

WORKMEN'S COMPENSATION (SILICOSIS) AMENDMENT ACT.

Act No. 13, 1936.

An Act to provide for increased payments of compensation under the Workmen's Compensation (Silicosis) Act, 1920, as amended; to amend that Act; and for purposes connected therewith. [Assented to, 20th May, 1936.]

Edward VIII,
No. 13, 1936.

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:—

1. (1) This Act may be cited as the "Workmen's Compensation (Silicosis) Amendment Act, 1936."

Short title
and
citation.

(2) The Workmen's Compensation (Silicosis) Act, 1920, as amended by the Workers' Compensation Act, 1926, and this Act, may be cited as the Workmen's Compensation (Silicosis) Act, 1920-1936.

2. (1) The Workmen's Compensation (Silicosis) Act, 1920, as amended by subsequent Acts, is amended—

Amendment
of Act No.
13, 1920.

(a) by omitting subsection two of section two and by inserting in lieu thereof the following subsection:—

Sec. 2 (2).

(2) In the case of the death or the disablement of a workman to whom any scheme made under this Act applies the amount of compensation shall be determined in accordance with the provisions contained in the Schedule to this Act.

(b)

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- (b) by inserting at the end of section three the following Schedule:—

THE SCHEDULE.

Definition
of "disease."

1. In this Schedule "disease" means silicosis, or silicosis accompanied by tuberculosis, or any other disease of the pulmonary or respiratory organs caused by exposure to silica dust.

COMPENSATION.

Compensation.

2. The amount of compensation shall be—

Death.

(a) Where death results from the disease—

Total
dependants.

- (i) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the death or the disablement resulting in death, as the case may be, or the sum of three hundred pounds, whichever of those sums is the larger, but not exceeding in any case five hundred pounds:

Provided that the amount of any weekly payments made under this Schedule, and any lump sum paid in redemption thereof, shall be deducted from such sums, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer:

Proviso.

Provided further that no deduction shall be made in respect of the amount of any weekly payments 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 one thousand pounds;

Partial
dependants.

- (ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions

provisions, as may be agreed upon, or in default of agreement as may be determined by the joint committee to be reasonable and proportionate to the injury to the said dependants; and

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(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial not exceeding twenty pounds;

No dependants.

(b) where total or partial disablement results from the disease, a weekly payment during the disablement not exceeding sixty-six and two-thirds per centum of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed three pounds, and the total liability in respect thereof shall not exceed one thousand pounds;

Disablement.

Provided that as respects the weekly payments during total disablement of a workman who is under twenty-one years of age at the date of the disablement, and whose average weekly earnings are less than twenty shillings, one hundred per centum shall be substituted for sixty-six and two-thirds per centum of his average weekly earnings, but the weekly payment shall in no case exceed fifteen shillings.

Minor.

3. For the purpose of the provisions of this Schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

Computation of average weekly earnings.

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated:

Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the terms of the employment, it is impracticable at the date of the death or disablement as the case may be, to compute the rate of remuneration, regard may be had to the average weekly amount which during the twelve months previous to the death or disablement as the case may be, 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)

No. 13, 1933.

- (b) where the workman 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 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 death or disablement, as the case may be;
- (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the death or disablement as the case may be, uninterrupted by absence from work due to illness or any other unavoidable cause;
- (d) where the employer has been accustomed to pay to the workman 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;
- (e) the average weekly earnings of casual workmen shall be deemed to be not less than the weekly living wages declared by the authority constituted by law for that purpose to be payable in the State or the area thereof in which the workman was employed, and the compensation shall be computed and assessed accordingly.

Fixation of
weekly
payment.

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

(2) (a) Where a workman is at the commencement of this Act receiving compensation, pursuant to the Workmen's Compensation (Silicosis) Act, 1920, or any amendment thereof, he shall be entitled to continue to receive compensation in all respects as if the amendments made by subsection one of this section had been in force at the date upon which the compensation first became payable to him.

(b) Where a workman has prior to the commencement of this Act received the full amount of compensation payable to him pursuant to the Workmen's Compensation

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Compensation (Silicosis) Act, 1920, or any amendment thereof, he shall be entitled to receive such further weekly payments of compensation after such commencement as would have been payable to him if the amendments made by subsection one of this section had been in force at the date upon which the compensation first became payable to him:

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Provided that a workman shall not be entitled to further weekly payments of compensation under this paragraph unless upon examination by the medical authority within twelve months after the commencement of this Act he is certified to be still suffering disablement due to silicosis, or silicosis accompanied by tuberculosis, or any other disease of the pulmonary or respiratory organs caused by exposure to silica dust.

(c) Where the dependants of a workman are at the commencement of this Act receiving compensation pursuant to the Workmen's Compensation (Silicosis) Act, 1920, or any amendment thereof, they shall be entitled to continue to receive compensation in all respects as if the amendments made by subsection one of this section had been in force at the date upon which the compensation first became payable to the dependants.

(d) Where the dependants of a workman have, prior to the commencement of this Act, received the full amount of compensation awarded to them by the joint committee established under the Workmen's Compensation (Silicosis) Scheme No. 1, 1927, such dependants shall, if the Minister, upon the recommendation of the joint committee, so approves, be entitled to receive such further weekly payments of compensation after such commencement as would have been payable to them if the amendments made by subsection one of this section had been in force at the date upon which the compensation first became payable to the dependants.

(e) Where a workman died before the commencement of this Act and had not received the full amount of compensation which would have been payable to him if—

- (i) he had lived; and
 - (ii) the amendments made by subsection one of this section had been in force at the date upon which compensation first became payable to him;
- any

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any dependants left by him to whom weekly payments or further weekly payments of compensation would have been payable if such amendments had been in force on such date, shall, if the Minister, upon the recommendation of the joint committee established under the Workmen's Compensation (Silicosis) Scheme No. 1, 1927, so approves, be entitled to receive such weekly payments.

(f) This subsection shall be read and construed with the Workmen's Compensation Act, 1916.
