

WORKERS' COMPENSATION ACT.

Act No. 15, 1926.

An Act to amend the law relating to Workmen's Compensation; to constitute a Workers' Compensation Commission, and to define its jurisdiction, powers, and duties; to provide for the compulsory insurance by employers against their liabilities in respect of injuries to workers, and also for the regulation and licensing of insurers and the deposit by them with the Colonial Treasurer of certain sums; to establish a fund to meet the costs of the administration of the Commission, and to provide for the contribution thereto by insurers; to amend the Workmen's Compensation Act, 1916, and the Workmen's Compensation (Amendment) Act, 1920, and to limit the future operation of those Acts; to amend the Workmen's Compensation (Silicosis) Act, 1920, and certain other Acts; and for purposes connected therewith. [Assented to, 18th March, 1926.]

George V,
No. 15.

BE

George V,
No. 15. **BE** it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Short title. **1.** (1) This Act may be cited as the "Workers' Compensation Act, 1926."

(2) This Act shall commence on a day not earlier than the first day of July, one thousand nine hundred and twenty-six, to be appointed by the Governor and notified by proclamation published in the Gazette not less than one month before the date of commencement.

Amendment of Act No. 71, 1916, Sch. I. **2.** The Workmen's Compensation Act, 1916, as amended by the Workmen's Compensation (Amendment) Act, 1920, is further amended as follows:—

cf. 13 & 14
Geo. V, c. 42,
s. 24 (2).

By inserting at the end of paragraph (1) (a) (i) of Schedule One the following further proviso:—

"Provided further that no deduction shall be made in respect of the amount of any weekly payments made under this Act so as to reduce the sum payable in respect of such dependants below two hundred pounds but under no circumstances shall the total of the employer's liability under this paragraph exceed seven hundred and fifty pounds."

Future operation of Workmen's Compensation Act, 1916, and pending proceedings. **3.** (1) The Workmen's Compensation Act, 1916, as amended by the Workmen's Compensation (Amendment) Act, 1920, and this Act, in this Act referred to as the Workmen's Compensation Act, shall cease to have effect so far as regards any accident which happens after the commencement of this Act.

(2) Proceedings for the recovery of compensation for any accident which happened before the commencement of this Act shall, if no proceedings have then been commenced, be commenced under and in accordance with this Act, but the amount of compensation payable shall be the amount as provided by the Workmen's Compensation Act.

(3)

(3) Proceedings already commenced at the commencement of this Act shall be continued under the Workmen's Compensation Act or may be by consent of the parties at any stage referred to the commission and continued before the commission.

George V,
No. 15.

4. Section two of the Workmen's Compensation (Silicosis) Act, 1920, is amended as follows:—

Amendment
of Act No. 13,
1920, s. 2.

- (a) by omitting from subsection one the words "or other" wherever occurring;
- (b) by omitting from subsection one paragraph (i) of the proviso;
- (c) by omitting from subsection two the words "disablement due to silicosis unaccompanied by tuberculosis" and by inserting in lieu thereof the words "disablement due to silicosis or to silicosis accompanied by tuberculosis";
- (d) by inserting in paragraph (d) of subsection three after the words "medical officers" the words "medical boards";
- (e) by omitting from paragraph (e) of subsection three the words "and for the suspension from employment of workmen who are found to be suffering from silicosis or from silicosis accompanied by tuberculosis" and by inserting in lieu thereof the words "for the suspension from employment of workmen who are found at any time to be suffering from silicosis or silicosis accompanied by tuberculosis, or who, when first medically examined in pursuance of the scheme, are found unsuitable for work in the industry or process by reason of their failure to satisfy such requirements with respect to physique as may be prescribed by the scheme";
- (f) by inserting in paragraph (f) of subsection three after the words "supplemental matters" the words "including provisions as to the determination of disputes arising between employers and the authority administering the fund."

cf. 8 & 9
Geo. V, c. 14,
s. 1.

George V,
No. 15.
Saving of
Acts, 1920
No. 13, 1920
No. 36, 1922
No. 31, 1924
No. 26.

5. Nothing in this Act shall affect the operation of the Workmen's Compensation (Silicosis) Act, 1920, as amended by this Act, the Workmen's Compensation (Broken Hill) Act, 1920, or the Workmen's Compensation (Lead Poisoning—Broken Hill) Act, 1922, as amended by the Workmen's Compensation (Lead Poisoning—Broken Hill) Amendment Act, 1924.

Definitions. **6.** (1) In this Act, unless the context or subject-matter otherwise indicates or requires :

“Commission” means the Workers' Compensation Commission of New South Wales constituted under this Act.

“Compensation” includes medical and death benefits prescribed by this Act.

1916 No. 71,
s. 4.
cf. Vict. Act,
No. 2,750,
s. 3.

“Dependants” means such of the members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would but for the incapacity due to the injury have been so dependent, and includes a person so dependent to whom the worker stands in loco parentis or a person so dependent who stands in loco parentis to the worker.

Where the worker, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, “dependants” shall include such an illegitimate child and parent or grandparent respectively.

1916 No. 71,
s. 4.

“Employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer.

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.

Employer

Employer also includes any Government department heretofore or hereafter created, or any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of the State as for example the Railway Commissioners for New South Wales, the Sydney Harbour Trust, the Metropolitan Water, Sewerage, and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Metropolitan Meat Industry Board, or the Hunter District Board of Water Supply and Sewerage.

George V,
No. 15.

- “Fund” means the fund established by this Act.
- “Incapacity” shall include disfigurement where it is sufficient to affect the earning capacity of a worker or his opportunities for employment.
- “Injury” means personal injury, and includes a disease which is contracted by the worker in the course of his employment, whether at or away from his place of employment, and to which the employment was a contributing factor, but does not include a disease caused by silica dust.
- “Insurer” includes any Government department, insurance company, mutual indemnity association, or any person, and each of several persons undertaking to insure or indemnify an employer against liability or any part of liability under this Act for injuries sustained by workers, or any racing club, association, or employer authorised under this Act to undertake the liability to pay compensation to workers employed by it or him.
- “Member of a family” means wife or husband, 1916 No. 71, father, mother, grandfather, grandmother, ^{s. 4.} step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister.
- “Outworker”

George V,
No. 15.
1916 No. 71,
s. 4.

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

Qld., 6 Geo.
V, No. 35,
s. 3.

“Place of Employment” means the premises, works, plant or place for the time being occupied by or under the control or management of the employer by whom the worker concerned is employed, and on or at or in connection with which the worker was employed at the time of the injury.

1916 No. 71,
s. 4.

“Seaman” includes master, officer, apprentice, pilot, or other person employed or engaged in any capacity on board a ship.

Ibid.

“Ship” includes every vessel used in navigation not ordinarily propelled by oars.

Ibid.

“Vessel” includes any ship or boat, or any other description of vessel used in navigation.

cf. *Ibid.*

“Worker” 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, but does not include—

- (a) any person employed otherwise than by way of manual labour whose remuneration exceeds seven hundred and fifty pounds per year; or
- (b) an outworker; or
- (c) a member of the police force; or
- (d) a person whose employment is casual and who is employed otherwise than for the purposes of the employer's trade or business.

(2) 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.

George V,
No. 15.
Worker—
deceased.

(3) (a) Where any person (in this subsection referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him ; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, reference to the principal shall be substituted for reference 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 :

Contracting
or subcon-
tracting.
1916 No. 71
s. 3.

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purposes 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.

(b) Where the principal is liable to pay compensation under this subsection, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this subsection, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by the Commission under this Act.

(c) Nothing in this subsection shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal.

(d)

George V,
No. 15.

(d) This subsection shall not apply in any case where the injury occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which otherwise are under his control or management: Provided that nothing in this paragraph shall affect the liability of the contractor under any other provisions of this Act.

Contracts for
labour.
Qld., 6 Geo.
V, No. 35,
s. 3 (2).

(4) Where a contract to perform any work exceeding five pounds in value (not being work incidental to a trade or business regularly carried on by the contractor in his own name or under a firm name) is made with such contractor who—

- (a) neither sublets the contract nor employs workers; or
- (b) though employing workers actually performs any part of the work himself,

such contractor and also such workers so employed shall, for the purposes of this Act, be deemed to be workers employed by the person who made such contract with such contractor.

Rural work.
Ibid., s. 3 (2A).

