

**WORKERS' COMPENSATION (AMENDMENT)
ACT.**

Act No. 20, 1951.

George VI. An Act to increase the amounts payable by way
No. 20, 1951. of compensation under the Workers' Com-
pensation Act, 1926, and the Workers'
Compensation (Silicosis) Act, 1942, as
amended by subsequent Acts; for this and
other purposes to amend the said Acts;
and for purposes connected therewith.
[Assented to, 27th June, 1951.]

BE

BE it enacted by the King's Most Excellent Majesty, No. 20, 1951.
 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, 1951." Short title and citation.

(2) The Workers' Compensation Act, 1926, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act, may be cited as the Workers' Compensation Act, 1926-1951.

2. The Principal Act is amended—

Amendment
of Act
No. 15,
1926.

- (a) (i) by inserting in subsection one of section six in the definition of "Dependants" after the words "to the worker" the words "and also includes a woman so dependent who for not less than three years immediately before the worker's death, although not legally married to him, lived with him as his wife on a permanent and bona fide domestic basis";
- (ii) by inserting in the same subsection next after the definition of "Place of Employment" the following new definition:—
 "Prescribed" means prescribed by this Act or by the regulations made thereunder.
- (iii) by inserting in paragraph (a) of subsection five of the same section after the word "worker" where firstly occurring the words "or although either subletting part of the work or employing a worker actually performs some part of the work himself";
- (iv) by omitting from paragraph (b) of the same subsection the words "and receives injury while

Sec. 6.
(Definitions.)

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while engaged in or about the work of cutting, delivering or supplying the said timber or any part thereof";

- (v) by inserting next after subsection (14A) of the same section the following new subsections:—

(14B) Where any person is ordinarily engaged in any employment in connection with which persons customarily attend certain prearranged places (in this Act called "places of pick-up") at which employers select and engage persons for employment, any such person shall be deemed, while in attendance at any such place of pick-up before being so selected, or while travelling thereto from his place of abode, to be a worker employed by the employer who last employed him in his customary employment.

(14c) A person engaged for fee or reward to take part—

- (a) as a boxer or wrestler in any public boxing or wrestling contest in a stadium or place to which the public is admitted on payment of a fee or charge; or
- (b) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge,

shall be deemed to be a worker employed by the person conducting or holding such contest or public performance.

Sec. 7.
(Liability
of employers
to workers
for injuries.)

- (b) (i) by omitting from paragraph (b) of subsection one of section seven the words "own default or wilful act" and by inserting in lieu thereof the words "serious and wilful misconduct";
- (ii) by inserting in the same paragraph after the word "subsection" the words "or on any

any of the other journeys referred to in paragraph (d) of this subsection"; No. 20, 1951.

(iii) by inserting in subparagraph (i) of the same paragraph after the word "school" the words "place of pick-up, or place referred to in subparagraph (i) of paragraph (d) of this subsection";

(iv) by inserting at the end of the same paragraph the words—

"An interruption of or deviation from any journey shall not be deemed to be substantial if, in the circumstances of the particular case, the nature, extent, degree and content of the risk of injury were not materially changed or increased by reason only of any such interruption or deviation";

(v) by inserting at the end of the same subsection the following new paragraphs:—

(d) The other journeys referred to in paragraph (b) of this subsection shall be—

(i) between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of obtaining a medical certificate or receiving medical, surgical or hospital advice, attention or treatment or of receiving payment of compensation in connection with any injury for which the worker is entitled to receive compensation;

(ii) between any camp or place, where the worker is required by the terms of his employment, or is expected by his employer, to reside temporarily or where it is reasonably necessary or convenient that

he

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he shall temporarily reside for any purpose of his employment, and the worker's place of abode when not so residing;

(iii) between the worker's place of abode and a place of pick-up.

