

WORKERS' COMPENSATION (AMENDMENT) ACT.

Act No. 20, 1945

An Act to increase the amounts payable by way of compensation under the Workers' Compensation Act, 1926-1944, the Workers' Compensation (Silicosis) Acts, 1942, and the Workmen's Compensation (Broken Hill) Acts, 1920-1942; to amend the said Acts and certain other Acts in certain respects; to provide for the establishment of a Premiums Committee and to define its powers and functions; and for purposes connected therewith. [Assented to, 5th April, 1945.]

George VI.
No. 20, 1945.

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

1. (1) This Act may be cited as the "Workers' Compensation (Amendment) Act, 1945."

Short title
and com-
mencement.

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

2. (1) The Workers' Compensation Act, 1926-1944, is amended by inserting at the end of section eight the following new subsection:—

Amendment
of Act No. 15,
1926.

Sec. 8.
(Compensation
payments—
Death.)

(5) (a) Where death results from the injury and the widow of the worker claims compensation in respect thereof, and the Commission—

cf. Imp. Act
6 & 7 Geo.
VI, ch. 6,
sec. 5.

(i) is satisfied that any earnings of the widow were in respect of employment which she entered into on or after the third day of September,

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September, one thousand nine hundred and thirty-nine, and would not have entered into but for the war; and

- (ii) is of opinion that, if she had not entered into the said employment she would have been dependent either wholly or partly upon the earnings of the worker at the time of his death, or would but for the incapacity due to the injury have been so dependent,

the Commission shall disregard those earnings either wholly or to such extent as the Commission thinks proper, and accordingly may treat the widow as wholly or partly dependent upon the earnings of the worker at the time of his death.

(b) Where, in any such case, a female member of the worker's family other than his widow claims compensation as aforesaid, the Commission shall treat her, for the purposes of paragraph (a) of this subsection as if she were the widow of the worker if the Commission is satisfied that—

- (i) she was acting as housekeeper to the worker at the time of his death (otherwise than in a temporary capacity by reason of the injury); or
- (ii) she was acting as housekeeper to the worker at the time when she entered into the employment in question and would have been so acting at the time of the worker's death if she had not entered into the said employment.

(c) This subsection shall not apply to any deaths taking place before the commencement of the Workers' Compensation (Amendment) Act, 1945, and shall expire on such date as the Governor may by proclamation published in the Gazette appoint, but without prejudice to anything previously done thereunder.

Further
amendment of
Act No. 15,
1926.
Sec. 9.
(Total or
partial in-
capacity.)

(2) The Workers' Compensation Act, 1926-1944, is further amended—

- (a) by omitting from paragraph (a) of subsection one of section nine the words "three pounds," and by inserting in lieu thereof the words "three pounds ten shillings;"

(b)

- (b) (i) by omitting from subparagraph (i) of paragraph (b) of the same subsection the words "one pound," and by inserting in lieu thereof the words "one pound five shillings";
- (ii) by omitting from subparagraph (ii) of the same paragraph the words "eight shillings and sixpence," and by inserting in lieu thereof the words "ten shillings";
- (c) (i) by omitting from subparagraph (i) of paragraph (c) of the same subsection the words "one pound," and by inserting in lieu thereof the words "one pound five shillings";
- (ii) by omitting from subparagraph (ii) of the same paragraph the words "eight shillings and sixpence," and by inserting in lieu thereof the words "ten shillings";
- (d) by omitting from subsection two of the same section the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (e) by inserting at the end of the same section the following new subsection:—

(7) (a) Where a claim under subparagraph (i) of paragraph (b) of subsection one of this section or under subparagraph (i) of paragraph (c) of that subsection is made for a weekly payment in respect of a wife or a female who was at the time of the injury to the worker in employment as a worker and who by reason only of earnings which she received or was entitled to receive in respect of such employment was not totally or mainly dependent on the earnings of the worker, and the Commission is satisfied that such wife or female has left the said employment for the purpose of caring for the worker and is engaged in caring for him, the Commission shall treat such wife or female as totally or mainly dependent upon the earnings of the worker at the time of the injury.

(b) This subsection shall not apply in respect of any injury received by a worker before the commencement of the Workers' Compensation (Amendment) Act, 1945.

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Further
amendment
of Act No. 15,
1926.

Section 10.

(Medical
and hospital
treatment.)