(5) (a) Where any person (in this paragraph referred to as "the principal") in the course of or for the purposes of his trade or business enters into a contract with any other person or persons (in this paragraph referred to as "the contractor") under which the contractor agrees—

- (i) to supply timber and such timber is obtained or to be obtained from trees felled or to be felled by the contractor or his wages-men (whether such trees are the property of the principal or the contractor or any other person); or
- (ii) to fell or ringbark trees or cut scrub or haul or load timber or haul and load timber; or
- (iii) to clear land of stumps or logs; or
- (iv) to cut sugar-cane; or
- (v) to perform any other work or class of work specified by proclamation of the Governor and published in the Gazette;

and the contractor does not either sublet the contract or employ workers, or, though employing workers, actually

actually performs any part of the work himself, the contractor and any worker so employed shall, for the purposes of this Act, be deemed to be workers employed by the principal. George V,
No. 15.

(b) Where any person (in this paragraph referred to as the principal) advertises or otherwise notifies that he will accept timber delivered or supplied to him or his agent or other person in accordance with such advertisement or notification, or advertises or otherwise notifies to the abovementioned effect, any person who gives notice to such principal that he will deliver or supply such timber or any part thereof, and receives injury while engaged in or about the work of cutting, delivering, or supplying the said timber or any part thereof shall be deemed to be a worker employed by the principal. Timber-
getters.

Notice of intention to deliver or supply timber as aforesaid shall indicate the nature of the actual work to be undertaken and the time within which it will be performed. The notice shall be given prior to injury and may be given personally or by letter posted to the principal at his place of business or usual address.

“Timber” includes sleepers, piles, poles, girders, logs, or pit timber.

“Cutting” includes felling, sawing, obtaining, preparing, or doing any work in connection with timber, and “cut” has a corresponding meaning.

(6) A salesman, canvasser, collector, or person paid wholly or partly by commission shall, for the purposes of this Act, be deemed to be a worker in the employment of the person by whom such commission is payable, unless such commission is received by the salesman, canvasser, collector, or person for or in connection with work incidental to a trade or business regularly carried on by him or by a firm whereof he is a member. Salesman.
Qld., 6 Geo. V,
No. 35, s. 3
(3c).

(7) Every share-farmer, and every worker, whether a member of the share-farmer's family or not, employed by any share-farmer shall, for the purposes of this Act, be deemed to be a worker employed by the owner of the farm. Share-farmer.
cf. *Ibid.* s. 3
(3B).

- George V,**
No. 15.
Tributer.
1916 No. 7,
s. 8 (5).
- (8) Every tributer working in connection with any mine as defined by the Mining Act, 1906, and also any workers employed by any such tributer shall, for the purposes of this Act, be deemed to be workers employed by the person with whom the tribute agreement was made by the tributer.
- Mining employees.
- (9) Any person usually employed about a mine or in connection with the operations thereof such as a check-weighman, check-inspector (whether local or general), cavil scrutineer or a pickman or boy shall, notwithstanding that his remuneration is provided wholly or partly by the workers employed at the mine, for the purposes of this Act, be deemed to be a worker employed by the person by or for whom the mine is being worked.
- Jockey.
Qld., 6
Geo. V,
No. 35,
s. 3 (3A).
- (10) A jockey engaged to ride for fee or reward in any horse or pony race run under the management of any racing club or association or engaged, whether for fee or reward or gratuitously, in riding work on the racecourse or other premises of any such body, shall for the purposes of this Act be deemed to be a worker employed by such club or association.
- Bailees.
cf. 13 & 14
Geo. V, c. 42,
s. 9 (2).
- (11) A person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment, other than a hire purchase agreement, in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, shall for the purposes of this Act be deemed to be a worker employed by the owner of the vehicle or vessel.
- Caddies, and others.
Ibid.
- (12) A person whose employment is of a casual nature, and who is employed otherwise than for the purposes of his employer's trade or business, if employed for the purposes of any game or recreation, and engaged or paid through a club, shall for the purposes of this Act be deemed to be a worker employed by the club if the club is a limited company, or if it is not, by the secretary or members of the managing committee thereof.
- Public authority.
1916 No. 71,
s. 4.
- (13) The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority.

(14) Any person employed in connection with a pastoral or agricultural occupation, as cook, cook's help, or hut-keeper, shall, notwithstanding that his remuneration is provided wholly or partly by the employees in any such occupation, for the purposes of this Act, be deemed to be a worker employed by the person by or for whom the work in any such occupation is undertaken.

George V,
No. 15.
Shearers'
cooks and
others.

PART II.

COMPENSATION.

7. (1) A worker who receives personal injury—

(a) in the course of his employment, whether at or away from his place of employment; or

(b) without his own default or wilful act, on the daily or other periodic journey between his place of abode and his place of employment,

(and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act.

Compensation shall not be payable in respect of an injury received during any substantial interruption of, or deviation from the journey referred to in paragraph (b) of this subsection, if the interruption or deviation is for a reason unconnected with the worker's employment.

(2) Compensation shall be payable in respect of any injury resulting in the death or serious and permanent disablement of a worker, notwithstanding that the worker was, at the time when the injury was received, in a place not directly concerned with his employment, but forming part of the employer's premises, or acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the worker for the purposes of and in connection with his employer's trade or business.

Liability of
employers
to workers
for injuries.

cf. Q'd.,
6 Geo. V,
No. 25, s. 9.

cf. 13 & 14
Geo. V, c. 42,
s. 7.

(3)

George V,
No. 15.

Waiting
period.

Serious
and wilful
misconduct.
cf. 6 Ed.
VII, c. 68,
s. 1 (2) (c).

Self-inflicted
injury.
cf. Geo. V,
No. 35.

Industrial
disease.
cf. 1916
No. 71, s. 12.

(3) Provided that—

(a) the employer shall not be liable under this Act in respect to any injury which does not disable a worker for a period of at least three days from earning full wages at the work at which he was employed. But if he is disabled for that period, the compensation shall date from his receiving the injury;

(b) if it is proved that the injury to a worker is solely attributable to the serious and wilful misconduct of the worker, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed;

(c) no compensation shall be payable on account of any injury to or death of a worker caused by an intentional self-inflicted injury.

(4) Where the injury is a disease which is of such a nature as to be contracted by a gradual process compensation shall be payable by the employer in whose employment the worker is or who last employed the worker.

Any employers who, during the twelve months preceding a worker's incapacity, employed him in any employment to the nature of which the disease was due, shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by the commission.

The worker, or his dependants, shall furnish to the employer from whom compensation is claimed such information as to the names and addresses of all the other employers who employed the worker during the twelve months preceding the injury as he or they may possess.

(5) For the purposes of sections forty-four and fifty-three of this Act the injury shall be deemed to have happened at the time of the worker's incapacity.

Canvassers,

(6) Where a salesman or other person referred to in subsection six of section six is entitled to compensation under this Act, all the employers by whom he was engaged

engaged at the time of the injury shall be liable to contribute to the compensation payable in such proportion as, in default of agreement, may be determined by the commission. George V,
No. 15.

The worker or his dependants shall furnish to any employer from whom compensation is claimed, such information as to the names and addresses of all the other employers by whom he was engaged at the time of the injury, as he or they may possess.

8. (1) Where death results from the injury, and the worker leaves any dependants wholly dependent upon his earnings, the amount of compensation payable by the employer under this Act shall be— Compensation payments (Death).

- (a) a sum equal to his earnings in the employment of the same employer during the four years next preceding the injury, or the sum of four hundred pounds, whichever of those sums is the larger, but not exceeding in any case eight hundred pounds.

The amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof or any lump sum paid as compensation under this Act, shall be deducted from such sum, but no such deduction shall be made so as to reduce the amount payable in respect of the dependants of the worker under this subsection below two hundred pounds. Death following incapacity.
cf. 13 & 14
Geo. V. c. 42,
s. 24 (2).

If the period of the worker's employment by the employer has been less than the said four years, then the amount of his earnings during the said four years, shall be deemed to be two hundred and eight times his average weekly earnings during the period of his actual employment by the employer;

- (b) in addition there shall be payable by the employer a sum of twenty-five pounds in respect of each child under the age of sixteen years who was dependent on the worker's earnings.

(2) Where death results from the injury and the worker does not leave any dependants wholly dependent upon his earnings, but leaves dependants in part dependent Death—leaving partial dependants.
cf. 6 Ed. VII,
c. 53, Sch. I
(1) (a) (2).

**George V,
No. 15.** dependent upon his earnings, the compensation payable by the employer under this Act shall be such sum, not exceeding in any case the amount payable under paragraph (a) of subsection one of this section, as may be agreed upon, or in default of agreement, may be determined, by the commission, to be reasonable and proportionate to the injury to the said dependants.

Death of
minor
leaving no
dependants.

(3) Where death results from the injury and the worker being a minor leaves no dependants, but during a period of six months preceding the injury has contributed the major portion of his earnings towards the maintenance of the home of the members of his family, such members of his family shall be deemed to be dependants of the worker, and the compensation payable by the employer under this Act shall be a sum not exceeding in any case four hundred pounds, as may be agreed upon, or in default of agreement may be determined by the commission to be reasonable and proportionate to the injury to such members of his family

Death--no
dependants.

