

WORKERS' COMPENSATION (SILICOSIS) ACT.

Act No. 14, 1942.

An Act to make further and more extensive provisions regarding the payment of compensation in the case of workers who suffer death or disablement owing to the disease known as silicosis of the lungs, or owing to other diseases of the pulmonary or respiratory organs caused by exposure to silica dust; to validate certain payments; to repeal the Workmen's Compensation (Silicosis) Act, 1920-1936, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 24th June, 1942.]

George VI.
No. 14, 1942.

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Workers' Compensation (Silicosis) Act.

No. 14, 1942.

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:—

Short title.

1. (1) This Act may be cited as the "Workers' Compensation (Silicosis) Act, 1942," and shall be construed with the Workers' Compensation Act, 1926, as amended by subsequent Acts whether passed before or after the commencement of this Act, hereinafter called the Principal Act.

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Repeal of Workmen's Compensation (Silicosis) Act, 1920-1936, and schemes made thereunder.

2. (1) The Workmen's Compensation (Silicosis) Act, 1920-1936, as amended by subsequent Acts, is hereby repealed, and the schemes made thereunder shall, as from the commencement of this Act, cease to have effect.

Awards made thereunder continued in force.

(2) (a) All awards, orders, and determinations, made in pursuance of the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as varied by any subsequent scheme, and the Workmen's Compensation (Silicosis) Scheme, No. 2 of 1938, as varied by any subsequent scheme, or deemed to be so made and continuing in force immediately prior to the commencement of this Act, shall continue in force after such commencement, but shall be subject to the provisions of this Act.

Pending matters.

(b) Any application for an award of compensation pending, and any other matter incomplete immediately prior to the commencement of this Act, shall be carried on, and determined, completed or dismissed, in accordance with the procedure prescribed by or under this Act.

Accrued rights and liabilities.

(c) Nothing in this Act shall affect any right, obligation, or liability acquired, accrued, or incurred under the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as varied by any subsequent scheme, and the Workmen's Compensation (Silicosis) Scheme, No. 2 of 1938, as varied by any subsequent scheme, except in so far as may be otherwise prescribed by this Act.

(3)

(3) (a) Any balance and investments at the credit of the Fund established under the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as varied by any subsequent scheme, and the Workmen's Compensation (Silicosis) Scheme, No. 2 of 1938, as varied by any subsequent scheme, at the commencement of this Act, shall be transferred to the Workers' Compensation (Silicosis) Fund established under this Act, and any liability of the Fund established under either of such schemes shall be and become a liability of such Workers' Compensation (Silicosis) Fund.

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Existing assets and debits of the Fund established under existing schemes.

(b) All property, assets, rights, books and documents which were immediately prior to the commencement of this Act in the custody or possession or under the control of the committees constituted under the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as varied by any subsequent scheme, and the Workmen's Compensation (Silicosis) Scheme, No. 2 of 1938, as varied by any subsequent scheme, shall as from such commencement be transferred to the custody, possession and control of the Workers' Compensation (Silicosis) Committee constituted under this Act.

Property of Committees constituted under Schemes.

(4) Any worker, and in the case of the death of the worker his dependants, in receipt of continuing compensation payments, immediately prior to the commencement of this Act, from the Fund established under the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as amended by any subsequent scheme, or the Workmen's Compensation (Silicosis) Scheme, No. 2 of 1938, as amended by any subsequent scheme, shall be entitled to receive compensation payments from the Workers' Compensation (Silicosis) Fund, constituted under this Act, as from the commencement of this Act at the rate prescribed by or under this Act and appropriate to the case.

Existing awards to be a charge against the Silicosis Compensation Fund.

3. For purposes of this Act, unless the context or subject matter otherwise indicates or requires—

Definitions.

“Broken Hill mine” and “Broken Hill mine-owner” shall have the meanings ascribed to the expressions “Broken Hill mines” and “Mine-owner” in the scheme of compensation set out in the Schedule to the Workmen's Compensation (Broken

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(Broken Hill) Act, 1920, as amended by subsequent Acts whether passed before or after the commencement of this Act.

“Committee” means the Workers' Compensation (Silicosis) Committee constituted under this Act.

“Disease” means silicosis or silicosis accompanied by tuberculosis, or any other disease of the pulmonary or respiratory organs caused by exposure to silica dust.

“Fund” means the Workers' Compensation (Silicosis) Fund constituted under this Act.

“Medical authority” means the medical authority appointed under this Act.

“Silicosis” means disease caused by the inhalation of free silica (SiO_2).

Application of this Act.

4. This Act shall apply to any worker other than a worker employed in or about a Broken Hill mine, or a mine to which the Coal Mines Regulation Act, 1912-1941, applies and with respect to whom the medical authority constituted under this Act certifies that—

- (a) the worker has contracted a disease caused by the inhalation of silica dust; and that
- (b) the worker's disablement for work, or the worker's death, was reasonably attributable to his exposure to the inhalation of silica dust in New South Wales in an employment to the nature of which the disease was due.

Workers' Compensation Silicosis Committee.