(3) The Workers' Compensation Act, 1926-1944, is further amended—

- (a) (i) by omitting from paragraph (a) of subsection three of section ten the words "three guineas per week" and by inserting in lieu thereof the words "ten shillings and sixpence for each day or part of a day";
- (ii) by omitting from paragraph (b) of the same subsection the words "three shillings" and by inserting in lieu thereof the words "three shillings and sixpence";
- (iii) by omitting from the same paragraph the words "one guinea per week" and by inserting in lieu thereof the words "one pound four shillings and sixpence per week. In addition to the amounts prescribed in this paragraph, the employer shall be liable for a sum of one guinea in respect of each treatment which necessitates the use of the hospital theatre and for a sum of ten shillings and sixpence in respect of any necessary X-ray photograph of the patient taken at the hospital";

Section 16.

(Compen-
sation
for certain
injuries.)

(b) by inserting at the end of subsection two of section sixteen the following words:—

"But such deduction, to the extent to which it would reduce the sum payable to the worker upon such an election to an amount less than one-half of the amount payable in respect of the injury, as indicated in the second column of the table, shall not be made."

Further
amendment
of Act
No. 15, 1926.New Sec.
30A.Insurance
Premiums
Committee.

(4) The Principal Act is further amended by inserting next after section thirty the following new section:—

30A. (1) There shall be a committee to be called the Insurance Premiums Committee (in this section referred to as "the committee") which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed on the committee by this section.

(2)

(2) The committee shall consist of three No. 20, 1945. members as follows:—

- (a) The chairman of the Workers' Compensation Commission who shall by virtue of his office be the chairman of the committee;
- (b) one member who shall be appointed by the Governor by notification published in the Gazette to represent the interests of licensed insurers;
- (c) one member who shall be appointed by the Governor on the nomination of the Minister and who shall be an officer within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

The members referred to in paragraph (b) and paragraph (c) of this subsection are in this section referred to as appointed members.

(3) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of any appointed member, nor shall any appointed member, in his capacity as a member, be subject to the provisions of any such Act during his term of office as a member.

(4) The member of the committee appointed by the Governor to represent the insurers shall be so appointed on the nomination of the licensed insurers or a majority of them.

(5) An appointed member shall hold office for the period specified in the instrument of his appointment, and shall be eligible for reappointment from time to time.

(6) The office of an appointed member shall become vacant if the person appointed thereto—

- (a) dies; or
- (b) becomes bankrupt, compounds with his creditors or makes an assignment of his estate for their benefit; or
- (c) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act, 1898-1944; or

(d)

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- (d) resigns his office by writing under his hand addressed to the Governor; or
- (e) is removed from office by the Governor.

(7) Where the licensed insurers neglect or fail to submit to the Minister, in the manner and within the time specified by the Minister, a nomination as provided by this section, the Minister may nominate any person he thinks fit for appointment to represent the interests of the licensed insurers.

(8) In the case of the illness or absence of an appointed member the Governor may appoint a deputy to act in the place of such member during his illness or absence.

Any deputy appointed under this subsection whilst acting as such deputy may exercise all the powers and authorities of the member in whose place he acts.

The provisions of subsections four and seven of this section shall apply to and in respect of the appointment of any deputy to act in the place of the member who represents the interests of licensed insurers.

(9) For the purposes of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the committee by or under this or any other Act, the committee may, with the approval of the Minister of the Department concerned, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

(10) Appointed members shall be entitled to receive such remuneration by way of fees, travelling allowances or otherwise as may be determined by the Governor, but not exceeding such amount or amounts per year (if any) as may be prescribed by regulations made under this Act.

(11) Any two members of the committee, one of whom shall be the chairman, shall constitute a quorum for the purposes of any meeting of the committee, and any duly convened meeting at which a quorum is present shall be capable of exercising and performing any of the powers, authorities, duties and functions conferred and imposed on the committee by this section.

(12).

(12) At any meeting of the committee the decision of the majority of the members present and voting at such meeting shall be the decision of the committee. No. 20, 1945.

If at any meeting of the committee the voting on any matter is equal, the chairman shall have a second or casting vote.

(13) No act or proceeding of the committee shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced, there was a vacancy in the office of either of the appointed members.

(14) The committee shall cause minutes of its proceedings and decisions at formal meetings to be kept.

(15) The procedure for the calling of meetings of the committee and for the conduct of business at such meetings shall, subject to this section and to any regulations made under this Act in relation thereto, be as determined by the committee.

(16) The chairman may sign any notice or other document for and on behalf of the committee.

