

WORKMEN'S COMPENSATION ACT.

Act No. 71, 1916.

An Act to amend the law with respect to compensation to workmen for injuries suffered in the course of their employment, and for disability incurred from industrial and other diseases; to repeal the Workmen's Compensation Act, 1910, and the Employers' Liability Act, 1897; to amend certain other Acts; and for purposes consequent thereon or incidental thereto. [Assented to, 13th December, 1916.]

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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:—

Preliminary.

1. This Act may be cited as the "Workmen's Compensation Act, 1916."

2. This Act shall commence and come into operation on the first day of July, one thousand nine hundred and seventeen; but except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.

Commence-
ment of Act.
See Act, 1906,
s. 16 (1).

3. The Employers' Liability Act, 1897, and the Workmen's Compensation Act, 1910, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act.

Repeal of
Acts.

4.

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Definitions,
Act, 1906,
s. 13.

4. In this Act, unless the context otherwise requires,—

“Employer” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman 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 workman whilst he is working for that other person.

“Workman” 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 any person employed whose remuneration exceeds three hundred and twelve pounds per year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of the police force, or an out-worker, or a member of the employer's family dwelling in his house.

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents, or other person, to whom or for whose benefit compensation is payable.

“Dependants” means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, 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, shall include such an illegitimate child and parent or grandparent respectively.

“Member

- “ Member of a family ” means wife or husband, father, mother, grand-father, grand-mother, step-father, step-mother, son, daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister. George V,
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- “ Minister ” means Minister for Labour and Industry.
- “ 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.
- “ Schedule ” means Schedule to this Act.
- “ Seaman ” includes master, officer, apprentice, pilot, or other person employed or engaged in any capacity on board a ship.
- “ Ship ” includes every vessel used in navigation not ordinarily propelled by oars.
- “ Vessel ” includes any ship or boat, or any other description of vessel used in navigation.

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.

Liability of employers.

5. (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the Schedule One. Liability of employers to workmen for injuries.
Act 1906,
s. 1.

(2) Provided that—

- (a) the employer shall not be liable under this Act in respect to any injury which does not disable a workman for a period of at least one week 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 the happening of the accident ;

(b)

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- (b) if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed;
- (c) nothing in this Act shall affect any civil liability of the employer when the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible. In such case the workman 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.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of Schedule One, be settled by arbitration in accordance with Schedule Two.

(4) 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.

Time for
taking
proceedings.
Act 1906, s. 2.

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

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

for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy, was occasioned by mistake, absence from the State, or other reasonable cause; and

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- (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 the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or if there be more than one office, any of the offices of such body.

7. (1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the

Contracting
out.
Act 1906, s. 3.

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No. 71. the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew, with or without modifications, such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Registrar of Friendly Societies by and on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection one of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Registrar of Friendly Societies shall include in his annual report the particulars of his proceedings under this Act. (8)

(8) The Governor may make regulations for the purpose of carrying this section into effect. **George V, No. 71.**

8. (1) Where any person (in this section 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 workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman 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 references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

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 workman employed by him on such work. Exceptional cases.

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

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which otherwise are under his control and management.

(5) Every tributer working in connection with any mine as defined by the Mining Act, 1906, and also any wages men employed by any such tributer shall, for the

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 ment was made by the tributer.

Provision in
 case of
 bankruptcy,
 &c., of
 employer.
 Act 1906, s. 5.

9. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included among the debts which, under section forty-eight of 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 be paid in priority to all other debts, the amount, not exceeding in any individual case two hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and that Act shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under Schedule One.

(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 a contract with insurers as aforesaid.

(5)

(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.

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10. 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—

Remedies
against both
employer and
stranger.

Act 1906, s. 6.

- (1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and
- (2) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

11. (1) This Act applies in respect of an accident happening to a seaman employed on a ship whose first port of clearance and whose destination are in New South Wales.

Application
of Act to
seaman.
See Act 1906,
s. 7.

(2) In this Act 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)

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

- (a) The notice of accident and the claim for compensation may, except where the person injured is a master, be served on the master of the ship as if he were the employer; but where the accident happened or the incapacity commenced on board the ship, it shall not be necessary to give any notice of the accident.
- (b) In the case of the death of the seaman, the claim for compensation shall be made within six months after news of the death has been received by the claimant.
- (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 a seaman, leaving no dependants, no compensation shall be payable if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial.
- (e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured seaman.
- (f) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life,

Sec. 34, 1906.

life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger as if the indemnity was damages for loss of life or personal injury.

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- (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 tribunal hearing the case may think probable.

Any duplicate agreement or list of the crew made out, or statement of a 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 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.

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 accident to a seaman, and it appears that the claimant is or may be entitled to claim compensation in respect of such accident under the Seamen's Compensation Act, 1911, of the Commonwealth, or any Act

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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. In default of such agreement, it shall be determined by the tribunal appointed to settle the claim in accordance with the Schedule Two. If no such tribunal has been appointed, it shall be determined by a Judge of the Supreme Court, sitting in Chambers.

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

Application
of Act to
industrial
diseases.
Act 1906, s. 8.