5. (1) (a) There shall be a Workers' Compensation (Silicosis) Committee which shall be constituted of two representatives of employers and two of employees and an independent chairman, appointed by the Minister.

(b) The Minister may appoint the chairman or any other member of the committee to be the executive member of the committee. The executive member shall devote the whole of his time to the duties of his office.

(c) (i) The chairman and other members of the committee shall hold office for three years and shall be eligible for reappointment.

(ii)

(ii) Where from any cause a member of No. 14, 1942. the committee ceases to hold office the Minister may appoint some suitable person to his office for the residue of the period for which such member was appointed.

(iii) The Minister may appoint suitable persons to act as alternate members during the illness or absence of any members of the committee, and any such alternate member when sitting shall have all the powers and immunities of a member of the committee.

(d) Three members shall constitute a quorum of the committee.

(e) When there is an equal division of opinion, the chairman shall have a casting vote.

(f) Proceedings of the committee shall not be invalidated by any vacancy in its membership.

(g) The members of the committee may be paid from the Fund such fees and/or travelling expenses as the Minister may approve.

(2) (a) The committee shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation in respect of a worker to whom this Act applies.

(b) There shall be no legal representation before the committee.

(c) The decisions of the committee shall be final and conclusive.

6. (1) There shall be established a Workers' Compensation (Silicosis) Fund which shall consist of— Constitution of Fund.

(a) all balances and investments transferred to the Fund by this Act;

(b) all moneys collected by way of levy under this Act;

(c) any moneys provided by Parliament for the purposes of the Fund.

(2) The Fund shall be vested in and administered by the committee. There shall be paid out of the Fund all compensation payable in respect of disablement or death of a worker to whom this Act applies from disease as defined by this Act and all moneys required for the fees of members of the committee, the salaries of the executive member and of the office staff, the fees payable to the medical authority and the costs of administration of this Act. (3)

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(3) The committee shall, from time to time, make a determination as to the class or classes of employment (in this section hereinafter referred to as "determined class or classes of employment") in any industry or process, which employment is of such a nature as to expose the worker to the risk of contracting a disease caused by silica dust, and shall from time to time notify insurers of their determination.

(4) The committee shall in or before the month of May in each year make an estimate of the amount to be expended out of the Fund for the next following year commencing on the first day of July, and shall in such estimate determine what part of such amount is to be provided by the insurers:

Provided that for the year commencing on the first day of July one thousand nine hundred and forty-two the committee may make such estimate at any time after the commencement of this Act.

(5) The part of the amount so estimated which is to be provided by the insurers shall be paid by the insurers in such proportions as the committee may determine.

In determining such proportions the committee shall have regard as far as practicable—

- (a) in the case of an insurer other than a self insurer, to so much of the premiums received by or due to the insurer in respect of policies of insurance as is appropriate to the number of workers employed in any determined class or classes of employment and to the wages paid to the workers so employed; and for the purposes of this paragraph "policy of insurance" means a policy of insurance or indemnity to an employer against liability under the Principal Act; and
- (b) in the case of a self insurer, to the number of workers employed by such self insurer in any determined class or classes of employment, and to the wages paid to workers so employed, and to the premium which such self insurer would have paid had he insured his liability under the Principal Act respecting workers so employed with the Government Insurance Office of New South Wales.

(6)

(6) The proportion to be paid by each insurer shall be paid in half-yearly instalments on the first day of July and the first day of January in each year or on such other days as the committee may fix, and if not so paid may be recovered by the committee as a debt. **No. 14, 1942.**

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

(7) Every insurer shall in each year at such time as the committee may notify, furnish to the committee such particulars as the committee may require for the purpose of enabling it to make any apportionment under this section.

(8) The levy made pursuant to the provisions of this section shall not be made on a Broken Hill mine-owner or on the owner of a mine to which the Coal Mines Regulation Act, 1912-1941, applies or on any insurer of any such owner, in so far as the business of the insurer relates to insurance of liability under the Principal Act of any such owner. **Exemptions from contributing to Silicosis Compensation Fund.**

7. (1) The medical authority, for the purposes of this Act, shall be a medical board consisting of three legally qualified medical practitioners who shall be appointed by the Minister, one of whom shall be appointed chairman, another of whom shall be nominated by employers who employ workers in any industry or process, employment in which exposes the worker to the possibility of contracting the disease, and another by such workers. **Medical authority.**

The Minister may appoint a deputy of each member of the medical authority. Each such deputy shall have the like qualification and shall be appointed on the like nomination (if any) as is required for the appointment of the member for whom he is to act as deputy.

In the event of the absence of any member from a meeting of the medical authority the deputy of such member shall be entitled to act in his place at such meeting, and, while so acting shall, for all purposes, be deemed to be a member of the medical authority.

Every nomination under this subsection shall be in such form and shall be made at such times and in such manner as may be prescribed by regulations made under this Act.

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(2) A certificate affecting the compensation of any person shall be issued only after consideration of the case has been given by the medical authority at a meeting at which all members are present.