(17) The committee shall, when so directed by the Minister—

- (a) investigate and furnish to the Minister a report and recommendation with respect to any matter relevant to the insurance of employers under this Act which may be referred to the committee by the Minister;
- (b) make an investigation with respect to any report, notice or return required by this Act to be furnished by an insurer.

(18) For the purposes of any investigation under this section the committee and the chairman shall have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923, as amended by subsequent Acts, on a commissioner and the chairman of a commission, respectively, appointed under Division 1 of Part II of that Act and the said Act. section
thirteen,

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thirteen, and Division 2 of Part II excepted, shall, *mutatis mutandis*, apply to any witness summoned by or appearing before the committee.

(19) For the purposes of any investigation under this section, and without prejudice to the generality of subsection eighteen of this section, any licensed insurer shall, when required by the committee or the chairman so to do, and upon reasonable notice produce to any person nominated for the purpose by the committee or the chairman any book, contract, record, document or paper reasonably required for the purposes of such investigation, and shall permit such person to inspect the same and to take copies thereof or extracts therefrom.

If a licensed insurer contravenes the provisions of this subsection he shall be guilty of an offence against this section.

(20) Any person who commits an offence against this section shall be liable upon summary conviction to a penalty not exceeding five hundred pounds. Where such offence is committed by a body corporate, and the act constituting the offence is proved to have been committed with the knowledge, consent, or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly.

(21) (a) It shall be the duty of the committee to prepare and present to the Governor before the expiration of six months after the commencement of the Workers' Compensation (Amendment) Act, 1945, a scheme which shall provide for the fixing and adjustment from time to time of the rates of premium payable in respect of policies of insurance referred to in section eighteen of this Act in such a way as to make the loss ratio to the extent to which the same can reasonably be ascertained by the committee not less than a fixed percentage specified in the scheme.

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In this paragraph "loss ratio" means the proportion which the cost of claims as calculated in the manner determined from time to time by the committee bears to the premium income also calculated in the manner determined from time to time by that committee. No. 20, 1945.

The committee may hold such investigation as it thinks fit for the purpose of preparing any scheme referred to in this subsection.

(b) Any such scheme may—

- (i) provide for the alteration by the committee from time to time as it thinks fit of the fixed percentage referred to in paragraph (a) of this subsection;
- (ii) provide for all matters for which provision is necessary or convenient for the purpose of carrying out or enforcing the provisions of the scheme, including, but without prejudice to the generality of the foregoing provisions of this subparagraph, provision for the imposition and recovery of penalties, the cancellation of licenses of insurers and the recovery and distribution of moneys required to be paid and distributed by any insurer or other person under the scheme;
- (iii) contain provisions for the exemption of any licensed insurer or class of licensed insurers from the operation of all or any of the provisions of the scheme, either absolutely, or subject to terms and conditions, and either generally, or for a limited time or from time to time.

(c) Any such scheme may be revoked or amended from time to time by a subsequent scheme prepared by the committee and presented to the Governor.

(d) Any scheme prepared by the committee and presented to the Governor under this subsection shall—

(i) be published in the Gazette;

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(ii)

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- (ii) take effect from the date of publication or from a later date to be specified in the scheme; and
- (iii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and, if not, then within fourteen sitting 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 scheme has been laid before such House, disallowing the scheme or any part thereof, such scheme or part shall thereupon cease to have effect.

Further
Amendment
of Act No. 15,
1926.
Section 44.
(Reports
and
returns.)

(5) The Workers' Compensation Act, 1926-1944, is further amended—

- (a) by omitting from subsections one and two of section forty-four the word "employer" wherever occurring and by inserting in lieu thereof the words "insurer of the employer";
- (b) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections:—

(3) A reference to an insurer in this section shall be construed as including a reference to a self-insurer.

(4) The Commission may, from the reports, notices and returns furnished to it under the provisions of this Act, compile and publish statistics concerning injuries in different industries and occupations, workers' compensation insurance, and such other aspects of workers' compensation as the Commission thinks fit.

