

WORKERS' COMPENSATION (BUSH FIRE FIGHTERS) ACT.

Act No. 32, 1944.

An Act to provide for the payment of compensation to persons who receive injury or suffer loss arising out of or in the course of fighting bush fires; to amend the Workers' Compensation Act, 1926-1942; and for purposes connected therewith. [Assented to, 8th December, 1944.]

George VI.
No. 32, 1944.

BE

Workers' Compensation (Bush Fire Fighters) Act.

No. 32, 1944.

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,
citation and
commence-
ment.

1. (1) This Act may be cited as the "Workers' Compensation (Bush Fire Fighters) Act, 1944."

(2) The Workers' Compensation Act, 1926, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation Act, 1926-1944.

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

Amendment of
Act No. 15,
1926.

2. The Workers' Compensation Act, 1926-1942, is amended—

Sec. 6.
(Definitions.)

(a) by inserting next after subsection fourteen of section six the following new subsection:—

Fire fighters
in fire
districts.

(14A) (a) A person who without remuneration or reward voluntarily and without obligation engages in fighting a bush fire in any fire district constituted under the Fire Brigades Act, 1909-1944, with the consent of or under the authority and supervision of or in co-operation with any volunteer fire brigade within the meaning of the said Act or any member of a permanent fire brigade or officer of the Board of Fire Commissioners of New South Wales shall be deemed to be a worker employed by the Board of Fire Commissioners of New South Wales.

(b) For the purposes of assessing the compensation payable to a person to whom this subsection applies the "average weekly earnings" of such person shall—

- (a) if such person was working under a contract of service immediately prior to fighting the bush fire, be computed according to the earnings of such person under that contract of employment;
- (b) if such person was not working under a contract of service immediately prior to fighting the bush fire, be such amount

as

as the Commission considers to be reasonable in the circumstances. No. 32, 1944.

(c) In this subsection—

“Bush fire” means a fire burning in grass, bush, scrub or timber and any fire arising therefrom.

“Fighting” has the meaning ascribed thereto in section 17B of this Act.

(b) by inserting next after Part II the following new Part:— New Part II.A.

PART II.A.

BUSH FIRE FIGHTERS COMPENSATION.

17A. This Part of this Act shall not apply to or in respect of any injury or destruction of or damage to property sustained in any fire district constituted under the Fire Brigades Act, 1909-1944. Application of Part.

17B. (1) In this Part of this Act, unless the context otherwise indicates or requires— Interpretation.

“Bush fire” means a bush or grass fire or a fire in or at any building or a fire of any kind at which a bush fire brigade or fire fighter operates or is in attendance for the purpose of its control or suppression.

“Bush fire brigade” means a bush fire brigade established, organised or authorised or deemed to be established, organised or authorised pursuant to the provisions of section four hundred and ninety-four of the Local Government Act, 1919, as amended by subsequent Acts, or any Order made pursuant to Regulation 35A of the National Security (General) Regulations under the National Security Act 1939-1943 of the Parliament of the Commonwealth.

“Bush Fire Fighters Compensation Fund” means the Fund constituted under this Part of this Act.

“Council”

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“Council” means council of a municipality or shire.

“Fighting” in relation to a bush fire includes any reasonable act or operation performed by a fire fighter at or about the scene of or in connection with a bush fire, which is necessary for, directed towards, or incidental to the control or suppression of the fire or the prevention of the spread thereof, or in any other way necessarily associated therewith.

“Fire fighter” includes—

- (a) the captain, group captain, or deputy captain, or any member of a bush fire brigade;
- (b) any person who, without remuneration or reward, voluntarily and without obligation, engages in fighting a bush fire—
 - (i) with the consent of or under the authority and supervision of the captain, group captain or deputy captain of a bush fire brigade; or
 - (ii) in conjunction with any civil authority; and
- (c) any person who, without remuneration or reward, voluntarily and without obligation, engages in fighting a bush fire and who, in the opinion of the Commission having regard to all the circumstances, should be deemed to be a fire fighter.

“Injury” means personal injury resulting in incapacity or death received by a fire fighter—

- (a) arising out of or in the course of fighting a bush fire; or

(b)

(b) arising out of or in the course of No. 32, 1944.
 journeying between the place of
 abode or place of employment of
 the fire fighter, or place from
 which the fire fighter was called,
 and the bush fire, when such
 journeying was made exclusively
 and bona fide for the purpose of
 engaging in fighting a bush fire,
 and includes a disease which is con-
 tracted in the course of fighting a
 bush fire or journeying as aforesaid and
 to which such fighting or journeying
 was a contributing factor.