(4) Where death results from the injury and the worker leaves no dependants, the compensation payable by the employer under this Act shall be reasonable burial expenses not exceeding thirty pounds.

Total or
partial
incapacity.

9. (1) Subject to the provisions of this section and of section ten, where total or partial incapacity for work results from the injury the compensation payable by the employer under this Act shall include :—

- (a) a weekly payment in respect of the worker during the incapacity which shall not exceed sixty-six and two-thirds per centum of his average weekly earnings for the previous twelve months if he has been so long employed by the employer, but if not, then for any less period during which he has been in the employment of the same employer.

The compensation payable under this paragraph shall not exceed three pounds per week, and, in the case of an adult worker, shall not be less than two pounds per week ;

(b)

(b) in addition to the compensation payable under the last preceding paragraph, a weekly payment during the incapacity of—

George V,
No. 15.
Married
worker.

(i) one pound per week in respect of the wife of the worker totally or mainly dependent on the earnings of the worker; and

(ii) eight shillings and sixpence per week in respect of each child of the worker under the age of fourteen years totally or mainly dependent on the earnings of the worker.

(c) in addition to the compensation payable under paragraph (a) a weekly payment during incapacity—

Other
dependants
of worker.

(i) where no compensation is payable to a worker under subparagraph (i) of paragraph (b), of one pound per week in respect of one adult totally or mainly dependent on the earnings of the worker; and

(ii) where no compensation is payable to a worker under subparagraph (ii) of paragraph (b), of eight shillings and sixpence per week in respect of each brother and sister under the age of fourteen years totally or mainly dependent on the earnings of the worker.

(2) The total weekly payment by the employer under subsection one of this section shall not exceed a sum equal to the average weekly earnings referred to in paragraph (a) of that subsection, or the sum of five pounds, whichever is the smaller amount.

Limit of
weekly
payments.

(3) The total liability of an employer in respect of compensation under this section shall not, except in the case of a worker whose injury results in total and permanent disablement, exceed one thousand pounds in any one case.

Total
liability.

(4) Where the weekly payments during incapacity of a worker who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than forty-five shillings, are to

Minors.

110 **Workers' Compensation.**

George V,
No. 15. to be determined, paragraph (a) of subsection one of this section shall be read as if the words one hundred per centum had been substituted for the words sixty-six and two-thirds per centum, but the compensation per week awarded under that paragraph shall in no case exceed thirty shillings.

Medical
benefits.

10. (1) Where total or partial incapacity for work results from the injury the compensation payable by the employer shall also include the cost of such medical, surgical and hospital treatment as may in the opinion of the commission reasonably be required to relieve the worker from the effects of the injury.

(2) The treatment shall include nursing, medicines, medical and surgical supplies, crutches, artificial members and other curative apparatus, and the treatment shall be continued for three months if required or for such further time as the commission directs.

(3) The cost to the employer shall be limited to fifty pounds unless the commission otherwise directs.

(4) If the employer fails to provide promptly the treatment, the worker may do so at the expense of the employer, but he shall not be entitled to recover any amount expended by him for such treatment or services unless he has requested the employer to furnish the same and the employer has refused or neglected to do so.

(5) The fees and charges for the treatment shall be limited to such charges as prevail in the same community for similar treatment of injured persons.

(6) The commission may if it thinks fit direct a change of doctor or treatment when in its judgment a change is desirable or necessary.

Partial
incapacity.
6 Ed. VII,
c. 58,
Sch. I (3).

11. In the case of partial incapacity, the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the worker before the injury, and the average weekly amount he is earning, or is able to earn, in some suitable employment or business, after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

12.

12. If a worker, who has so far recovered from the injury as to be fit for employment of a certain kind, proves to the satisfaction of the commission that he has taken all reasonable steps to obtain, and has failed to obtain such employment, and that his failure to obtain such employment is a consequence, wholly or mainly, of the injury, the commission shall order that his incapacity shall continue to be treated as total incapacity for such period, and subject to such conditions, as may be provided by the order, without prejudice, however, to the right of review conferred by this Act.

George V,
No. 15.

Partial
incapacity
treated as
total.

13 & 14
Geo. V, c. 42,
s. 16.

13. 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.

Allowances
received by
worker.

6 Ed. VII, c. 58,
Sch. I (3).

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

Computation
of average
weekly
earnings.

Ibid., Sch. I
(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 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 injury, was being earned by a person in the same grade, employed at the same work, by the same employer; or, if there is no person so employed, by a person in the same grade employed in the same class of employment, and in the same district.

- (b) Where the worker has 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

ibid.

Workers' Compensation.

George V,
No. 15.

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 injury.

(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 injury, uninterrupted by absence from work due to illness, strikes, lockouts, tempestuous weather, or any other unavoidable cause.

6 Ed. VII,
c. 58, Sch. I
(2).

(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 the earnings.

Casuals.
1920 No. 45,
s. 4.

(e) The average weekly earnings of a casual worker, who has worked under successive contracts of service with two or more employers in the same industry, shall be computed as if his earnings under all such contracts, for a period of twelve months preceding the injury or any less period he may have been engaged in the industry, were earnings in the employment of the employer for whom he was working at the time of the injury.

Such average weekly earnings shall be deemed to be not less than the weekly living wages declared by the statutory authority to be payable in the area in which the injury occurs, and the compensation shall be computed and assessed accordingly.

Until a separate declaration is made by the statutory authority as to the living wages to be paid to persons engaged in rural occupations, the living wages for other adult males or females for the time being in force in the area in which the injury occurs, shall, for the purposes of the computation and assessment of compensation, be deemed to be the living wages paid to the male or female workers engaged in such occupations.

(f)

- (f) Upon request of an injured worker to the employer liable to pay compensation under this Act, the employer shall furnish in writing a list of the earnings of that worker upon which the amount of average weekly earnings may be calculated for the purpose of determining the amount of any weekly payment under this Act.

George V,
No. 15.

List of
earnings.
13 & 14
Geo. V, c. 42,
s. 24 (4).

15. (1) Subject to this Act, the liability in respect of any weekly payment may, with the consent of the worker, be redeemed either in whole or in part by the payment of a lump sum, determined by the commission, having regard to the injury, age, and occupation of the worker at the time of the occurrence of the injury, as well as to his diminished ability to compete in an open labour market.

Redemption
of weekly
payments
either in
whole or in
part.

(2) An agreement as to the redemption of a weekly payment by a lump sum 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 unless such sum has been determined by the commission in accordance with this Act.

(3) Such lump sum may, by agreement or order of the commission be invested or otherwise applied for the benefit of the person entitled thereto.

16. (1) Notwithstanding the foregoing provisions of this Part the compensation payable by the employer for the injuries mentioned in the first column of the table hereunder set forth shall, if the worker so elects, when the injury results in total or partial incapacity, be the amounts indicated in the second column of that table.

Compensa-
tion for
certain
injuries.
W.A. 1912,
No. 69, s. 0.

(2) Nothing in subsection one of this section shall, except when an election has been made under that subsection, limit the amount of compensation payable for any such injury during any period of total incapacity resulting from that injury, but any sum so paid shall be deducted from the compensation payable in accordance with the table.

(3) Section fifteen shall not apply to any payment under this provision save that any such payment

114 **Workers' Compensation.**

George V,
No. 15. payment may, by agreement or by order of the commission, be invested or otherwise applied for the benefit of the person entitled thereto.

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

(5) 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 a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use, may be awarded in lieu of the full amount.

(6) No worker shall in any case (including the case of a worker sustaining by the same occurrence more than one of the injuries mentioned in the table) be entitled to receive more than one thousand pounds compensation in addition to payment of such expenses as are provided for in section ten, which section is hereby made applicable to workers entitled to compensation under this section.

TABLE.

Nature of injury.	Amount payable.		
	£	s.	d.
Loss of either arm, or of the greater part thereof ...	675	0	0
Loss of lower part of either arm, either hand, or five fingers of either hand	600	0	0
Loss of a leg	600	0	0
Loss of the lower part of a leg	562	10	0
Loss of a foot	525	0	0
Loss of sight of one eye, with serious diminution of the sight of the other	675	0	0
*Loss of sight of one eye	375	0	0
Loss of hearing	600	0	0
Complete deafness of one ear	200	0	0
Loss of a thumb	225	0	0
Loss of a forefinger	150	0	0
Loss of joint of a thumb	112	10	0
Loss of little finger, middle finger, or ring finger ...	112	10	0
Loss of a toe or the joint of a finger	90	0	0
Loss of a joint of a toe	75	0	0

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

17. Unless otherwise authorised by the commission, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages, or be delivered or sent by registered post to the worker's address.