(5) Every insurer shall furnish to the Commission within the time and in the manner prescribed by rule made by it, reports and returns showing—

- (a) the total amount of wages paid each year to workers in respect of whom policies have been issued by the insurer under this Act;

(b)

(b) such further information and details in relation to workers as may be prescribed by rule made by the Commission or the Insurance Premiums Committee. **No. 20, 1945.**

(6) The amendments made by paragraphs (a), (b) (c) and (d) of subsection two of this section shall be deemed to extend to, and from the commencement of this Act, apply in respect of all persons in receipt of weekly payments under the provisions of section nine of the Workers' Compensation Act, 1926-1944, and under the provisions of the Workers' Compensation (Silicosis) Acts, 1942, as well as to all persons becoming entitled to weekly payments under any of such provisions after such commencement. **Increased weekly payments—retroactive.**

(7) Any policy of insurance against liability under the Workers' Compensation Act, 1926, or any amendment of that Act, being maintained in force at the commencement of this Act shall be deemed to insure the employer and always to have insured the employer against any additional liability to which he may become liable during the currency of the policy under any amendment of the Workers' Compensation Act, 1926-1944, made by this section. **Subsisting policies. cf. Act No. 13, 1942, s. 5.**

Where a person is in receipt of compensation at the commencement of this Act and such compensation is payable by an insurer such insurer shall be liable to pay any additional compensation to which such person becomes entitled by virtue of any amendment made by this section.

(8) The Workers' Compensation Act, 1926, as amended by subsequent Acts and by this section of this Act may be cited as the Workers' Compensation Act, 1926-1945. **Citation.**

3. (1) The Workers' Compensation (Silicosis) Acts, 1942, is amended— **Amendment of Act No. 14, 1942.**

(a) by omitting from paragraph (b) of subsection one of section six the words "levy under this Act" and by inserting in lieu thereof the words "contributions from insurers under this section"; **Sec. 6. (Fund.)**

(b)

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- (b) (i) by inserting in subsection three of the same section after the word "employment" the words "(in this section hereinafter referred to as 'determined class or classes of employment')";
- (ii) by inserting in the same subsection after the word "dust" the words "and shall from time to time notify the insurers and the Insurance Premiums Committee constituted under the Principal Act, of their determination";
- (c) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—

(4) The committee shall as soon as practicable after the commencement of section three of the Workers' Compensation (Amendment) Act, 1945, make an estimate of the amount to be expended out of the fund for that portion of the year ending on the thirtieth day of June next following the date of such commencement as is unexpired on that date. And thereafter the committee shall in or before the month of May in each year make an estimate of the amount to be expended out of the fund for the next following year commencing on the first day of July;

- (d) by omitting subsections five, six, seven and eight of the same section and by inserting in lieu thereof the following subsections:—

(5) Any such estimate, if set out in writing in a certificate signed by the chairman of the committee, shall, in any proceeding for the recovery of any contribution to the fund under this section be deemed to have been duly made.

(6) The amount of such estimate shall be paid to the committee by way of contributions by insurers in such proportions as the Insurance Premiums Committee constituted under the Principal Act may determine.

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In determining such proportions the Insurance Premiums Committee shall have regard as far as practicable—

(a) in the case of an insurer other than a self-insurer, to so much of the premiums received by or due to the insurer in respect of policies of insurance as is appropriate to the number of workers employed in any determined class or classes of employment and to the wages paid to the workers so employed; and for the purposes of this paragraph "policy of insurance" means a policy of insurance or indemnity to an employer against liability under the Principal Act; and

(b) in the case of a self-insurer to the number of workers employed by such self-insurer in any determined class or classes of employment, and to the wages paid to workers so employed, and to the premium which such self-insurer would have paid had he insured his liability under the Principal Act respecting workers so employed with the Government Insurance Office of New South Wales.

(7) The proportion to be paid by each insurer shall be paid in half-yearly instalments on the first day of July and the first day of January in each year, or on such other days as the committee may fix, and if not so paid may be recovered by the committee as a debt.

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

(8) Every insurer shall in each year at such time as the Insurance Premiums Committee constituted under the Principal Act may notify, furnish to that committee such particulars as it may require for the purpose of enabling it to make any apportionment under this section.

(9)

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(9) No contribution shall be payable under this section by a Broken Hill mine owner, or by the owner of a mine to which the Coal Mines Regulation Act, 1912, as amended by subsequent Acts, applies, or by an insurer of any such owner, in so far as the business of the insurer relates to insurance of liability under the Principal Act of any such owner.

(10) (a) An insurer shall be entitled to recover from his policy-holders in such proportions as the Insurance Premiums Committee may determine, the amount of any contribution payable by such insurer under this section together with such percentage of that amount as may be fixed from time to time by the Insurance Premiums Committee to cover any costs or expenses of an insurer under this section.

(b) In this subsection "policy-holder" means an employer as defined in section three of this Act who on the first day of July of the year in respect of which the contribution by the insurer is payable, is the holder of a policy of insurance or indemnity which was issued to him by that insurer, is in force on that date and indemnifies such employer against liability under the Principal Act.

