

WORKMEN'S COMPENSATION (BROKEN HILL) ACT.

Act No. 36, 1920.

An Act to provide for the promulgation of a scheme to procure the payment of compensation in the case of workmen certified after medical examination to be suffering from pneumoconiosis or tuberculosis and prevented from resuming employment in metalliferous mines at Broken Hill; to amend the Acts relating to workmen's compensation and for purposes connected therewith. [Assented to, 31st December, 1920.]

George V,
No. 36.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Workmen's Compensation (Broken Hill) Act, 1920," and shall be construed with the Workmen's Compensation Act, 1916, hereinafter called the Principal Act.

Short title
and construc-
tion.

2. The scheme of compensation set out in the Schedule to this Act shall take effect from the passing of this Act.

Scheme of
compensation.

3. Such sums as the Minister may from time to time certify to be payable by the Government into the fund established under the scheme, are hereby appropriated out of the Consolidated Revenue Fund.

Compensa-
tion Fund.

4.

- George V,
No. 36.**
Variation or amendment of scheme.
- 4.** Any variation of the scheme or any amendment of its provisions, other than the contribution by the Government to the fund or the rates of compensation, may be made by the Minister at the request of the joint committee and shall have effect as if enacted in this Act. Any such variation or amendment 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 variation or amendment; 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 of which notice has been given at any time within fifteen sitting days after the variation or amendment has been laid before such House disallowing the variation or amendment or any part thereof, such variation, or amendment, or part, shall thereupon cease to have effect.
- Operation of Act. **5.** This Act shall remain in operation until the thirtieth day of September, one thousand nine hundred and twenty-eight, and no longer.
- Other compensation payments. **6.** Mine workers and dependents claiming or receiving compensation under this Act shall not be entitled to claim or receive compensation under the Workmen's Compensation Act or any Act in force in New South Wales for the time being relating to compensation to workmen in respect of injuries received, disablement, or industrial diseases.
- Beneficiary not to lose his rights under this Act. **7.** In the event of any beneficiary under this Act leaving the State of New South Wales he will not forfeit his rights under this Act.

SCHEDULE.

BROKEN HILL MINES (PNEUMOCONIOSIS-TUBERCULOSIS)
COMPENSATION SCHEME.

PART I.

PRELIMINARY.

1. Title: This scheme may be cited as the Broken Hill Mines (Pneumoconiosis-Tuberculosis) Compensation Scheme.

2. Definitions: In this scheme, unless the context otherwise requires—

“Expressions” in this scheme have the same meanings as in the Workmen's Compensation Act, 1916. Eng. Sil. Sch. par. 3.

“Beneficiary” means a mine worker in respect of whose disablement or death the joint committee has made an award under this scheme, and includes the wife or widow or child under fourteen years of such mine worker, and a dependent father or mother, and a dependent sister or brother or an illegitimate or adopted child under fourteen years of such mine worker.

“Broken Hill Mines” means metalliferous mines situated within the county of Yancowinna in the State of New South Wales, and included in the Schedule hereto.

“Compensation” means the consideration for which a mine worker undertakes after medical examination made before or after the adoption of the Scheme to give up his work and position as a mine employee if such examination has proved or proves that he is disqualified by pneumoconiosis or tuberculosis from association with other persons as a mine worker; or that having contracted pneumoconiosis or tuberculosis he is thereby incapacitated from further work in the mines. J. Edmunds' award, p. 4.

“Medical Authority” means the Technical Commission of Inquiry of the New South Wales Board of Trade appointed to investigate miners' phthisis and other diseases affecting miners in the Broken Hill district while the services of such commission are available in such district; or if and when the services of the Commission are not available as aforesaid the medical authority constituted under any statutory scheme for compensating employees of the Broken Hill mines who may be suffering from industrial diseases and pending the constitution of any such statutory scheme the medical authority appointed by the Minister for Labour and Industry upon the nomination of the joint committee hereinafter mentioned.

“Mine owner” includes the holder for the time being of any estate, right, title, or interest in or to a Broken Hill mine.

“Mine worker” means any person whose name was on the pay-sheet or who was in the employ of any of the Broken Hill mines on the 1st May, 1919, and who offers himself for re-engagement within three months after the passing of this Act, and includes any person certified by the Technical Commission

Workmen's Compensation (Broken Hill) Act.

George V,
No. 36.

Commission of Inquiry of the New South Wales Board of Trade as the result of medical examination made by the said Technical Commission prior to the 1st day of November, 1920, to be suffering from pneumoconiosis and [*or*] tuberculosis.