George V,
No. 15.
Place of
payment.

PART III.

INSURANCE.

18. (1) Every employer shall obtain from an insurer licensed under this Act to carry on business in the State, a policy of insurance or indemnity for the full amount of his liability under this Act to all workers employed by him and shall maintain such policy in force:

Compulsory
insurance.

Provided that the commission may authorise any employer to undertake the liability to pay compensation to his own workers who furnishes to the commission a certified copy of his balance-sheets for his last three trading years, and such other particulars as may be required. The commission may at any time upon notice to the employer concerned, and consideration of such evidence as he desires to submit, review and continue, suspend or terminate, any such authority as it may deem expedient.

Self-insurers.

"Employer" in this proviso includes a racing club or association.

(2) No insurer shall, except with the consent of the commission, given after due inquiry into the circumstances, refuse to issue such a policy of insurance or indemnity to any employer who has complied with the prescribed conditions:

Provided that an insurer who confines his operations to indemnifying one employer, or a group of employers engaged in one industry, trade or business, in respect of the liability to workers under this Act or at common law, shall not be required to issue a policy in respect of the liability of any other employer whatever, even if engaged in the same industry, trade, or business.

The

**George V,
No. 15.** The operations of a racing or recreation club shall, for the purposes of this subsection, be deemed to be its trade or business.

Insurance
policy.
cf. Vict. Act,
No. 2,750,
s. 31.

(3) Every policy of insurance or indemnity indemnifying an employer against his liability under this Act shall contain only such provisions relating thereto as are prescribed, but may contain such other provisions relating to liability under any other Act or Commonwealth Act or at common law as are appropriate to any particular case.

Any contravention of this provision shall not annul such policy or diminish or affect the liability of the insurer to the person insured under such policy.

Every such policy shall provide that the insurer shall as well as the employer be directly liable to any worker insured under such policy and in the event of his death, to his dependants, to pay the compensation for which an employer is liable, and that the insurer shall be bound by and subject to any order, decision, or award made against the employer of such worker under the provisions of this Act.

Penalty.

(4) Every employer or insurer who fails to comply with any provision of this section shall be liable to a penalty not exceeding one hundred pounds, and after the date of conviction of any such failure to comply he shall from time to time be liable to further penalties not exceeding twenty pounds for every week during which he continues to make default in compliance with any such provision.

(5) It shall be sufficient defence on any prosecution under this section instituted within twelve months from the commencement of this Act, if the person charged proves that he is insured by an insurance company carrying on business in the State against the full amount of his liability to pay compensation under this Act to all workers employed by him.

Joint policy.

(6) Where a principal and a contractor, or two or more principals, are liable to pay compensation in respect of the same worker, it shall be sufficient to obtain a joint policy in respect of such liability. The premium chargeable

chargeable in respect of such policy shall not exceed the current rates for insurance of an employer's liability in respect of workers engaged in the same trade, occupation, calling or industry.

George V,
No. 15.

(7) (a) Every employer applying to an insurer to issue or renew a policy of insurance or indemnity against liability under this Act shall supply to the insurer a full and correct statement of all wages paid to workers in his employment during the period relevant to the determination of the premium payable by him for such policy of insurance.

(b) Any employer who fails to supply such full and correct statement of wages in respect of any such period shall be guilty of an offence against this Act.

19. (1) Within three months of the commencement of this Act every insurer carrying on the business of workmen's compensation insurance in the State at the time of the commencement of this Act, or who after the said commencement commences to carry on the business of insurance of employers against their liability to their workers under this Act or at common law, shall deposit with the Colonial Treasurer a sum of money which shall be determined as follows:—

Deposits by
insurers.

Where the premium income of the insurer from such business in the State, during the twelve months next preceding the commencement of this Act, after deducting local reinsurances—

cf. Qld. Act,
7 Geo. V,
No. 27,
s. 11 (2).

did not exceed ten thousand pounds—

the deposit shall be £6,000

exceeded ten thousand pounds—

the deposit shall be £10,000

In a case where a first deposit of six thousand pounds has been made, the insurer shall make a return to the Colonial Treasurer, in each year on such day to be appointed by the Colonial Treasurer, of his premium income from the business of insuring employers against their liability under this Act or at common law during the twelve months preceding, after deducting local reinsurances, and if and when such premium income after such deductions has increased

**George V,
No. 15.**

increased so as to exceed ten thousand pounds, the insurer shall increase his deposit with the Colonial Treasurer to the sum of ten thousand pounds.

In the case of an insurer commencing to carry on business in the State after the commencement of this Act, the initial deposit to be made by him shall be six thousand pounds.

(2) If any insurer carries on any such business in contravention of the provisions of this section the insurer or his attorney shall be severally liable to a penalty not exceeding one hundred pounds for every day during which such business is carried on.

**Compulsory
reinsurance.**

(3) No licensed insurer shall, except with the consent of the commission, refuse to enter into a contract of reinsurance with any other licensed insurer in respect of such proportion of the total liability covered by a policy of insurance issued under the provisions of this Act, as does not exceed the amount of liability retained by the insurer who issued the prime policy.

The reinsurance commission payable to a licensed insurer in respect of such reinsurance contracts shall be ten per centum of the premium payable.

A licensed insurer shall have the right at all reasonable times to inspect the books and all documents of the ceding insurer so far as they in any way relate to any contract of reinsurance entered into by such licensed insurer.

(4) Subsection three of this section shall not apply to—

- (a) a racing club, association, or employer, authorised under this Act to undertake the liability to pay compensation to workers employed by it or him; or
- (b) an insurer who confines his operations to indemnifying one employer, or a group of employers engaged in one industry, trade or business, in respect of the liability to workers under this Act. The operations of a racing or recreation club shall for the purposes of this paragraph be deemed to be its trade or business.

(5)

(5) The operation of subsection three of this section may be suspended by the Governor on the recommendation of the commission for such period as may be deemed proper if the Governor is satisfied that a scheme of reinsurance is in force among insurers, is equitable in its operation, and is unlikely to cause undue hardship to any insurer.

George V,
No. 15.

Any such suspension shall be notified by proclamation published in the Gazette.

20. In the case of an employer authorised to undertake the liability to pay compensation to his own workers, the amount of the deposit shall, subject to the requirements of the preceding section, be determined by the commission, having regard to the insurance premiums payable in respect of the same, or any similar trade, occupation, calling or industry.

Amount of
deposit.

"Employer" in this section includes a racing club or association.

21. (1) Every sum of money deposited with the Colonial Treasurer by an insurer pursuant to this Act shall be invested and re-invested from time to time as occasion requires in New South Wales stock of such currency and bearing interest at such rate as are in force for the time being in respect of such stock issued to ordinary investors.

Investments
of deposits.
S.A., 15 Geo.
V, No. 1,639,
s. 4.]

(2) The interest on all such stock shall be paid to the insurer depositing the sum of money.

(3) The investment and redemption shall be at par.

22. (1) Notwithstanding anything in this Act, the obligation imposed by this Act upon an insurer to deposit with the Colonial Treasurer any specific sum of money may be satisfied in whole or in part by the deposit by the insurer of securities of equal value issued by the State or the Commonwealth.

Alternative
method of
giving
security.
Ibid. s. 5.

(2) The value of any such securities shall, for the purposes of this section, be deemed to be the face value thereof: Provided that, if the market value of any securities deposited by an insurer under this section is at any time below par, the Colonial Treasurer may, at his discretion, and from time to time, require the insurer to deposit further securities to such an amount that

George V,
No. 15. that the total market value of all the securities deposited by the insurer equals the amount of the deposit required to be made by the insurer.

(3) Every security so deposited with the Colonial Treasurer shall (unless it is negotiable) bear or be accompanied by an assignment in blank executed by the insurer making the deposit.

(4) Every reference in this Act to the sum of money required to be deposited with the Colonial Treasurer shall be deemed to include, *mutatis mutandis*, a reference to any securities substituted in whole or in part therefor under the authority of this section, and the Colonial Treasurer may, if he thinks fit, convert any such securities into money by sale, hypothecation or otherwise, for the purpose of satisfying any such final judgment against the insurer making the deposit as is mentioned in section twenty-four of this Act.

Where share capital of a company is acquired by some other company one deposit may suffice.

S.A. Act,
15 Geo. V,
No. 1,659,
s. 6.

23. (1) If it is proved to the satisfaction of the Colonial Treasurer that any insurer, if a company, has acquired the share capital of any other insurer, being a company, and that such companies are under a common management in Australia, a deposit as required by this Act by the acquiring insurer shall, if the Colonial Treasurer so certifies, be a sufficient compliance with the requirements of this Act.