“Insurance company” means any corporate cf. Act No.
 body, company, partnership, associa- 9, 1909,
 tion, underwriters, or persons insuring s. 5.
 any property against loss or damage
 caused by fire or lightning.

(2) Any reference to a fire fighter who
 has been injured shall, where the fire fighter is
 dead, include a reference to his legal personal
 representative or to his dependants, or other per-
 son to whom or for whose benefit compensation
 is payable.

17c. (1) A fire fighter who has received an Compensa-
 injury, and, in the case of the death of the fire tion payable
 fighter, his dependants, shall be entitled to an to fire
 award from the Commission, and to receive com- fighters for
 pensation from the Bush Fire Fighters Compen- injury
 sation Fund as herein provided. received.

(2) Where an award is made by the
 Commission under this section the compensation
 payable thereunder shall be—

- (a) where death results from the injury—
 the compensation payments prescribed
 by section eight of this Act;
- (b) where total or partial incapacity for
 work results from injury—the weekly
 compensation payments prescribed by
 section nine or section eleven of this
 Act, as the case may be;

(c) .

No. 32, 1944.

- (c) where medical or hospital treatment, or ambulance service becomes necessary as a result of the injury—the benefits prescribed by section ten of this Act.

All of such compensation payments shall be made from the Bush Fire Fighters Compensation Fund.

(3) For the purposes of this Part of this Act the provisions of subsection three of section seven, sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, fifty-five, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one and sixty-two of this Act shall, *mutatis mutandis*, apply to all awards under this section.

Where a fire fighter was not working under a contract of service immediately prior to fighting the bush fire at which he has received the injury his "average weekly earnings" for the purposes of this Part shall be such amount as the Commission considers to be reasonable in the circumstances.

(4) The requirements of sections ten and fifty-three of this Act as to notices and claims shall apply to notices and claims for compensation under this section or indemnity under section 17D of this Act, save that notices are to be given to, and claims made on, the Registrar of the Commission in lieu of to or on the employer.

(5) The provisions of this Act as to medical examination of a worker shall apply, *mutatis mutandis*, to and in respect of a fire fighter and for the purposes of this subsection the powers exercisable in respect thereof by an employer shall be exercisable by the Registrar of the Commission.

(6) Application for awards under this Part of this Act shall be made in the manner prescribed by the Commission.

(7) At the hearing of any claim under this Part of this Act the Registrar of the Commission may appear before the Commission and exercise in respect of any matters and questions arising

arising out of such claim the like powers, rights and authorities as an employer may exercise in respect of a claim between a worker and employer under this Act. No. 32, 1944.

(8) Compensation payable to a fire fighter under this Part of this Act shall be reduced by such amount as the fire fighter is entitled to or has received as compensation in respect of the same injury under any other Part of this Act, or under any Act relating to workers' compensation, or from any other source whatsoever.

The provisions of section sixty-four of this Act shall apply, mutatis mutandis, to any case where the injury for which compensation is payable under this Part of this Act was caused under circumstances creating a legal liability in some person to pay damages in respect thereof. For the purposes of such application references to "worker" and "employer" shall be construed as references to "fire fighter" and "Commission" respectively.

17D. There shall be payable from the Bush Fire Fighters Compensation Fund in respect of the destruction of or damage to—

- (a) wearing apparel or personal effects upon a fire fighter whilst fighting a bush fire;
- (b) any vehicle, equipment or thing used in connection with fire fighting at or near the scene of the bush fire and owned by or in the possession or custody of a fire fighter,

Indemnity for destruction of or damage to personal effects, vehicles, etc., of fire fighter.

such amount as the Commission may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner thereof for such destruction or damage:

Provided that—

- (i) the amount payable in any particular case pursuant to paragraph (a) of this subsection shall not exceed ten pounds;
- (ii)

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- (ii) no indemnity shall be payable in respect of any loss occasioned by theft or any loss resulting from reasonable wear and tear;
- (iii) no indemnity shall be payable where the owner is entitled to adequate reimbursement under any policy of insurance or from any other source whatsoever.

Bush Fire
Fighters
Compensation
Fund.

17E. (1) There shall be established and kept in the Treasury an account in Special Deposits Account to be called the Bush Fire Fighters Compensation Fund.

(2) All moneys received under this Part of this Act shall be paid into such Fund, and the costs of administration of this Part of this Act, and all expenses incurred by the Registrar of the Commission in the exercise of his powers, authorities or functions pursuant to this Part of this Act, in addition to all compensation payable in respect of injury to fire fighters and amounts payable under section 17D of this Act, shall be paid out of the said Fund.

Returns by
insurance
companies.
cf. s. 42,
infra.

