schedule, cl. 12, and re-numbered cl. 5 in 1949 reprint.\*

5. Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

Regulations as to such examinations. No. 69 of 1912. First Schedule, cl. 13, and re-numbered cl. 6 in 1949 reprint.\*

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

\* See footnote † to s. 5 ante.

7. (a) Where a worker has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the worker, as the case may be, has within fourteen 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 Registrar on application being made in manner prescribed by either party, may, on payment by the applicants of such fee, not exceeding two pounds, as is prescribed, refer the matter to a medical referee.

Reference to medical referee.  
No. 69 of 1912.  
First Schedule, cl. 14, and re-numbered cl. 7 in 1949 reprint.\*  
Amended by No. 40 of 1924, s. 14; No. 36 of 1941, s. 4 (g); No. 77 of 1948, s. 12 (1).

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

No. 50 of 1938, s. 7 (b).

(b) The medical referee to whom the matter is so referred shall, in manner prescribed, give a certificate as to the condition of the worker, and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall (subject to an appeal to a medical board consisting of three members, which shall have jurisdiction to hear and determine such appeal) be conclusive evidence as to the matters so certified.

No. 77 of 1948, s. 12 (1).

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.

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

(e) 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 (a).

\* See footnote † to s. 5 ante.

Inserted by  
No. 36 of  
1934, s. 3 (b)  
as 14A,  
and  
re-numbered  
cl. 15 in  
1943 reprint\*  
and cl. 8 in  
1949 reprint.†  
Amended by  
No. 77 of  
1948, s. 12  
(m).

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

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

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

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

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

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

Provided that where the worker was at the date of the accident under twenty-one years of age and 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 sixty-six and two-thirds 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; but nothing in this proviso shall prejudice the

Review of  
weekly  
payment.  
No. 69 of  
1912.  
First  
Schedule,  
cl. 15,  
re-numbered  
cl. 16 in  
1943 reprint,\*  
and cl. 9 in  
1949 reprint.†

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.



right to payments in respect of any dependent wife or dependent child in accordance with the provisions of clause 1, paragraph (c) of this Schedule.

10. Where permanent total or permanent partial incapacity has resulted from an accident and any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer or the worker, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Board, and such lump sum may be ordered by the Board to be paid to or invested or otherwise applied for the benefit of the person entitled thereto.

Lump sum in redemption of weekly payment. No. 69 of 1912.  
First Schedule, cl. 16, re-numbered cl. 17 in 1943 reprint,\* and cl. 10 in 1949 reprint.†  
Amended by No. 43 of 1920, s. 5; No. 77 of 1948, s. 12 (o).

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

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

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

- (i) in the case of permanent total incapacity the lump sum shall be the sum ascertained by deducting the total amount received by the worker as weekly payments from the maximum sum of two thousand one hundred pounds;
- (ii) in any other case the lump sum shall be assessed upon a calculation or estimate by the Board of the compensation payable or likely to be payable under the provisions of this Act;
- (iii) no deduction of any nature or kind shall be made by the Board from any lump sum ascertained or assessed as hereinbefore provided.

Substituted by No. 42 of 1944, s. 4 (g) as cl. 18, re-numbered cl. 11 in 1949 reprint.†  
Amended by No. 77 of 1948, s. 12 (p); No. 64 of 1952, s. 7; No. 88 of 1953, s. 12.

12. Subject to the provisions of this Act, if a worker receiving a weekly payment ceases to reside in Western Australia he shall be entitled to receive the amount of the weekly payments accruing due so long as he proves, in such a manner and at such intervals as may be prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

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

\* See footnote † to s. 3 ante.  
† See footnote † to s. 5 ante.

Payments not assignable. No. 69 of 1912. First Schedule, cl. 18, re-numbered cl. 20 in 1943 reprint,\* and cl. 13 in 1949 reprint.†

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

Suspension of payment. No. 69 of 1912. First Schedule, cl. 19, re-numbered cl. 21 in 1943 reprint,\* and cl. 14 in 1949 reprint.†

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

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

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

Provided that

- (a) no such memorandum shall be recorded before seven days after the despatch by the Registrar of notice to the parties interested;
- (b) where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer proves that the worker has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Board, under the circumstances, may think just;
- (c) the Board may at any time rectify the register;

\* See footnote † to s. 8 ante.  
 † See footnote † to s. 5 ante.

- (d) (i) upon receipt of a memorandum for registration, the Registrar shall examine the same in order to satisfy himself as to the genuineness of the agreement and as to the adequacy of the amount of any compensation or other moneys payable thereunder, and if it appears to the Registrar as the result of such examination or as the result of any information which he considers sufficient that an agreement as to the redemption of weekly payments by a lump sum or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he shall refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the Board, which shall make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board may think just;
- (ii) for the purpose of carrying out his duties under subparagraph (i) of this paragraph, the Registrar may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation payable under the agreement, the Registrar may require the employer to have the worker examined by a medical practitioner nominated by the Registrar, at the expense of the employer, in any case where the Registrar is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation aforesaid;
- (e) the Board may, upon application being made within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the Register, order that the record be removed from the

Register on proof to the Board's satisfaction that the agreement was obtained by fraud or undue influence or other improper means, or that the amount of compensation payable under the agreement is inadequate, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances the Board may think just.

Inserted by  
No. 77 of  
1948, s. 12  
(s) (vii).