12. (1) Where—

- (i) a certifying surgeon appointed under this Act for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in Schedule Three, and is thereby disabled from earning full wages at the work at which he was employed ; or
- (ii) a workman is, in pursuance of any Act or of any regulations made under any Act, suspended from his usual employment on account of having contracted any such disease ; or
- (iii) the death of a workman is caused by any such disease ;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

- (a) The disablement or suspension shall be treated as the happening of the accident.
- (b)

- (b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.
- (c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due :

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Provided that—

- (i) the workman or his dependants, if so required, shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer, upon proving that the disease was not contracted whilst the workman was in his employment, shall not be liable to pay compensation ; and
- (ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable ; and
- (iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the said twelve months, employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable

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recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation.

- (d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.
- (e) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.
- (f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement, or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall, in accordance with regulations under this Act, be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of Schedule Three, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The Governor may make rules regulating the duties and fees of certifying and other surgeons under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given :

Provided

Provided that—

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- (a) where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;
- (b) where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the Minister may direct, a medical practitioner appointed by the Minister for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The Governor may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order. Such orders shall be notified in the Gazette.

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

13. This Act shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Application
to workmen
of Crown.
Act 1906, s. 9.

Provided that in case of death or incapacity if he elects to make his claim under this Act he shall, in addition to any benefits to which he is entitled thereunder, be entitled to a refund of the amount of any contributions or deductions made by him, or out of 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.

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Appointment
of certifying
surgeons and
medical referees.
See Act 1906,
s. 10.

Medical
referees.

14. (1) The Minister may appoint such legally qualified medical practitioners as he may determine to be certifying surgeons for the purposes of this Act, and may appoint districts in which such surgeons shall discharge their duties, and may alter the boundaries of any such districts.

(2) The Minister may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may determine, and the remuneration of, and other expenses incurred by, certifying surgeons and medical referees under this Act shall, subject to regulations made hereunder, be paid out of moneys provided by Parliament.

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 insurers interested, he shall not act as medical referee in that case.

Remunera-
tion of
arbitrators.

(3) The remuneration of an arbitrator appointed by a judge of district courts under Schedule Two shall be paid out of moneys provided by Parliament in accordance with regulations made hereunder.

Detention of
ships.
Act 1906,
s. 11.

15. (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of the State of New South Wales, or within three miles of the coast thereof, a police magistrate may, upon its being shown to him by any person that the owners are probably liable as such to pay such compensation, and that none of the owners reside in such State, issue an order directed to any officer named by the magistrate requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the magistrate, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer to whom the order is directed shall detain the ship accordingly. The Governor may make rules relating to applications under this subsection.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant,

defendant, and the production of the order of the magistrate, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding. George V,
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(3) If the owner of a ship is a corporation, it shall, for the purposes of this section, be deemed to reside in the State of New South Wales if it has an office in such State at which service of writs can be effected.

(4) If after service on him of any order of detention under this section, the master of the ship, or the owner or any person sends the ship to sea, in contravention of such order, or is party or privy to the offence, he shall be liable for each offence to a penalty not exceeding one hundred pounds.

Supplemental and general.

16. (1) Every employer in any industry to which the Minister may direct that this section shall apply shall, on or before such day in every year as the Minister may direct, send to the Minister a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Minister may direct, and in default of complying with this section shall be liable, on conviction, to a penalty not exceeding five pounds. Returns as
to com-
pensation.
Act 1906,
s. 12.

(2) Any directions made by the Minister as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

17. (1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1910, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act. Provision as
to existing
contracts and
schemes.
Act 1906,
s. 15.

(2)

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No. 71.** (2) Every scheme under the Workmen's Compensation Act, 1910, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

(3) The said registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

Regulations. **18.** (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.

(2) Such regulations shall—

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

Recovery of penalties. **19.** 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.

SCHEDULES.

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SCHEDULE ONE.

Scale and conditions of compensation.

1. The amount of compensation under this Act shall be—

- (a) where death results from the injury—
 - (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 injury, 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 Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, 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;
 - (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, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and
 - (iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding twenty pounds;
- (b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. 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 two pounds, and the total liability in respect thereof shall not exceed seven hundred and fifty pounds:

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

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2. For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

- (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 casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the 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 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 accident.
- (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 accident, uninterrupted by absence from work due to illness or any other unavoidable cause.
- (d) Where the employer has been accustomed to pay to the 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.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workmen may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which 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.

4. Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a legally qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

5. The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the district court of the district in which the workman was employed at the time of the accident, and
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any sum so paid into court shall, subject to rules of court, and the provisions of this Schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in :

Provided that, if so agreed, the payment in case of death shall, if the workman 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.

6. Rules of court may provide for the transfer of money paid into court under this Act from one district court to another.

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

8. Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this Schedule, shall be settled by the district court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this Schedule, by the district court. Where there are both total and partial dependants, nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

9. Where, on application being made in accordance with rules of court, it appears to a district court 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 court 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 court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

10. Any sum which under this Schedule is ordered to be invested may be invested in whole or in part in the Government Savings Bank of New South Wales by the registrar of the district court in his name as registrar.