(c) In determining the proportions recoverable by an insurer from his policy-holders under this subsection the Insurance Premiums Committee shall have regard as far as practicable to the number of workers employed in any determined class or classes of employment by each policy-holder and to the wages paid to the workers so employed.

Citation. (2) The Workers' Compensation (Silicosis) Acts, 1942, as amended by this section, may be cited as the Workers' Compensation (Silicosis) Act, 1942-1945.

Commencement. (3) This section shall commence upon the date upon which the first scheme prepared and presented to the Governor by the Insurance Premiums Committee in pursuance of subsection twenty-one of section 30A of the Workers' Compensation Act, 1926-1944, as amended by this Act, takes effect.

4. (1) This section shall be read and construed as one with the Workers' Compensation (Silicosis) Acts, 1942.

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Certain persons to be entitled to compensation.

(2) Each person named in the list of forty-four cases already filed by the committee with the Minister, and each person named in any supplementary list which may be filed by the committee with the Minister after the commencement of this Act, shall, if the medical authority certifies that his disablement for work from the disease was reasonably attributable to his exposure to the inhalation of silica dust in New South Wales in an employment to the nature of which the disease was due, be deemed to be entitled to receive compensation in accordance with any award or variation thereof that may be made by the committee (which award or variation the committee is hereby authorised to make as if the person concerned were a worker) until such time as the payments are terminated by the committee in accordance with the provisions of the Workers' Compensation (Silicosis) Acts, 1942.

(3) All such compensation payments shall be made from the fund.

(4) Any award made by the committee in pursuance of this section shall be operative as from the date of the award.

5. (1) Part II of the Schedule to the Workmen's Compensation (Broken Hill) Acts, 1920-1942, is amended—

Amendment of Act No. 36, 1920.

- (a) (i) by omitting from subparagraph (a) of paragraph six the figures "3 0 0" and by inserting in lieu thereof the figures "3 10 0";
- (ii) by omitting from the same subparagraph the figures "1 0 0" wherever occurring and by inserting in lieu thereof the figures "1 5 0";
- (iii) by omitting from the same subparagraph the figures "0 8 6" wherever occurring and by inserting in lieu thereof the figures "0 10 0";

Schedule. Part II—Compensation provisions.

(iv)

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- (iv) by omitting from the same subparagraph the figures "1 17 0" and by inserting in lieu thereof the figures "2 5 0";
- (b) (i) by omitting from subparagraph (b) of the same paragraph the figures "3 0 0" and by inserting in lieu thereof the figures "3 10 0";
- (ii) by omitting from the same subparagraph the figures "1 0 0" and by inserting in lieu thereof the figures "1 5 0";
- (iii) by omitting from the same subparagraph the figures "0 8 6" and by inserting in lieu thereof the figures "0 10 0";
- (c) by omitting from subparagraph (c) of the same paragraph the figures "2 10 0" and by inserting in lieu thereof the figures "2 15 0";
- (d) by omitting from subparagraph (h) of the same paragraph the figures and symbols "£4 17s." and by inserting in lieu thereof the figures and symbols "£5 15s.";
- (e) by omitting from the first proviso to the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds."

Increased
compensa-
tion—Retro-
active.

(2) The amendments made by subsection one of this section shall be deemed to extend to, and from the commencement of this Act apply in respect of all persons in receipt of compensation under the Workmen's Compensation (Broken Hill) Acts, 1920-1942, as well as to persons becoming entitled to compensation after such commencement.

(3) (a) Any additional compensation which is payable by virtue of the operation of this section in respect of any mine worker who was on or before the first day of May one thousand nine hundred and nineteen last employed by Amalgamated Zinc (De Bavay's) Limited, or by Sulphide Corporation, Limited, shall be paid by the joint committee out of the amount paid to the joint committee under paragraph twenty-two of the Schedule to the Workmen's Compensation (Broken Hill) Acts, 1920-1942, by Amalgamated Zinc (De Bavay's) Limited, or by Sulphide Corporation, Limited as the case may be.

(b)

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(b) Any compensation payable under the Workmen's Compensation (Broken Hill) Acts, 1920-1942, as amended by this section, in respect of any such mine worker, shall, when the amount paid to the joint committee as referred to in paragraph (a) of this subsection is exhausted, be paid out of the fund established under Part III of the Schedule to the said Act.

(4) The Workmen's Compensation (Broken Hill) Act, 1920, as amended by subsequent Acts and by this section of this Act may be cited as the Workmen's Compensation (Broken Hill) Act, 1920-1945. ^{Citation.}