“The Fund” means the Broken Hill Compensation (Pneumoconiosis-Tuberculosis) Fund established under this Scheme.

PART II.

COMPENSATION PROVISIONS.

- cf. Award, p. 3. 3. Upon the medical authority certifying that—
- Eng., par. 4. (1) the death of a mine worker has been caused by pneumoconiosis and [*or*] tuberculosis; or
- (2) a mine worker is suffering from pneumoconiosis and [*or*] tuberculosis to such a degree that he should not be re-engaged or should be withdrawn from employment in the Broken Hill mines
- such mine worker and his dependents, as prescribed, shall be entitled to compensation under this scheme: provided that no compensation shall be payable if
- (i) the medical authority certifies that a mine worker is capable of earning the amount declared by the statutory authority to be the living or basic wage for the locality whether within or without the State in which he resides; and
- (ii) the joint committee is satisfied that employment at the above-mentioned wage is available.
- Ibid.* 5. 4. The certificate of the medical authority shall be conclusive evidence of matters certified therein
- Ibid.* 6. 5. Awards of compensation shall be made by the joint committee hereinafter constituted to be a mine worker in respect of whom the medical authority has issued a certificate as aforesaid.
- Award, pp. 3, 4. 6. The rates of compensation shall be—

	per week.		
	£	s.	d.
(a) Single man or widower	2	0	0
Additional payment in respect of any dependent child, mother, father, sister, or brother, as under—			
Mother	1	0	0
Father	1	0	0
Sister under 14 years	0	8	6
Brother	0	8	6
Each child	0	8	6
Provided that the total additional sum in respect of dependents shall not exceed	1	17	0
(b) Married man	2	0	0
Additional payment in respect of—			
Wife	1	0	0
Each child under 14 years	0	8	6
(c) Each widow until remarriage	2	0	0
			(d)

- (d) In the case of a partially dependent wife, widow, father, or mother, or of either a sister, brother, or child under 14 years, such weekly sum shall be paid as may be determined by the joint committee to be reasonable and proportionate to the financial loss sustained but not exceeding in any case the amounts payable under sub paragraphs (a), (b), or (c) hereof. **George V, No. 36.** cf. Act, Sch. (1) (i).
- (e) During partial incapacity the weekly payment shall in no case exceed the difference between the living or basic wage for the time being declared by the statutory authority for the locality, whether within or without the State in which the mine worker in respect of whom an award is made resides, and the average weekly amount he is earning or is able to earn in some suitable employment or business, and shall bear such relation to the amount of such difference as in the circumstances of the case may appear proper to the joint committee. 1916 Act, Sch. 1, 3.
- (f) Removal expenses : Such amount as is considered reasonable by the joint committee may be allowed to a beneficiary who is compelled, in order to obtain suitable employment, to remove from the county of Yancowinna. Eng., 7 (2) (c).
- (g) Funeral expenses of a mine worker considered reasonable by the joint committee may be allowed not exceeding a total of £20. Act, Sch. 1 (1) (a) (iii).
- (h) In determining the amount of compensation to be paid to partial dependents no deduction shall be made in respect of any old age or invalid pension received by a dependent except to the extent to which it increases the total payment in respect of any mine worker to more than £3 17s. per week.

7. Any beneficiary may (with the approval of the joint committee) agree upon a lump sum to be paid in full satisfaction of compensation, and thereupon the amount to be paid in respect of such compensation shall be the sum so agreed upon, and that upon payment of such lump sum the beneficiary and all dependents shall thereupon cease to have any claim whatsoever upon the fund. Award, p. 4 of Act, Sch. 11, s. 9.

8. The joint committee shall ascertain and record in manner to be determined by it, with the approval of the Minister, all particulars respecting any beneficiary which may be necessary to determine his or her compensation rights under the scheme.

9. Where any compensation is payable under this scheme to a person under any legal disability, the joint committee may make such payment during the disability to any person nominated by the committee for the purpose, or to the public trustee, to apply, subject to any directions of the committee, as in his discretion he thinks best for the benefit of the person entitled thereto. Eng., par. 13.

10. 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. Id., 11.

11. Review : Any weekly payment may be reviewed, and increased, diminished, or ended as the joint committee may decide, in accordance with the provisions of this scheme. Act, Sch. 1 (1) (f).

PART

George V,
No. 36.

PART III.

THE BROKEN HILL (PNEUMOCONIOSIS-TUBERCULOSIS)
COMPENSATION FUND.

Enr., par. 16.
Award, p. 4 (n).