11. Any sum to be so invested may be invested in the purchase of an annuity from the State Treasurer in accordance with regulations made under this Act or be accepted by the Savings Bank Commissioners as a deposit in the name of the registrar as such ; and 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.

12. No part of any money invested in the name of the registrar of any district court in the Government Savings Bank of New South Wales under this Act shall be paid out, except upon authority addressed to the Savings Bank Commissioners by the judge or registrar of the district court.

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13. Any person deriving any benefit from any moneys invested in the Government Savings Bank of New South Wales under the provisions of this Act may, nevertheless, open an account in the said bank.

14. Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a legally qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

15. A workman shall not be required to submit himself for examination by a medical practitioner under paragraph 4 or paragraph 14 of this Schedule otherwise than in accordance with regulations made by the Governor, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a district court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound, as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Governor, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Governor, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served, and applications made under this paragraph and the forms to be used for those purposes and as to the fee to be paid under this paragraph.

16. Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act :

Provided

Provided that where the workman was at the date of the accident under twenty-one years of age, and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding two pounds.

17. Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the State Treasurer in accordance with regulations made under this Act, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the district court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

18. If a workman receiving a weekly payment ceases to reside in the State, he shall thereupon cease to be entitled to receive any weekly payment, unless the 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 workman 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 of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

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

20. Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of section forty-eight of the Friendly Societies Act, 1912, shall not apply to such society in respect of such scheme.

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SCHEDULE TWO.

Arbitration, &c.

1. For the purpose of settling any matter which, under this Act, is to be settled by arbitration, if any committee representative of an employer and his workmen exists with power to settle matters under this Act, in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing, sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

2. If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the district court, according to the procedure prescribed by rules of court.

3. The Arbitration Act, 1902, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the district court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time, and in accordance with the conditions prescribed by rules of the Supreme Court, either party appeals to the said Supreme Court, and the judge of the district court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the district court.

4. A district court judge may, if he thinks fit, summon a medical referee to sit with him as an assessor.

5. Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

6. The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the district court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the district court, shall not exceed the limit prescribed by such rules, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the district court.

7. In the case of the death or refusal or inability to act of an arbitrator, the judge of the district court may, on the application of any party, appoint a new arbitrator.

8. Where an agreement has been made before ascertainment of compensation between a workman and his employer for payment of a lump sum by way of compromise and satisfaction of all claims,
or

or the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the district court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a district court judgment :

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Provided that—

- (a) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested ; and
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the district court, under the circumstances, may think just ; and
- (c) the judge of the district court may at any time rectify the register ; and
- (d) where it appears to the registrar of the district court, on any information which he considers sufficient, that an agreement made before ascertainment of compensation between a workman and his employer for payment of a lump sum by way of compromise in satisfaction of all claims or an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge, who shall in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just ; and
- (e) the judge may, within six months after a memorandum of an agreement as to compromise of claims or the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

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

10. Where any matter under this Act is to be done in a district court, or by, to, or before the judge or registrar of a district court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of the district court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

11. The duty of a judge of district courts under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the district court, and the officers of the court shall act accordingly, and the rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the district court, or an arbitrator appointed by the judge of the district court, and proceedings in the district court or before any such arbitrator, and such rules may be made by judges of district courts under section 149 of the District Courts Act, 1912.

12. No court fee, except such as may be prescribed under paragraph 15 of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

13. Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and 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 in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the district court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

14. Any committee, arbitrator, or judge may, subject to regulations made under this Act, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

15. The Minister may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any
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any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on district courts or judges of district courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (d) and (e) of paragraph 8 of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Minister to be necessary or proper for the purposes of the order.

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SCHEDULE THREE.

Description of disease.	Description of process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ ...	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis... ..	Mining.
Poisoning by nitro and amido derivatives of benzine (dinitrobenzol, anilin, and others), or its sequelæ.	Any process involving the use of a nitro or amido derivative of benzine or its preparations or compounds.

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Description of disease.	Description of process.
Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
Poisoning by nickel carbonyl or its sequelæ.	Any process in which nickel carbonyl gas is evolved.
Arsenic poisoning or its sequelæ	Handling of arsenic or its preparations or compounds.
Lead poisoning or its sequelæ ...	Handling of lead or its preparations or compounds.
Poisoning by Gonioma Kamassi (African boxwood) or its sequelæ.	Any process in the manufacture of articles from Gonioma Kamassi (African boxwood).
Chrome ulceration or its sequelæ	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
Scrotal epithelioma (chimney-sweeps' cancer).	Chimney-sweeping.
Nystagmus (miners' eye complaint)	Mining.
Glanders	Care of any equine animal suffering from glanders; handling the carcase of such animal.

SCHEDULE

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Description of disease.	Description of process.
Compressed air illness or its sequelae.	Any process carried on in compressed air.
Subcutaneous cellulitis of the hand (beat hand).	Mining.
Subcutaneous cellulitis over the patella (miners' beat knee).	Mining.
Acute bursitis over the elbow (miners' beat elbow).	Mining.
Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.