(e) Where a worker on any day on which he has attended at his place of employment pursuant to his contract of service or apprenticeship—

(i) is temporarily absent therefrom on that day during any ordinary recess; and

(ii) does not during such absence voluntarily subject himself to any abnormal risk of injury; and

(iii) during such absence receives an injury without his serious and wilful misconduct,

the worker (and in the case of the death of the worker, his dependants) shall receive compensation from the employer in accordance with this Act.

(vi) by inserting next after subsection two of the same section the following new subsection:—

(2A) Compensation shall be payable in respect of an injury which, but for existing incapacity, would have resulted in total or partial incapacity of the worker. Such compensation shall be payable as if such total or partial incapacity had in fact resulted from the injury.

“Existing incapacity” means total incapacity by disease or otherwise—

(a) not entitling the worker to compensation under this Act; and

(b)

(b) existing at the time when the No. 20, 1951.
total or partial incapacity
would otherwise have resulted
from the injury.

3. (1) The Principal Act is further amended—

Further
amendment
of Act No.
15, 1926.

- (a) (i) by omitting from paragraph (a) of Sec. 8.
subsection one of section eight the words (Compensa-
“five hundred pounds” and by inserting in tion
lieu thereof the words “eight hundred payments—
pounds”; Death.)
- (ii) by omitting from the same paragraph the
words “one thousand pounds” and by
inserting in lieu thereof the words “two
thousand pounds”;
- (iii) by inserting in the same paragraph after
the word “shall” where first occurring the
word “not”;
- (iv) by omitting from the same paragraph the
words “but no such deduction shall be made
so as to reduce the amount payable in
respect of the dependants of the worker
under this subsection below three hundred
pounds”;
- (v) by omitting from paragraph (b) of the same
subsection the words “fifty pounds” and by
inserting in lieu thereof the words “seventy-
five pounds”;
- (vi) by omitting from subsection three of the
same section the words “five hundred
pounds” and by inserting in lieu thereof
the words “eight hundred pounds”;
- (vii) by omitting from subsection four of the
same section the words “thirty pounds” and
by inserting in lieu thereof the words “sixty
pounds”;
- (b) (i) by omitting from paragraph (a) of Sec. 9.
subsection one of section nine the words (Total or
“four pounds” and by inserting in lieu partial
thereof the words “five pounds fifteen incapacity.)
shillings”; (ii)

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- (ii) by omitting from the same paragraph the words "three pounds" and by inserting in lieu thereof the words "four pounds ten shillings";
- (iii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—

**Married
worker.**

(b) in addition to the compensation payable under paragraph (a), a weekly payment during the incapacity of—

- (i) two pounds per week in respect of the wife of the worker who is totally or mainly dependent on the earnings of the worker at the date of the injury or who whether married to the worker at or after such date becomes so dependent after such date; and

- (ii) fifteen shillings per week in respect of:

- (a) each child and stepchild of the worker under the school leaving age; and

- (b) each child under the school leaving age to whom the worker stands in loco parentis,

who is totally or mainly dependent on the earnings of the worker at the date of the injury or who whether born before or after such date becomes so dependent after such date.

Where pursuant to this paragraph a weekly payment is made in respect of any person such payment shall be payable only during any period of dependency;

(iv)

(iv) by omitting paragraph (c) of the same subsection and by inserting in lieu thereof the following paragraph:—

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(c) in addition to the compensation payable under paragraph (a), a weekly payment during incapacity—

Other dependents of worker.

(i) where no compensation is payable to a worker under subparagraph (i) of paragraph (b), of two pounds per week in respect of one female who is totally or mainly dependent on the earnings of the worker at the date of the injury or who becomes so dependent after such date; and

(ii) where no compensation is payable to a worker under subparagraph (ii) of paragraph (b), of fifteen shillings per week in respect of each brother and sister under the school leaving age who is totally or mainly dependent on the earnings of the worker at the date of the injury or who whether born before or after such date becomes so dependent after such date.

Where pursuant to this paragraph a weekly payment is made in respect of any person such payment shall be payable only during any period of dependency.