12. A fund for the purpose of providing the compensation prescribed by this scheme and meeting the cost of its administration shall be established and maintained as to one half by contributions from the mine owners and as to the remaining half by contributions from the Government of New South Wales.

cf. Eng., p. 17
and 25.

13. The fund shall be vested in and administered by the joint committee.

Ibid. 18.

14. It shall be the duty of the joint committee to fix, levy and enforce the payment of such contributions by the mine owners and the Government as are necessary to enable the fund to meet its liabilities under the scheme.

15. Unless and until any other agreement shall be made between the mine owners and notified in writing to the joint committee, half the amount of compensation payable in respect of a mine worker shall, as between the mine owners themselves, be paid into the fund by the mine owner who, on or before the 1st May, 1919, last employed the mine worker, and payments into the fund for half the cost of administration shall as between the mine owners themselves be made in the ratio of their payments in respect of compensation.

cf. S. Africa,
s. 10 (1).

16. The joint committee shall from time to time prepare a statement showing the estimated expense of maintaining the fund for a period of three (or six) months and serve a copy on the Minister, as representative of the Government, and upon each mine owner. Thereupon each mine owner and the Minister shall pay to the committee the amount mentioned in such notice.

Eng., par. 19.

17. Any sums due as contributions to the fund under this scheme may be recovered by the joint committee summarily as a civil debt:

Provided that the liability of the fund to pay compensation in any particular case shall not be affected by any failure in the payment of any sums due to the fund.

18. The liability of the mine owners as to one half of the estimated expenditure of maintaining the fund from time to time ascertained as hereinbefore provided shall be joint as well as several and notwithstanding the provisions of paragraphs 16 and 17 hereof the joint committee may recover against any such mine owner the whole or any part of the amount from time to time ascertained as payable by the owners of the Broken Hill mines: Provided, however, that the joint committee shall not call upon any non-defaulting mine owner to make any payment in addition to a payment severally due by it under the scheme until after legal proceedings have been taken against any mine owner failing to pay the whole or any part of the amount severally payable by such mine owner and judgment has been obtained when necessary in such proceedings and reasonable effort made to enforce and satisfy the same.

19. Any mine owner who is required or compelled under the last preceding paragraph to pay an amount in excess of the proportion set out

out in this scheme as the share payable by such mine owner may recover in any court of competent jurisdiction any such excess from the mine owner so making default.

George V,
No. 36.

20. If for any cause any such excess cannot be recovered from a mine owner making default the mine owner paying such excess may recover in any court of competent jurisdiction a share of such excess from any other mine owner proportionate to the ratio payable for such mine owner as set out in this scheme.

21. It shall not be a bar to any proceeding under paragraphs 17, 18, 19 or 20 hereof, that no notice has been served as required by paragraph 16 hereof or (in any proceeding under the last preceding paragraph) that the default has occurred owing to a mine having been closed down or abandoned or to there being no mine owner upon whom notice could have been served.

22. The joint committee may accept in lieu of the contributions to the fund under this scheme to be paid by any mine owner as prescribed, an amount determined by an actuary appointed by the Minister which amount may be deemed to be paid in full settlement of all future contributions still payable by such mine owner under the scheme

S. Africa,
s. 12 (1).

23. The joint committee may call upon any mine owner to give security to its satisfaction for the payment of all future contributions and failing such security may demand in lieu of such contribution the payment of a capital sum determined by such actuary as aforesaid.

Ibid. (2).

24. The joint committee may apply the provisions of the last preceding paragraph in the case of any mine owner who becomes bankrupt (or being a company is wound up as an insolvent company) or sells or transfers the mine owned or leased or worked by him or it or terminates the agreement under which the mine is held or worked.

Ibid. (3).

25. The joint committee may equalise or graduate the contributions during successive periods of three months and may, subject to the approval of the Minister, borrow moneys from time to time for the purpose of equalising or graduating such amount or of meeting any deficiency in the fund; and moneys so borrowed together with the interest thereon shall be a charge upon the fund.

Ibid. (13).

26. Any expenses of or incidental to the establishment of the fund and any expenses incurred from time to time by the joint committee in its administration shall be charged to the fund.

Eng., par. 17.

27. It shall be the duty of the joint committee to invest any amounts received in excess of current requirements and to secure that no moneys are applied directly or indirectly for any purpose other than those authorised by the scheme: Provided that in investing any moneys hereunder the joint committee shall be limited to such investments as trustees in New South Wales are permitted by Act of Parliament.

Ibid. 18.

28. The joint committee shall cause the accounts to be audited once in every year by a public accountant, and shall forward a copy of the report of the auditor to the Minister for Labour and Industry and to the mine owners.

Ibid. 21.