(2) For the purpose of computing the sum of money required by this Act to be deposited by the acquiring insurer, the premium income of that insurer shall be deemed to be the sum of the premium incomes of the acquiring insurer and of the company whose share capital was acquired.

Application of deposits.
Ibid. s. 7.

24. (1) Subject to this Act, the Colonial Treasurer shall hold every sum of money deposited under this Act upon trust for the payment and satisfaction of all final judgments given against the insurer making the deposit in respect of all insurance policies and contracts issued and entered into by the insurer in the State relating to the liability of employers to their workers under this Act or at common law, which judgments are not otherwise satisfied.

(2)

(2) No sum of money deposited with the Colonial Treasurer under this Act shall be liable to be attached or levied upon or made subject to any debts of or claims against the insurer making the deposit, except as mentioned in the next preceding subsection. George V,
No. 15.

25. (1) If any insurer who has deposited with the Treasurer a sum of money under this Act ceases to carry on business of insurance of employers against the liability to their workers under this Act in the State, the insurer may withdraw the sum so deposited :— Return of
deposits.
S.A. Act,
15 Geo. V,
No. 1,659
s. 8.

- (a) on the expiration of three months after service on the Colonial Treasurer of a notice in writing duly signed by or on behalf of the insurer stating that the insurer has ceased to carry on such insurance business in the State; and
- (b) on satisfying the Colonial Treasurer that the insurer has not from the date of the service of the notice carried on such insurance business in the State; and
- (c) on satisfying the Colonial Treasurer that all the liabilities of the insurer in the State in respect of such insurance are fully liquidated or provided for.

(2) The Colonial Treasurer shall cause every notice served on him under this section, and also his decision with regard to the proposed withdrawal to be published at the cost of the insurer in such manner as he thinks fit.

26. The allegation in any complaint under this Act that any body or association therein named is an incorporated body under any Act shall be prima facie evidence of the fact alleged. Evidence.
Ibid. s. 10.

27. Upon application in the prescribed form accompanied by evidence that the deposit required by this Act has been made, the commission may grant to the applicant a license to carry on in New South Wales the business of insurance of employers against their liability to their workers under this Act and at common law. Such license shall remain in force until terminated under this Act. Licensing of
insurers.

With

George V,
No. 15.

With the application shall also be lodged a return of the premium income of the applicant from workmen's compensation business during the twelve months preceding the commencement of this Act, verified by statutory declaration.

Termination
of licenses.

28. (1) If it is at any time alleged in a complaint in the prescribed form to the commission, that the insurer is unable to meet his liabilities or that a person licensed as an insurer has failed to comply with any material provision of this Act, or is persistently acting in breach of any provision of this Act, the commission may give notice in the prescribed form to the insurer calling upon him to show cause why his license should not be terminated or suspended.

(2) The commission shall hear evidence in support and in answer to the complaint, and after due inquiry shall decide whether or not the license should be terminated or suspended giving reasons for the decision.

(3) The decision of the commission to terminate or suspend any license granted under this Act, shall not be carried into effect until the time for lodging an appeal against the decision has expired, nor while any appeal against the decision is pending.

(4) Notwithstanding the provisions of sections thirty-six and thirty-seven of this Act, an appeal from any decision given by the commission relating to insurers under any of the provisions of this Act shall lie to the Supreme Court.

Such appeal shall be instituted by notice of appeal filed within thirty days after receipt of written notice of the decision from the commission, and shall be by way of special case as prescribed by rules of court.

(5) Any party to the proceedings before the commission may appeal from its decision.

(6) On the hearing of the case the court shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

(7)

(7) If it appears to the court that the facts necessary to enable the question submitted to be determined are not sufficiently set forth in the case or that such facts are in dispute, the court may direct all such inquiries to be made or issues to be tried as it deems necessary in order to ascertain such necessary facts, and, if it deems fit, may amend the case. Any such inquiry may be made before a judge of the court or the Master in Equity.

George V,
No. 15.

(8) In every appeal under this section the costs of the appeal, including the costs of any issue therein, shall be in the discretion of the court.

(9) For the purposes of this section the court may be holden before one judge only.

(10) Any notification of the cancellation of any license under this Act shall be published by the commission in the Gazette, and any notification so published shall be prima facie evidence that the license has been cancelled.

29. (1) No person shall carry on the business of insurance of employers against their liability to their workers under this Act or at common law after his license in that behalf has been cancelled, unless or until a fresh license as an insurer under this Act has been granted to him.

Unlicensed
insurers.

(2) No person whose license has been cancelled shall thereafter, unless or until a fresh license so to do has been granted to him under this Act, do any act or perform any function whatsoever for which a license is required under this Act.

30. The commission may refuse to license under this Act any insurer whose license issued under this Act has been at any time cancelled, or may issue the license subject to such conditions as it thinks fit, subject to a right of appeal in either case in such insurer in manner provided in section twenty-eight.

Power to
refuse
license.

George V,
No. 15.

PART IV.

WORKERS' COMPENSATION COMMISSION.

Appointment
of com-
mission.
cf. 1924
No. 24, s. 5.

31. (1) There shall be a Workers' Compensation Commission which shall consist of a chairman and two other members appointed from time to time by the Governor.

The provisions of the Public Service Act, 1902, shall not apply to the appointments.

(2) (a) The chairman shall be a barrister-at-law of five years' standing, and shall have the same rank, title, status, and precedence, and the same salary and rights as a judge of the district court.

(b) The chairman shall be the "permanent head" within the meaning of the Public Service Act, 1902, and any Act amending the same.

(3) The salaries of the members, other than the chairman, shall be fixed by the Governor.

(4) The members of the commission, other than the Chairman, shall be appointed for a term of seven years, and shall be eligible for reappointment.

On the occurrence of a vacancy an appointment shall be made for the remainder of the unexpired term of the vacant office.

(5) A member of the commission may be suspended or removed for misbehaviour or incompetence, as follows:—

(a) A member of the commission may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided.

The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven days after such suspension if Parliament be in session and actually sitting, and when Parliament is not in session or not actually sitting, within seven days after the commencement of the next session or sitting.

(b)

- (b) A member of the commission suspended under this section shall be restored to office unless each House of Parliament within twenty-one days from the time when such statement has been laid before it, declares by resolution that the said member ought to be removed from office, and if each House of Parliament within the said time does so declare, the said member shall be removed by the Governor accordingly.

George V,
No. 15.

(6) A member of the commission shall be deemed to have vacated his office if he—

- (a) engages in New South Wales during his term of office in any paid employment outside the duties of his office;
- (b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary for their benefit;
- (c) absents himself from duty for a period of fourteen consecutive days, except on leave granted by the Governor, or becomes incapable of performing his duties;
- (d) resigns his office, by writing under his hand, addressed to the Governor.

(7) No act or proceeding of the commission shall be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done, or commenced, there was a vacancy in the office of any one member.

32. (1) The commission shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued in its corporate name; and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of, or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer. The corporate name of the commission shall be "The Workers' Compensation Commission of New South Wales."

Body
corporate.
cf. 1924
No. 24, s. 5.

(2) At any meeting of the commission at which all three members are present, the decision of a majority

**George V,
No. 15.** majority of the members shall be the decision of the commission: Provided that the chairman alone shall decide any question of law, and provided that either the chairman or a majority of the commission may refer any question of law for the decision of the Supreme Court in accordance with the provisions of section thirty-seven.

Quorum. (3) Any two members of the commission shall be a quorum, and, subject to the next following provision, shall have all the powers and authority by this Act conferred upon the commission.

Differences of opinion. (4) If at any meeting of the commission, at which two members only are present, such members differ in opinion upon any matter, the determination of such matter shall be postponed until all the members are present.

No action or suit against members of commission. (5) No action or suit shall be brought or maintained against any person who is, or at any time has been a member of the commission for anything done or omitted by him pursuant to the duties imposed upon him by this Act, nor shall any action, suit, or other proceeding lie against him, nor any costs be payable by him in respect of any proceeding before the commission.

Minutes of meetings, &c. (6) The commission shall cause minutes of its decisions to be kept upon the official papers, and cause minutes to be kept of the proceedings at formal meetings, and an annual report of its work and a statement of accounts to be prepared and presented to Parliament through the Minister.

Appointment of deputy. (7) In case of the illness, suspension, or absence of any member of the commission, a deputy may be appointed by the Governor to act for such member during his illness, suspension, or absence; and every such deputy shall have the immunities and shall, during the time he acts as deputy, have all the powers and authority of such member.

Appointment of officers and employees. cf. 1924 No. 24, s. 5. **33.** (1) For the purpose of carrying out the powers, duties, authorities, and obligations conferred or imposed upon the commission by this or any other Act, the commission, with the approval of the Minister of the department concerned, may make use of the services of any of the officers and employees of the public service.