(v) by inserting next after paragraph (d) of the same subsection the following new paragraph:—

(e) Any payment made by a worker to a female by way of wages for the performance of domestic services by her for the worker shall not preclude the female from being totally or mainly

mainly dependent on the earnings of the worker for the purposes of subparagraph (i) of paragraph (c) of this subsection.

- (vi) by omitting from subsection two of the same section the words "seven pounds" and by inserting in lieu thereof the words "nine pounds";
- (vii) by omitting subsection three of the same section;
- (viii) by omitting from subsection four of the same section the words "fifty-five shillings" and by inserting in lieu thereof the words "four pounds";
- (ix) by omitting from the same subsection the words "forty shillings" and by inserting in lieu thereof the words "three pounds five shillings";
- (x) by omitting from subsection five of the same section the words "four pounds" and by inserting in lieu thereof the words "six pounds";
- (xi) by omitting from the same subsection the words "three pounds" and by inserting in lieu thereof the words "four pounds ten shillings";
- (xii) by inserting in paragraph (a) of subsection six of the same section after the word "age" the words "or any child under the school leaving age to whom the worker stands in loco parentis";
- (xiii) by inserting at the end of the same subsection the words:—

"or

- (c) has for not less than three years immediately before the date of the injury, although not legally married to the worker, lived with him as his wife on a permanent and bona fide domestic basis."

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(2) The amendments made by paragraph (b) of 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 weekly payments under the provisions of section nine of the Principal Act and under the provisions of the Workers' Compensation (Silicosis) Act, 1942-1946, as well as to all persons becoming entitled to weekly payments under any of such provisions after such commencement.

No. 20, 1951.
Increased
weekly
payments—
retroactive.
Act No. 40,
1948, s. 2
(2) (a).

4. The Principal Act is further amended—

Further
amendment
of Act
No. 15,
1926.

- a) (i) by omitting from the definition of "Ambulance service" in subsection two of section ten the words "a medical practitioner or to a hospital" and by inserting in lieu thereof the words "or from a medical practitioner or hospital";
- (ii) by inserting in paragraph (a) of the definition of "Medical treatment" in the same subsection after the word "dentist" the words "a registered physiotherapist";
- (iii) by inserting in paragraph (b) of the same definition after the word "members" the words "eyes or teeth and other artificial aids and spectacle glasses";
- (iv) by inserting at the end of the same definition the words:—
- "and
- (d) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred by him in obtaining any medical treatment";
- (v) by omitting from paragraph (a) of subsection three of the same section the words "eighteen shillings for each day or part of a day" and by inserting in lieu thereof the words "twenty-five shillings, or such greater sum as may be prescribed, for each day or part of a day unless the Commission upon

Sec. 10.
(Medical and
hospital
treatment
etc.)

No. 20, 1951.

upon application made from time to time by or on behalf of the worker directs that the employer shall be liable for a further sum to be specified in the order. In addition to the amounts payable under the foregoing provisions of this paragraph, the employer shall be liable for a sum of two guineas, or such greater sum as may be prescribed, in respect of each treatment which necessitates the use of the hospital theatre, and for a sum of one guinea, or such greater sum as may be prescribed, in respect of any necessary X-ray photograph of the patient taken at the hospital”;

- (vi) by omitting from paragraph (b) of the same subsection the words “one guinea” and by inserting in lieu thereof the words “two guineas, or such greater sum as may be prescribed”;
- (vii) by omitting from the same paragraph the words “ten shillings and sixpence” and by inserting in lieu thereof the words “one guinea, or such greater sum as may be prescribed”;
- (viii) by omitting from paragraph (c) of the same subsection the words “fifty pounds” and by inserting in lieu thereof the words “one hundred and fifty pounds”;
- (ix) by omitting from paragraph (b) of subsection four of the same section the words “fifty pounds” and by inserting in lieu thereof the words “one hundred and fifty pounds”;
- (x) by omitting from subsection five of the same section the words “two guineas” and by inserting in lieu thereof the words “twenty-five pounds, or such greater sum as may be prescribed”;
- (xi) by inserting at the end of the same subsection the words:—