29. The joint committee shall, when required by the Minister, prepare a revenue account, balance-sheet, and statement of cases dealt with in respect of any prescribed period, and shall cause an investigation of the estimated liabilities of the fund to be made by an actuary

Eng., Sch. 23.

**George V,
No. 36.** actuary so far as may be necessary to comply with the Minister's direction; and the account, balance-sheet, and statement shall be printed, signed, and forwarded to the Minister.

PART IV.

JOINT COMMITTEE.

- Eng., Sch. 25.* 30. There shall be established a joint committee for the administration of this scheme, for final determination of all questions arising thereunder, and for the discharge of other duties which may be imposed on them by the scheme, or any rule made under the scheme.
- I.A. Act, s. 39.* 31. The joint committee shall consist of four members to be appointed by the Minister, one-half in number of whom shall be nominated by the mine owners and the other half by the mine workers, and an independent chairman. Nominations on behalf of mine workers may be made by trade or industrial unions or associations any of whose members are entitled to compensation under the scheme. The chairman shall be chosen by the unanimous agreement of the other members, but if no such agreement is arrived at, or if the chairman so chosen is unable or refuses to act, he shall be appointed by the Minister.
- Eng., Sch. 27.* 32. In the absence of the chairman at any meeting, the chair may be occupied by any member of the committee chosen by the members present.
- Ibid. 28.* 33. Any question arising at any meeting shall be decided by the majority vote of those present, and, in case of equality, by the casting vote of the independent chairman.
- Ibid. 29.* 34. The joint committee shall have a secretary appointed by the committee, subject to the approval of the Minister, on such terms and at such remuneration to be paid out of the fund as the Minister may approve. The secretary's duties shall be to arrange for all necessary meetings of the committee, keep an accurate record of the proceedings, notify decisions to the beneficiaries, and to any others concerned, arrange for the making of compensation payments, the keeping of accounts, and perform such duties as may be assigned to him under the scheme or any rules made thereunder.
- Ibid. 30.* 35. The members of the joint committee shall be entitled to be reimbursed from the fund such travelling expenses incurred for the purpose of attending meetings and as the Minister may approve.
- I.A. Act, 1912,
s. 23.* 36. The joint committee shall, until otherwise determined by the Minister, be remunerated on the following scale:—
Chairman at the rate of 15s. per hour for the aggregate of hours occupied by sittings of the committee.
Members at the rate of 7s. 6d. per hour for the aggregate of hours occupied by sittings of the committee, with a minimum of 30s. a sitting to each member.
- Eng., par. 31.* 37. Any office or other expenses of the joint committee and any fees or other charges payable in respect of the administration of any moneys held in trust under the scheme which are certified by the committee to be necessary shall be paid out of the fund.
38. The joint committee may, subject to the approval of the Minister, make rules and prescribe forms for giving effect to this scheme.

PART

PART V.

George V,
No. 36.

MEDICAL PROVISIONS.

39. The joint committee shall nominate one or more duly qualified medical practitioners for appointment by the Minister as the medical authority to act if and when the services of the Technical Commission of Inquiry of the New South Wales Board of Trade appointed to investigate miners' phthisis and other diseases affecting miners in the Broken Hill district are not available for the purposes of medical examination under this scheme. Provided that the constitution of a medical authority under any statutory scheme for compensating persons hereafter employed in the Broken Hill mines shall supersede any medical authority appointed under this paragraph.

40. All mine workers who have not prior to the establishment of this scheme been examined by the medical authority shall be so examined before resuming work and if upon any such examination the medical authority has certified or shall certify that he is suffering from pneumoconiosis and [or] tuberculosis to such a degree that he should not be re-engaged or should be withdrawn from employment in the Broken Hill mines, he shall not be re-engaged or employed in or about any of the said mines.

- (a) Whenever re-engagement or re-employment is so prohibited, Eng., par. 33. the medical authority shall certify to what degree, if any, the general physical capacity of the workman for employment is impaired by the pneumoconiosis and [or] tuberculosis.
- (b) The medical authority shall certify the result of any such examination in the manner and form required by the joint committee.

41. There shall be paid out of the fund such salary, fees, remuneration, or expenses to the medical authority as the joint committee may, with the approval of the Minister, determine. Eng., Sch. 43.

42. The joint committee shall on application by a mine worker issue to him a warrant authorising him to be examined by the medical authority and upon production of such warrant the medical authority shall examine such mine worker accordingly. cf. Eng., 36.