(2)

(2) The staff of the commission shall be appointed under and be subject to the provisions of the Public Service Act, 1902.

George V,
No. 15.
Staff under
Public
Service
Act, 1902.

No such appointment shall be made without the concurrence of the commission.

(3) The commission may appoint any officer of the commission to act as deputy or assistant registrar, and to perform any duty or exercise any power of the registrar for such period as it deems necessary.

(4) The commission may appoint, employ, and dismiss such casual employees as it deems necessary for the purposes of this Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of other Acts.

(5) Every person appointed under this Act who without lawful excuse reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

(6) Any member of the commission who at the date of his appointment was, or is, an officer of the public service shall, in the event of his office on the commission being discontinued, or in the event of the dissolution of the commission, be eligible on the recommendation of the Public Service Board to be appointed to some office in the public service not lower in classification and salary than that which he held at the date of his appointment to the commission.

34. The commission, for the purpose of conducting any inquiry, investigation or hearing under this Act, shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon a Commissioner appointed under Division 1 of Part II of the Royal Commissions Act, 1923; and the said Act, section thirteen and Division 2 of Part II excepted shall, mutatis mutandis, apply to any witness or person summoned by or appearing before the commission or any member or person to whom the powers of the commission have been delegated under this Act.

35.

George V,
No. 15.
Delegation
of powers.

35. For the purpose of conducting an inquiry, investigation or hearing under the authority of this Act, at which it may be inconvenient for all or any of the members of the commission to be present, the commission may delegate any of its powers or functions to any one member of the commission, or to any fit person, but the decision of any matter in dispute shall be determined by the commission.

Jurisdiction.

36. (1) The commission shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Act, and the action or decision of the commission shall be final.

(2) Nothing in subsection one of this section shall prevent the commission 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 commission shall have authority to do.

(3) The decisions of the commission shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent.

(4) Without limiting the generality of the provisions of subsection one of this section, the jurisdiction of the commission shall extend to determining—

- (a) the question whether an injury received by a worker entitles him to compensation under this Act ;
- (b) the existence and degree of incapacity for work by reason of an injury ;
- (c) the permanence of disablement by reason of an injury ;
- (d) the degree of diminution of earning capacity by reason of an injury ;
- (e) the amount of average earnings of a worker ;
- (f) the existence, for the purpose of this Act, of the relationship of any member of the family of a worker as defined by this Act ;
- (g) the existence and extent of dependency.

(5)

(5) (a) Where an award or order of the commission for the payment of money has been entered up or made in favour of any person, the registrar of the commission, upon the application of such person or of his solicitor or agent, shall issue and deliver to such person, solicitor, or agent a certificate in the prescribed form or to the like effect, and shall make a minute or memorandum thereof against the entry of the award or order. George V,
No. 15.
Certificate
may issue in
respect of
unsatisfied
award or
order.

(b) Such person may file, or cause to be filed, the said certificate in any district court having jurisdiction within the district where the debtor resides, when the registrar shall enter judgment for such person for the amount of the certificate together with the fees paid for such certificate to the registrar of the commission and the fees paid for filing such certificate and entering judgment. Certificate
may be filed
in district
court.

37. (1) No award, order, or proceeding of the commission shall be vitiated by reason of any informality or want of form, or be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature, on any account whatsoever. Decision of
commission
to be final.

(2) No writ of prohibition or certiorari shall lie in respect of any award, order, proceeding, or direction of the commission relating to, or on the face of the proceedings appearing to relate to any matter arising out of this Act.

(3) The validity of any proceeding or decision of the commission shall not be challenged in any manner howsoever.

(4) When any question of law arises in any proceeding before the commission, the commission may of its own motion, state a case for the decision of the Supreme Court thereon. Commission
may state
case.

(5) The Supreme Court for the purpose of hearing any such case shall consist of three judges, and shall have power to make such order as it thinks fit in regard to the costs of and incidental to any case so stated.

E

(6)

George V,
No. 15.

(6) The judges of the Supreme Court, or any two of them, may also make rules with regard to the setting down of any case for argument, and the hearing and decision of the same, and its return with the decision of the Supreme Court thereon.

(7) The decision of the Supreme Court upon the hearing of any such case shall be binding upon the commission and upon all the parties to such proceeding.

Proceedings
of commis-
sion.

38. The commission may—

- (a) conduct its proceedings in public or private as it may think fit ;
- (b) adjourn the proceedings to any time or place ;
- (c) summon a medical referee to sit with the commission as an assessor ;
- (d) submit to a medical referee or medical board for report any matter which seems material to any question arising in an arbitration ; and
- (e) make rules regarding all matters of procedure and practice, and prescribe forms to be used, scales of fees and costs to be paid to barristers and attorneys ; expenses to be paid to witnesses, and the fees payable in any proceedings ;
- (f) make rules for the purpose of—
 - (i) enabling persons to take or defend, or be a party to, proceedings before the commission as poor persons ; and
 - (ii) regulating the practice and procedure and all matters relating to fees and costs in connection with such proceedings.

The expression “ poor person ” means any person who is not worth fifty pounds, excluding furniture to the value of twenty pounds, his wearing apparel, tools of trade, and the subject-matter of the proceedings to which he is a party.

Commission
to assist all
parties.

39. The commission shall—

- (a) 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)

- (b) make all reasonable efforts to conciliate and bring parties to agreement where dispute has arisen concerning compensation claims of injured workers. George V, No. 15. Conciliation.

40. If on any proceedings for the recovery under this Act of compensation for an injury, it appears to the commission that the contract of service or apprenticeship under which the injured person was engaged at the time when the injury happened was illegal, the commission may, if, having regard to all the circumstances of the case, the commission thinks it proper so to do, deal with the matter as if the injured person had at the time aforesaid been a worker under a valid contract of service or apprenticeship. Illegal employment. & 9 Geo. V, c. 8, s. 1.

41. (1) There shall be a fund belonging to and vested in the commission, in this Act called "the fund," from which shall be paid all moneys required for the salaries of the members of the commission and its staff and all other moneys required for carrying out the provisions of this Act. Constitution of fund. cf. 1909 No. 9, ss. 33-37.

(2) The commission shall in each year make an estimate of the amount to be expended out of the fund for the next following year commencing the first day of January: Provided that for the year one thousand nine hundred and twenty-six the commission may make such estimate at any time during that year.

(3) Such estimate when sealed with the seal of the commission shall in any proceeding for the recovery of any contribution to the fund be deemed to have been duly made.

(4) Each insurer shall contribute annually to the fund, a sum amounting to a percentage to be fixed by the commission on the total amount of the premiums received by or due to the insurer during the year ending the thirty-first day of December then last past, in respect of insurance of employers against their liability to their workers under this Act or at common law, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act. Such percentage shall be uniform for all insurers.

(5)

George V,
No. 15.

(5) The amount of any such annual contribution shall be paid in quarterly instalments on the first day of January, April, July and October in each year or on such other days as the commission may fix.

If any such 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.

(6) For the year one thousand nine hundred and twenty-six the contribution under this section shall be based upon the premium income of the insurer in respect of insurance against liability under the Workmen's Compensation Act, 1916, as subsequently amended, as shown in the returns furnished by insurers lodged with applications for licenses.

Self-insurers
assessment of
contribu-
tions.

(7) An employer authorised to undertake the compensation liability to his own workers shall, in respect of any period for which contributions to the fund are payable by insurers, pay such contribution to the fund as the commission may deem reasonable, assessed upon the wages paid to workers during any such period, having regard to the premium payable for such insurance by employers engaged in the same or any similar trade, occupation, calling, or industry.

Any such employer shall, upon demand, furnish such particulars of the wages paid by him during any such period as may be required by the commission.

Rules may be made, amended, varied, or rescinded by the commission respecting the manner in which such employers who undertake self-insurance shall contribute to the fund.

"Employer" in this subsection includes a racing club or association.

Returns by
insurers.
cf. 1909 No.
9, s. 39.

42. (1) Every insurer shall, in the month of July in each year, or at such other time as the commission may notify, send to the commission a return showing the total amount of the premium income received by or due to such insurer in respect of insurance of employers against their liability to their workers under this Act and at common law during the year ending the thirty-first day of December then last past, less any part of such

such premium income actually paid by way of re-
insurance to any other insurers contributing under this
Act, together with a statutory declaration by the
insurer, or his manager, secretary, or agent in this
State that, to the best of his knowledge, information,
and belief, such return is a true return of such amount.

George V,
No. 15.

(2) If any such insurer fails to send such return
within the time so prescribed or notified, such insurer
shall be liable to a penalty not exceeding five pounds
for every day during which such default continues.