17F. (1) Every insurance company 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 company during the year ending the thirty-first day of December then last past, in respect of insurance of any property whatsoever, situated outside fire districts constituted under the Fire Brigades Act, 1909-1944, against loss or damage caused by fire or lightning, less any part of such premium income actually paid by way of re-insurance to any other companies contributing under this Part of this Act, together with a statutory declaration by the manager, secretary or agent in the State of such company that, to the best of his knowledge, information and belief, such return is a true return of such amount.

(2)

(2) If any such company fails to send ^{No. 32, 1944.} such return within the time so prescribed or notified such company 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 company shall be liable to a penalty not exceeding one hundred pounds.

17G. (1) Subject to the provisions of this Part of this Act contributions to the Bush Fire <sup>Assessment and pay-
ment of con-
tributions.</sup> Fighters Compensation Fund shall be made annually by the Colonial Treasurer, insurance companies and councils whose areas are situated either wholly or partly outside fire districts constituted under the Fire Brigades Act, 1909-1944, in such amounts as may be assessed by the Commission under the provisions of this section.

(2) The first assessment of contributions payable to the Bush Fire Fighters Compensation Fund under this section shall be made by the Commission as soon as practicable after the commencement of the Workers' Compensation (Bush Fire Fighters) Act, 1944.

(3) (a) Upon the commencement of the Workers' Compensation (Bush Fire Fighters) Act, 1944, there shall be paid by the Colonial Treasurer into the Bush Fire Fighters Compensation Fund the sum of five thousand pounds.

(b) At the date of each assessment under this section there shall be paid by the Colonial Treasurer into the Bush Fire Fighters Compensation Fund such sum as may be assessed by the Commission.

Such sum shall not exceed one half of the total of the contributions payable by all insurance companies upon each assessment under this section.

(c) Any moneys payable by the Colonial Treasurer under this section shall be paid out of moneys provided by Parliament.

(4)

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(4) The contribution payable by each insurance company at each assessment shall be a sum amounting to a percentage determined by the Commission of the total amount of the premium income received by or due to such company during the year ending the thirty-first day of December then last past in respect of insurance of any property whatsoever situated outside fire districts constituted under the Fire Brigades Act, 1909-1944, against loss or damage caused by fire or lightning, less any part of such premium income actually paid by way of reinsurance to any other companies contributing under this Part of this Act. Such percentage determined by the Commission shall not exceed one and one half and shall apply equally to all such insurance companies.

(5) The contribution payable by every shire council at each assessment shall be such amount not exceeding thirty-five pounds as may be assessed by the Commission.

(6) The contribution payable by a municipal council the area of which is wholly outside a fire district constituted under the Fire Brigades Act, 1909-1944, at each assessment shall be such amount not exceeding thirty-five pounds as may be assessed by the Commission.

(7) The contribution payable by a municipal council the area of which is partly outside a fire district constituted under the Fire Brigades Act, 1909-1944, at each assessment shall be such amount not exceeding twenty-five pounds as may be assessed by the Commission.

(8) Contributions payable under this section shall become due and payable upon assessment by the Commission, and any such contribution not paid within thirty days of the date of assessment shown on the assessment notice shall, unless the Commission otherwise determines, be increased by ten per centum of the amount of the contribution payable.

(9)

(9) Contributions or any part thereof not paid by any insurance company or council within sixty days of the date of assessment, and all penalties incurred in respect thereof, shall constitute a debt due and payable to the Commission and shall be recoverable in any court of competent jurisdiction by the Registrar on behalf of the Commission. No. 32, 1944.

(10) If after the expiration of two years from the commencement of the Workers' Compensation (Bush Fire Fighters) Act, 1944, the Commission determines that the Bush Fire Fighters Compensation Fund is in a position of sufficiently sound credit to permit of non-assessment of contributions in respect of any annual period, the Commission may submit a recommendation to that effect to the Colonial Treasurer together with a statement showing the then financial position of the Bush Fire Fighters Compensation Fund, and if the Colonial Treasurer approves, contributions under this section shall not be assessed or be recoverable by the Commission in respect of that particular annual period.

17H. The Colonial Treasurer may at any time pay into the Bush Fire Fighters Compensation Fund sums by way of advance to provide the Commission with temporary finance, and such sums shall be refundable by the Commission as soon as practicable with interest at the rate of three per centum. Advances by
Colonial
Treasurer.

17I. The annual report prepared and presented to Parliament pursuant to subsection six of section thirty-two of this Act shall include such statistics as the Commission deems relevant to the operation of this Part of this Act. Statistics
to be
included in
annual
report.