43. Every mine worker receiving compensation shall be re-examined within the intervals prescribed by the medical authority who shall on such re-examination issue a fresh certificate confirming or amending the previous certificate. Such examination shall be made once every six months or at such intervals as may be specified in the certificate, and in cases where the worker has removed from the district may, with the leave of the joint committee, be made by a medical practitioner selected by the medical authority. Eng., par. 38.

44. Upon claim being made for the payment of any compensation consequent upon the death of a mine worker, the medical authority may in its discretion decline to issue a certificate as to the cause of death until a post mortem examination has been made. Ibid. 41.

45. The medical authority shall forward every certificate to the secretary of the joint committee, and also notify the secretary of any refusal

George V, refusal to issue a certificate. The medical authority shall keep in the
No. 36. prescribed form a record of every examination made and certificate issued under this scheme.

Eng., par. 43. 46. There shall be paid out of the fund any travelling or other expenses reasonably incurred by a mine worker in submitting himself for any medical examination under this scheme.

PART VI.

DUTIES OF MINE OWNERS AND MINE WORKERS.

Ibid. 44. 47. It shall be the duty of every mine owner—

- (a) to furnish facilities for examination of mine workers at the mine or at some other place to the satisfaction of the joint committee, and to comply with directions given by the Minister for this purpose ;
- (b) not to knowingly re-engage, re-employ, or continue to employ in the mines any mine worker who has not been medically examined or has been suspended under this scheme from further employment therein, or has refused to submit himself to any examination required under this scheme.

Ibid. 44. 48. If a mine owner fails to carry out any of the said duties, or any other duty expressly imposed on him by this scheme, the Minister may direct that he shall pay such increased contribution to the fund as may appear to the Minister to be reasonable in the circumstances after affording the mine owner an opportunity of being heard thereon.

49. It shall be the duty of every mine worker—

- (a) to submit himself for periodical and other examinations provided and for that purpose to attend at the specified times and places ;
- (b) to furnish true information to his present or any future employer as to his employment in the Broken Hill or other mines ;
- (c) not to resume employment in any mine or quarry after having been suspended under this scheme ;
- (d) to accept such employment as may be secured for and proffered to him unless the medical authority shall certify that he is incapable of performing the duties of such employment or that it is unsuitable for or injurious to him.

Ibid. 45. If a mine worker refuses or wilfully neglects to submit himself to any such examination or in any way obstructs the same, or if he fails to furnish true information as aforesaid, or if, after having been suspended, he re-engages in the Broken Hill mines, or if he refuses or wilfully neglects to accept employment as aforesaid or otherwise fails to carry out any duty imposed on him by this scheme, he, or any person claiming through or in respect of him, shall forfeit any right to compensation under the scheme.

Provided that if the joint committee are satisfied that the failure of the mine worker to comply with the foregoing requirements has been due to a bona fide mistake on his part or to causes outside his control, and that the fund will not thereby be prejudiced, it shall be in the discretion of the committee to relax this provision on such conditions and to such extent as they may think fit. 50.

50. Every mine worker entitled to compensation shall be supplied by the joint committee with a register in the prescribed form, which shall be renewed when necessary, and in which shall be entered— **George V, No. 36.**
Reg., par. 46.

- (a) the date of commencement of any employment and the name and address of the employer, the nature of the employment, and the remuneration therefor (to be entered by the employer);
- (b) the date of any examination by the medical authority in pursuance of the scheme and result of the examination (to be entered by the medical authority).

This register shall be kept by the mine worker and produced when required by the joint committee or by the medical authority for the purpose of carrying out any duties under this scheme, and a duplicate of it shall be kept by the joint committee.

SCHEDULE.

Name of mine.	Name of present owner.
North Mine ...	North Broken Hill, Limited.
Junction North ...	Junction North Broken Hill Mine (No Liability).
Pinnacles... ...	Do do do
Junction ...	The Broken Hill Junction Lead Mining Company (No Liability).
British ...	British Broken Hill Proprietary Company, Limited.
Block 14 ...	Broken Hill Proprietary Block 14 Company, Limited.
Block 10 ...	Broken Hill Proprietary Block 10 Company, Limited.
Central ...	Sulphide Corporation, Limited.
South ...	Broken Hill South Silver Mining Company, Limited.
South Blocks ...	The Zinc Corporation, Limited.
Zinc Corporation... ..	Do do do
Broken Hill South Extended.	Do do do
Proprietary ...	Broken Hill Proprietary Company, Limited.
Amalgamated Zinc (De Bavay's), Ltd.	Amalgamated Zinc (De Bavay's), Ltd.
Marshall's Caledonian.	Marshall's Caledonian Lead and Silver Mines (No Liability).

STORES