(3) If any such return is false in any material
particular, such insurer shall be liable to a penalty not
exceeding one hundred pounds.

PART V.

GENERAL PROVISIONS.

43. (1) There shall be kept constantly posted up in
some conspicuous place at or near every mine, quarry,
factory, workshop, or shop, and on every ship to which
this Act applies, where it may be conveniently read by a
person employed, a summary of the requirements of
this Act, with regard to the giving of notice of injuries
and the making of claims.

Posting
summary of
Act.
13 & 14
Geo. V, c. 42,
s. 10.

(2) The summary shall be in or to the effect of
the prescribed form, and in the event of the summary
becoming effaced, obliterated, or destroyed, it shall be
renewed with all reasonable dispatch.

(3) In the event of any non-compliance with the
provisions of this section, the owner, agent, or manager
of the mine or quarry, or the occupier of the factory
workshop, or shop, or the master of the ship, shall be
guilty of an offence against this Act. Proceedings to
recover a penalty for a contravention of this section
shall be instituted only by an official authorised by the
commission.

(4)

George V,
No. 15.

(4) The want of, or any defect or inaccuracy in the notice of an injury required by section fifty-three, shall not be a bar to the maintenance of proceedings for the recovery of compensation if the employer is proved to have had knowledge of the injury from any source at or about the time of the occurrence, or, where the employer is the owner of a mine or quarry, or the occupier of a factory, workshop, or shop—

- (a) if such summary as aforesaid has not been posted up in accordance with the provisions of this section ;
- (b) if the injury has been reported by or on behalf of the employer to an inspector of mines or factories ;
- (c) if the injury has been entered in any register of accidents kept by or on behalf of the employer at the mine, quarry, factory, workshop, or shop ;
- (d) if the injury has been treated in an ambulance room at the mine, quarry, factory, workshop, or shop.

Reports of
injuries.

44. (1) The employer of any worker who sustains personal injury in the course of his employment, or on his journey to or from the place of employment, shall, when the injury results in death, or incapacity for work for a period of three days, notify the commission in writing as soon as practicable and furnish full particulars regarding the cause, nature and extent of the injury, name and address of the worker, including his dependants in case of death, also his average weekly earnings, the name of the insurer concerned, and such other information as may be prescribed.

(2) The employer of any such worker shall upon the return to employment, termination of incapacity of such worker, or from time to time if requested, furnish such further particulars as the commission may require.

Statistics.

(3) The commission may compile and publish statistics concerning injuries in different industries or occupations from the reports received from employers.

45.

45. (1) This Act applies, notwithstanding any contract to the contrary made after the commencement of this Act.

George V,
No. 15.

No contract-
ing out.

(2) Any contract existing at the commencement of this Act containing a provision whereby a worker relinquishes any right to compensation under this Act shall, to the extent of such provision on the commencement of this Act, be determined.

Qld., 6 Geo. V,
No. 35, s. 12.

46. (1) This Act applies in respect of an injury to a worker who is a seaman employed on a New South Wales ship or a ship whose first port of clearance and whose destination are in New South Wales.

Seamen.

1916 No 71,
s. 11.

(2) In this section the term "New South Wales ship" means any ship which is—

- (a) registered in this State; or
- (b) owned by a body corporate established under the laws of this State or having its principal office or place of business in this State, or is in the possession of any such body corporate by virtue of a charter; or
- (c) 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) 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.

(3) The application of this Act in respect of injuries to seamen, as provided by this section, shall be subject to the following modifications:—

- (a) the notice of injury and the claim for compensation may, except where the person injured is a master, be served on the master of the ship as if he were the employer; but where the injury happened, or the incapacity commenced on board the ship, it shall not be necessary to give any notice of the injury;
- (b) in the case of the death of the seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant;

(c)

Workers' Compensation.

George V,
No. 15.

- (c) where an injured seaman is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury taken by a judge or magistrate in the British possession, or by any British consular officer in the foreign country shall, in any proceedings for enforcing the claim, be admissible in evidence if authenticated by the signature of such judge, magistrate, or consular official, without proof of the signature or official character of the person appearing to have signed such depositions ;
- (d) in the case of the death of the seaman, leaving no dependants, no compensation shall be payable if the owner of the ship is, under any law in force in this State, liable to pay the expenses of burial ;
- (e) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force in this State, liable to defray the expenses of maintenance of the injured seaman ;
- (f) any sum payable by way of compensation shall be paid in full notwithstanding any limitation of liability in any other law ;
- (g) in any proceeding for the recovery of compensation if it is shown that the ship has, twelve months or upwards before the institution of the proceeding, left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board, either immediately after the time when she was last heard of, or at such later time as the commission may think probable.

Any duplicate agreement or list of the crew made out, or statement of change of the crew delivered to a public officer at the time of the last departure of the ship from a port, or a certificate purporting to be a
certificate

certificate from a consular or other public officer at any port, stating that certain seamen were shipped in the ship from such port shall, if produced or purporting to be produced from the proper custody be in the absence of proof to the contrary, sufficient proof that the seamen therein named as belonging to the ship were on board at the time of the loss.

George V.
No. 15.

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 ;

- (h) where a claim is made for compensation under this Act in respect of any injury to a seaman, and it appears that the claimant is or may be entitled to claim compensation in respect of such injury under the Seamen's Compensation Act, 1911, of the Commonwealth, or any Act amending it, proceedings for compensation under this Act shall be stayed until the claimant has given to the person from whom he claims such compensation a sufficient undertaking not to institute or continue any proceedings under the said Act or Acts of the Commonwealth.

The sufficiency of such undertaking may be as agreed upon between the parties and, in default of such agreement, it shall be determined by the commission.

(4) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated wholly or mainly by shares in the profits of the gross earnings of the working of such vessel, except in such cases and subject to such modifications as are prescribed.

cf. 13 & 14
Geo. V, c. 42,
s. 8 (2).

47. (1) This Act shall apply to workers employed by or under the Crown or any Government department to whom this Act would apply if the employer were a private person.

Workers of
Crown.

(2) If a worker elects to make his claim under this Act he shall, in the case of death or total and permanent

George V, permanent disablement, in addition to any benefits to
No. 15. which he is entitled under this Act, be entitled only to a refund of the amount of any contributions made by him or deductions from his salary or emoluments and paid to any superannuation account under any other Act with interest thereon at the rate of four per centum per annum from the respective dates when such contributions or deductions were made.

Deductions
 from wages.
 Qld., 6 Geo. V,
 No. 35, s. 17.

48. (1) No employer shall directly or indirectly take or receive any money from a worker whether by way of deduction from wages or otherwise in respect of any liability under this Act.

(2) Any money so taken or received as aforesaid from a worker, whether with the consent of such worker, or not, may by him be recovered as a debt from the employer, or person who took or received it.

Bankruptcy
 of employer.
 1916 No. 71,
 s. 9.

49. (1) Where any employer has entered into a contract with any insurer 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 insurer as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vested in the worker.

Upon any such transfer the insurer shall have the same rights and remedies and be subject to the same liabilities as if such insurer were the employer, so however that the insurer shall not be under any greater liability to the worker than the insurer would have been under to the employer.

(2) If the liability of the insurer to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which, under the Bankruptcy Act, 1898, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up,
 to

to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the sequestration order or the date of the commencement of the winding-up, and that Act shall have effect accordingly.

George V,
No. 15.

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 should in the opinion of the commission be redeemed.

(4) 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 contract with an insurer as aforesaid.

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

PART VI.

MEDICAL PROVISIONS.

50. (1) The commission may appoint legally qualified medical practitioners to be medical referees for the purposes of this Act and the remuneration of, and other expenses incurred by, such medical referees shall, subject to rules made under this Part, be paid by the commission out of the fund.

Medical referees.
cf. 1916 No. 71, s. 14.

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

51. (1) Where notice has been given of an injury to a worker, or any worker is receiving weekly payments under this Act, any such worker shall, if so required by the commission, submit himself for examination by a medical referee or a medical board consisting of two or more

Medical examinations.
Ibid. Sch. I, pars. 4-14.

George V, more medical referees, or an independent medical
No. 15. practitioner nominated by the employer and approved by the commission, 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 proceedings under this Act in relation to compensation shall be suspended until such examination has taken place.

(2) A worker shall not be required to submit himself for medical examination otherwise than in accordance with this Act and rules made by the commission, or at more frequent intervals than may be prescribed by those rules.

(3) The medical referee, medical practitioner, or medical board to whom any matter is referred shall, in accordance with rules made by the commission, 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 such other information as the commission may require.

Any such certificate given by a medical board shall be conclusive evidence as to the matters so certified.