“Any sum for which the employer becomes liable in respect of ambulance service

service under this subsection may be recovered from the employer by the person rendering the ambulance service or where the ambulance service is rendered by an unincorporated body of persons by the officer thereunto authorised in writing by the governing body of such unincorporated body";

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- (b) by inserting next after section ten the following new section:—

**New Sec.
10A.**

10A. (1) A worker who has met with an accident arising out of and in the course of his employment and has, as a result thereof, sustained damage to his crutches, artificial members, eyes or teeth, other artificial aids, or spectacle glasses, shall be entitled to receive by way of compensation from his employer the reasonable cost of repairing, or, if necessary, replacing the crutches, artificial members, eyes, teeth, artificial aids or spectacle glasses but shall not, in respect of damage resulting from any such accident, be entitled under this section to a sum exceeding twenty-five pounds, or such greater sum as may be prescribed, unless the Commission, upon application made from time to time by or on behalf of the worker, directs that the worker shall be paid a further sum to be specified in the order.

**Damages to
artificial
limbs, etc.**

The provisions of subsection three of section seven, and sections forty and fifty-three and Part VIII of this Act shall apply, *mutatis mutandis*, to any damage sustained by a worker to which this section applies

- (2) Nothing in this section shall—
- (a) affect the liability of an employer under section ten of this Act;
 - (b) entitle a worker to payments under this section as well as under section ten of this Act in respect of the same damage.
 - (c)

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Sec. 11.

(Partial
incapacity.)

(c) (i) by inserting at the end of subsection one of section eleven the following new paragraphs:—

(b) The amount of the average weekly earnings of a worker as aforesaid shall, in the case of an adult worker in receipt of compensation at the commencement of the Workers' Compensation (Amendment) Act, 1951, or who after such commencement receives compensation in respect of an injury which occurred before such commencement, be deemed to be increased as from such commencement by the difference between the needs basic wage or the basic wage, as the case may be, applicable at the time of the injury and the basic wage applicable at such commencement, and shall after such commencement be deemed to be increased or reduced from time to time, as the case may be, by the amounts by which and from the dates from which the basic wage applicable at such commencement is subsequently increased or reduced, as the case may be.

(c) The amount of the average weekly earnings of a worker as aforesaid shall, in the case of an adult worker who receives an injury after the commencement of the Workers' Compensation (Amendment) Act, 1951, be deemed to be increased or reduced from time to time, as the case may be, by the amounts by which and from the dates from which the basic wage applicable at the time of the injury is subsequently increased or reduced, as the case may be.

(d) In this subsection:—

“basic wage” means the basic wage
for adult males or adult
females,

females, as the case may require referred to in section fourteen of this Act; No. 20, 1951.

“needs basic wage” means the needs basic wage referred to in subparagraph (i) or subparagraph (ii), as the case may require, of paragraph (c) of section fourteen of this Act as enacted immediately before the commencement of the Workers' Compensation (Amendment) Act, 1951, together with the fixed loading referred to therein.

- (ii) by omitting subsections two and three of the same section and by inserting in lieu thereof the following subsection:—

(2) An employer shall provide suitable employment for his injured worker during the worker's partial incapacity for his pre-injury employment.

Upon any failure by such employer to provide suitable employment as aforesaid the worker's incapacity for work shall be deemed to be total, and he shall be compensated accordingly.

- (d) by inserting in section thirteen after the word “benefit” the words “(other than any payment, allowance, or benefit from a superannuation or similar fund to which the worker has contributed)”; Sec. 13.
(Allowance received by worker.)

- (e) (i) by omitting from paragraph (c) of section fourteen all words after the words “time of the injury”; Sec. 14.
(Computation of average weekly earnings.)