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

Inserted by  
No. 77 of  
1948, s. 12  
(s) (vii).

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

Effect of  
non-  
registration  
of agreement.  
No. 69 of  
1912.  
First  
Schedule,  
cl. 21,  
re-numbered  
cl. 23 in  
1943 reprint,\*  
and cl. 16 in  
1949 reprint.†

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

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

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

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

Worker  
not to be  
prejudiced  
by resuming  
work.  
No. 69 of  
1912.  
First  
Schedule,  
cl. 26,  
re-numbered  
cl. 29 in  
1943 reprint,\*  
and cl. 18 in  
1949 reprint.†

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

\* See footnote † to s. 8 ante.

† See footnote † to s. 5 ante.

Second Schedule.

TABLE.

Nature of Injury.	Amount of compensation payable.
	£
Total loss of the sight of both eyes .....	1,750
Total loss of the sight of an only eye .....	1,750
Loss of both hands .....	1,750
Loss of both feet .....	1,750
Loss of a hand and a foot .....	1,750
Total and incurable loss of mental powers involving inability to work .....	1,750
Total and incurable paralysis of the limbs or of mental powers .....	1,750
	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 one pound per week.
Total loss of the right arm or of the greater part of the right arm .....	1,400
Total loss of the left arm or of the greater part of the left arm .....	1,310
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm .....	1,225
Total loss of the same for the left hand and arm .....	1,135
Total loss of a leg .....	1,310
Total loss of a foot or the lower part of the leg .....	1,050
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye .....	1,310
Total loss of hearing .....	1,050
Partial deafness of both ears .....	Such percentage of £1,050 as is equal to the percentage of diminution of hearing.
Complete deafness of one ear .....	350
Total loss of the sight of one eye .....	700
Loss of binocular vision .....	700
Total loss of the thumb of the right hand .....	525
Total loss of the thumb of the left hand .....	455
Total loss of the forefinger of the right hand .....	350
Total loss of the forefinger of the left hand .....	280
Total loss of a joint of the thumb .....	280
Total loss of the first joint of the forefinger of either hand .....	140
Total loss of the middle finger of the hand .....	210
Total loss of the little or ring finger of the hand .....	190
Total loss of the great toe of either foot .....	350
Total loss of a joint of the great toe of either foot .....	175

Section 7 (3).

Substituted by No. 77 of 1948, s. 13.

Amended by No. 48 of 1951, s. 13.

Cf. Vic., No. 5128, s. 5, substituted for No. 3806, s. 8, as amended by Nos. 4360, s. 6, and 4456, s. 7.

## Workers' Compensation.

Nature of Injury.	Amount of compensation payable. £
Total loss of any other toe or of a joint of a finger .....	105
Total loss of a joint of any other toe .....	35
Partial loss of the sight of both eyes .....	Such percentage of £1,750 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of the sight of one eye .....	Such percentage of £700 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

## Section 8.

No. 40 of  
1924, s. 18.No. 50 of  
1938, s. 8.No. 77 of  
1948, s. 14.

## Third Schedule. §

Description of Disease.	Description of Process.
*Arsenic, phosphorus, lead, mer- cury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their prepara- tions or compounds.
*Anthrax .....	Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles or carcases.
Communicable diseases .....	Employment in an occupation or in a situation exposing the worker to infection by the in- termediate hosts of any com- municable disease or by agen- cies transmitting any commu- nicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the par- ticular vectors or agents con- cerned in the transmission of that disease, or where that action can be reasonably pre- sumed.
*Poisoning by trinitrotoluene or by bonzol or its nitro and amido derivatives (dinitro- benzol, anilin and others)	Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of bonzol or its preparations or com- pounds.
*Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its pre- parations or compounds.
*Poisoning by fluorine .....	Any process in which fluorine is used.
*Poisoning by nitrous fumes .....	Any process in which nitrous fumes are evolved.
*Poisoning by cyanogen com- pounds .....	Any process in which cyanogen compounds are used.

Asterisks  
referred to  
in s. 9 (1).

Description of Disease.	Description of Process.
*Poisoning by carbon monoxide	Any process in which carbon monoxide is used, or evolved.
*Leptospirosis; endemic typhus, scrub typhus, brills' disease, swineherds disease, plague, mite dermatitis and scrub itch.	Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.
*Chrome ulceration	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium or their preparations.
Effects of insolation	Work entailing prolonged exposure to sunlight.
Effects of electrical currents	Workers exposed to electrical currents.
Any dermatosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn.	Any industrial process.
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to 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, or stone or metal screening.‡
Silicosis	
*Pneumoconiosis	
*Miner's 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 s. 8 and this Schedule with respect to these diseases, see s. 2 of the Act No. 40 of 1924, and proclamations in the *Gazette* of 30th January, 1925; 27th February, 1925; 4th June, 1926; 11th June, 1926; 10th December, 1926; 24th December, 1926; 16th August, 1929; 31st March, 1930, and 14th August, 1953. See also footnote (c) to page 1 and s. 8 (15) of this reprint.

## Section 16.

## Fourth Schedule.

No. 69 of  
1912.  
Third  
Schedule;  
amended and  
re-numbered  
Fourth  
Schedule  
by No. 40 of  
1924, s. 15.  
Amended by  
No. 77 of  
1948, s. 15.

Mining; quarrying; excavation; the cutting of standing timber or firewood or both, 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.