(4) Rules may be made, amended, varied or rescinded by the commission respecting the procedure in regard to the medical examination of injured workers, the manner in which documents are to be furnished or served, and applications made, and the forms to be used for those purposes and as to fees and expenses to be paid for medical examinations and medical treatment.

Rehabili-
 tation of
 disabled
 workers.

52. (1) The commission may draw from the fund such sums as may be necessary for the purposes of the vocational re-education and rehabilitation of disabled workers.

(2) All Government departments shall as far as practicable, render assistance to the commission in giving effect to the purposes specified in this section.

PART VII.

PROCEEDINGS RESPECTING COMPENSATION.

53. (1) Proceedings for the recovery, under this Act, of compensation for an injury shall not be maintainable unless notice of the injury has been given to the employer as soon as practicable after the happening thereof, and before the worker has voluntarily left the employment in which he was at the time of the injury, and unless the claim for compensation with respect to such injury has been made within six months from the occurrence of the injury, or in case of death, within six months from the time of death:

Time for
taking
proceedings.
1916 No. 71,
s. 6.

Provided always that—

- (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not or would not if a notice or an amended notice was 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, 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 found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

(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 date on which the injury happened.

(3) The notice may be given orally, or in writing, to the employer, or any person designated for the purpose by the employer, or any foreman or other official under whose supervision the worker is employed. If there is more than one employer, the notice may be given to any one of such employers.

(4)

George V,
No. 15.
13 & 14
Geo. V, c. 42,
s. 10 (4).

(4) For facilitating the giving of notice of injuries, a book in the prescribed form shall be kept at every mine, quarry, factory, workshop or shop, in which the prescribed particulars of injuries happening to persons employed at the mine, quarry, factory, workshop or shop may be entered by the injured worker, or some other person acting on his behalf.

An entry in such book, if made as soon as practicable after the happening of the injury, shall be sufficient notice of the injury for the purposes of this Act.

The book shall be kept at such place as to be readily accessible at all reasonable times to any injured worker who was employed at the mine, quarry, factory, workshop or shop, and any person bona fide acting on his behalf.

1916 No. 71,
s. 5 (3).

(5) Notice in writing 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.

Ibid. 4).

(6) 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 be more than one office, any of the offices of such body.

Residence
outside Com-
monwealth.
Ibid. Sch. I,
par. 18.

54. If a worker receiving a weekly payment ceases to reside in the Commonwealth of Australia, he shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

If the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as he proves, in such manner and at such intervals as may be prescribed by rules made by the commission, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

55.

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

George V,
No. 15.

Non-assign-
ability of
compensation.
1916 No. 71,
Sch. I, par. 19.

56. (1) Any sum awarded as compensation shall, unless paid into the commission under this Act, be paid on the receipt of the person to whom it is payable under any agreement, award, or order.

Receipt for
payment.

Ibid. Sch. II,
par. 13.

(2) The solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded, ordered or agreed as compensation, except such sum as may be awarded by the commission.

Costs.

(3) The award may be made on the application either of the person claiming compensation, or of his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent.

(4) Any sum so awarded shall be subject to taxation by the registrar of the commission and to the scale of costs prescribed by rules made by the commission.

57. (1) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the office of the commission.

Payment into
commission
on death.

cf. *Ibid.*
Sch. I, par. 5.

(2) Any sum so paid shall, subject to rules made by the commission, be invested, applied, or otherwise dealt with by the commission, in such manner as the commission in its discretion thinks fit for the benefit of the persons entitled thereto under this Act.

(3) The receipt of the registrar of the commission shall be a sufficient discharge in respect of the amount paid in.

(4) The payment in case of death may, if the worker leaves no dependants, be made to his legal personal representative, or if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

58.

George V,
No. 15.

Payment into
commission.
Person under
disability.
1916 No. 71,
Sch. I, par. 7.

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

Dependency
questions and
apportion-
ment.

cf. *Ibid.*
Sch. I, par. 8.

59. (1) The amount payable to each dependant shall be settled by the commission.

(2) Where there are both total and partial dependants the commission may apportion the compensation partly to the total and partly to the partial dependants.

13 & 14
Geo. V, c. 42,
s. 24 (1).

(3) Where a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the worker.

Review.
1916 No. 71,
Sch. I, par.
16.

60. (1) Any weekly payment may be reviewed by the commission at the request of either the employer or the worker, and on such review may be ended, diminished, or increased subject to the maximum provided by this Act, and the amount of payment shall, in default of agreement, be settled by the commission.

13 & 14
Geo. V, c. 42,
s. 24 (6).

(2) Where the worker was at the date of the injury under twenty-one years of age, and the review takes place more than six months after the injury, and before the worker attains the age of twenty-one years, the amount of the weekly payment may be increased to such an amount as would have been awarded if the worker had at the time of the injury been earning the weekly sum which he would probably have been earning at the date of the review, if he had remained uninjured.

61.

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

**George V.
No. 15.**

Review—account neglect
by widow—
variation of
dependants
circum-
stances.
1916 No 71,
Sch. I, par

62. (1) Any sum which under this Act is ordered to be invested may be invested in whole or in part in the Government Savings Bank of New South Wales. The provisions of any statute or regulations respecting the limit of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

Investment.
Ibid. pars.
10, 11, 12.

(2) No part of any money invested in the Government Savings Bank of New South Wales under this Act shall be paid out, except under the authority of the commission or the order of some officer of the commission authorised in that behalf.

Withdrawals.

PART VIII.

REMEDIES AT COMMON LAW.

63. (1) Nothing in this Act shall affect any civil liability of the employer where 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.

Negligence.
Ibid. s. 52 (e).

(2) In such case the worker may, at his option, proceed under this Act or independently of this Act, but he shall not be entitled to compensation under this Act, if he has obtained judgment against his employer independently of this Act.

64.

Workers' Compensation.

**George V,
No. 15.**

Remedies
against both
employer and
stranger.

1916 No. 71,
s. 10.

64. 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—

- (a) 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
- (b) if the worker has recovered compensation under this Act, the person by whom the compensation was paid shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions relating thereto shall, in default of agreement, be settled by action, or, with the consent of the parties, by the commission.

Common
employment.
cf. N.Z., 13
Geo. V, s. 67.

65. (1) Where any injury or damage is suffered by a worker by reason of the negligence of a fellow worker, the employer of those workers shall be liable in damages in respect to that injury or damage in the same manner and in the same cases as if those workers had not been engaged in a common employment.

(2) This section applies to every case in which the relation of employer and worker exists, whether the contract of employment is made before or after the passing of this Act, and whether or not the employment is one to which the other provisions of this Act apply.

(3) "Employer" in this section includes any Government department or any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of New South Wales but does not refer to any person who by any provision of section six is deemed to be an employer.

PART IX.

MISCELLANEOUS.

66. (1) The Governor may make regulations for carrying out the provisions of this Act, and may in such regulations impose any penalty not exceeding fifty pounds for any breach thereof. Regulations and rules.

(2) Such regulations and any rules made by the commission shall—

- (a) be published in the Gazette ;
- (b) take effect from the date of publication, or from a later date to be specified in such regulations or rules ; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations or rules have been laid before such House disallowing any regulation or rule or part thereof, such regulation, rule or part shall thereupon cease to have effect.

67. Every person who is guilty of an offence against this Act for which a penalty is not expressly prescribed shall be liable to a fine not exceeding five pounds for each offence or where the offence is a continuing one to a fine not exceeding five pounds for each day during which the offence continues. General penalty.

68. All penalties under this Act or the regulations may be recovered in a summary way before a stipendiary or police magistrate, or any two justices in petty sessions. Recovery of penalties.

69. Nothing in this Act shall affect any proceeding for a fine or penalty under the enactments relating to mines, factories, or shops, or the application of any such fine or penalty. Saving of penalties under other Acts. 1916 No. 71, s. 54.

**George V,
No. 15.**

Examination
de bene esse.
1912 No. 23,
s. 83.

1901 No. 24,
s. 66.

70. (1) The commission may, on the application of either party, authorise any barrister, attorney, commissioner for taking affidavits, or justice of the peace, whether of New South Wales or elsewhere in His Majesty's dominions, or any British consul or vice-consul in any place out of His Majesty's dominions, to take at some convenient place, the examination of a witness de bene esse, if such witness is absent from New South Wales, is expected to die, or to be unable from sickness or infirmity to attend at the hearing of any proceeding.

Medical
examination
of workers
residing
outside
State.

(2) The commission may appoint a medical practitioner residing outside the State to be a medical referee for the purposes of this Act, and may require any worker who is in receipt of weekly payments, or claims compensation, under this Act, to submit himself for examination by any such medical referee, at such times as the commission may require, 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 proceedings under this Act in relation to compensation, shall be suspended until the commission otherwise orders.