At any meeting of the medical authority at which all members are present the decision of the majority on any question shall be the decision of the medical authority.

(3) The medical authority shall undertake such duties and make such examinations and furnish reports thereon as the committee or the Minister may require.

(4) Where a medical practitioner has been employed as a medical practitioner in connection with any case by or on behalf of a worker or by any insurer of the worker he shall not act as medical authority in that case.

(5) The certificate of a medical authority shall be conclusive evidence as to the matters certified.

Certificate
of medical
authority.

8. (1) Where a worker comes within the provisions of this Act, and the medical authority certifies that—

- (a) the worker's disablement for work, or
- (b) the worker's death,

from the disease was reasonably attributable to his exposure to the inhalation of silica dust in New South Wales in an employment to the nature of which the disease was due, such worker, and in the case of the death of the worker, his dependants, shall be entitled to an award from the committee, and to receive compensation at the prescribed rates from the Fund.

Future
awards.

(2) Where an award—

- (a) is made by the committee in respect of the disablement or death of a worker happening after the commencement of this Act; or
- (b) was made by a joint committee constituted under a scheme made under the Workmen's Compensation (Silicosis) Act, 1920-1936, as amended by subsequent Acts, and repealed by this Act, and such award is continuing in force as at the commencement of this Act,

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the compensation payable thereunder, after the commencement of this Act, shall be— No. 14, 1942.

- (i) where death results from the disease—the compensation payments prescribed by section eight of the Principal Act; Compensation payments.
Death.
- (ii) where disablement for work results from the disease—the weekly compensation payments prescribed by section nine of the Principal Act; Incapacity.
- (iii) where medical or hospital treatment, or ambulance service becomes reasonably necessary as the result of the disease—the benefits prescribed by section ten of the Principal Act. Medical and hospital treatment; ambulance service.

All of such compensation payments shall be made from the Fund established by section six of this Act.

(3) For the purposes of this Act, the provisions of sections eight, nine, ten, eleven, thirteen, fourteen, fifty-five, fifty-seven, sixty and sixty-one of the Principal Act shall, mutatis mutandis, apply to all awards referred to in paragraph (a) or paragraph (b) of subsection two of this section.

(4) The requirements of sections ten and fifty-three of the Principal Act as to notices and claims shall apply to notices and claims under this Act, save that notices are to be given to, and claims made on, the committee, in lieu of to or on the employer. Notices and claims.

(5) Where, in proceedings before the Commission, it is claimed that a worker's injury is a disease caused by the inhalation of dusts, other than silica dust, and the Commission finds in its award that the injury is a disease caused by silica dust, and that the worker's disablement or death was not due to his employment in or about a Broken Hill mine, or a mine to which the Coal Mines Regulation Act, 1912-1941, applies, such award shall be conclusive evidence before the committee as to all the matters found therein. Award of the Commission conclusive evidence.

9. (1) All persons who prior to the commencement of this Act were in receipt of payments as "hard luck" cases or ex-beneficiaries from the Fund established under the Workmen's Compensation (Silicosis) Scheme, No. 1 of 1938, as amended by subsequent schemes, in accordance with any decision of the committee administering such scheme, shall be deemed to Allowances for "hard luck" cases.

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No. 14, 1942. to be and to have been entitled to such payments, and any such person shall be deemed to be entitled to continue to receive such payments from the Fund established under this Act, in accordance with such decision until such time as such payments are diminished or terminated by the committee constituted under this Act and the payments made to any such person in any such case are hereby validated.

(2) The payments payable from the Fund under this section shall not exceed five thousand pounds in any one year, commencing on the first day of July.

Regulations. **10.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of subsection one of this section, the Governor may make regulations—

- (a) (i) requiring persons before being employed in any specified industry or process or group of industries or processes involving exposure to the risk of contracting a disease caused by silica dust, to submit themselves to medical examination;
- (ii) prescribing the physical standard requirements of pre-employment medical examination of workers under this Act;
- (iii) regulating or prohibiting the employment in any specified industry or process or group of industries or processes involving exposure to the risk of contracting a disease caused by silica dust, of workers who, upon medical examination, are found to be susceptible to a disease so caused;
- (iv) requiring workers engaged in any specified industry or process or group of industries or processes involving exposure to the risk of contracting a disease caused by silica dust, to submit themselves to periodical medical examination;
- (v)

- (v) prescribing that any or all of the preceding requirements shall be conditions precedent to compensation from the Fund; No. 14, 1942.
- (b) (i) regulating the procedure to be followed in respect of applications for compensation;
- (ii) prescribing the form of registers and general forms to be used;
- (iii) regulating the procedure at meetings of the committee;
- (c) prescribing measures to be taken by employers and workers for the prevention or elimination of the risk of contracting a disease caused by silica dust;
- (d) generally giving effect to the purposes of this Act;
- (e) imposing any penalty not exceeding fifty pounds for any breach of such regulations.

(3) Any penalty for a breach of any regulation may be recovered in a summary manner before a stipendiary or police magistrate.

(4) The regulations shall—

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

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.