- (ii) by inserting next after the same paragraph the following new paragraph:—

(e1) Where a worker is a worker to whom paragraph (e) of subsection one of this section applies or has been absent from work by reason of illness, strikes,

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strikes, lockouts, tempestuous weather, intermittency of employment, slackness of trade, or any other reasonable cause, the average weekly earning of the worker shall, notwithstanding the foregoing provisions of this section—

- (i) in the case of an adult worker be deemed to be not less than the full wage for a full normal working week of that worker or the basic wage, whichever is the greater; and
- (ii) in the case of any worker other than an adult worker be not less than the full wage for a full normal working week of that worker.

(iii) by inserting at the end of the same section the following new subsection:—

(2) In this section “basic wage” means:—

- (a) in the case of an adult male worker, the basic wage for adult males assessed on the index number for Sydney contained in the Retail Price Index Numbers published from time to time by or by the direction of the Commonwealth Court of Conciliation and Arbitration;
- (b) in the case of an adult female worker, seventy-five per centum of the basic wage for adult males as defined in paragraph (a) of this definition.

Sec. 16.
(Compensation for certain injuries.)

- (f) (i) by omitting from subsection one of section sixteen the words “when the injury results in total or partial incapacity”;
- (ii) by omitting subsection six of the same section;

(iii).

(iii) by omitting the Table set forth at the end No. 20, 1951. of the same section and by inserting in lieu thereof the following Table:—

TABLE.	
Nature of injury.	Amount payable.
	£ s. d.
Loss of either arm, or of the greater part thereof	1,450 0 0
Loss of lower part of either arm, either hand, or five fingers of either hand	1,250 0 0
Loss of a leg	1,350 0 0
Loss of the lower part of a leg	1,150 0 0
Loss of a foot	1,100 0 0
Loss of sight of one eye, with serious diminution of the sight of the other	1,350 0 0
*Loss of sight of one eye	750 0 0
Loss of hearing	1,100 0 0
Complete deafness of one ear	500 0 0
Loss of a thumb	500 0 0
Loss of a forefinger	350 0 0
Loss of joint of a thumb	300 0 0
Loss of little finger, middle finger or ring finger	200 0 0
Loss of a toe or the joint of a finger	150 0 0
Loss of a joint of a toe	100 0 0
Loss of great toe	350 0 0
Loss of joint of forefinger or of joint of great toe	200 0 0

* For the partial loss of sight of one eye there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

5. (1) The Principal Act is further amended—

Further
amend-
ment of
Act No. 15,
1926.

- (a) by inserting in paragraph (a) of subsection two of section 18c after the word "injury" the words "or the employer having been a self-insurer at the time of the happening of the worker's injury has ceased to undertake liability to pay compensation to his own workers and has withdrawn in
- Sec. 18c.
(Uninsured
liability
scheme.)

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in accordance with the provisions of this Act the deposit lodged by him with the Colonial Treasurer”;

**New sec.
25A.**

(b) by inserting next after section twenty-five the following new section:—

**Return of
deposits
to self-
insurers.**

25A. If any self-insurer who has deposited with the Treasurer a sum of money under this Act has ceased either before or after the commencement of the Workers' Compensation (Amendment) Act, 1951, to undertake the liability to pay compensation under this Act to workers employed by him, the self-insurer may withdraw the sum so deposited—

(a) on the expiration of three months after service on the Colonial Treasurer of a notice in writing duly signed by or on behalf of the self-insurer stating that the self-insurer has ceased to undertake the liability to pay compensation under this Act to the workers employed by him; and

(b) on satisfying the Colonial Treasurer that all the liabilities of the self-insurer under this Act in respect of workers employed by it or him while a self-insurer are fully liquidated or provided for.

**Sec. 31.
(Appoint-
ment of
Commission.)**

(c) (i) by omitting from subsection one of section thirty-one the words “One of such persons shall be by his commission appointed chairman” and by inserting in lieu thereof the words “The Governor may appoint one of such persons as chairman”;

(ii) by inserting in paragraph (a) of subsection three of the same section after the word “member” the words “other than the Chairman”;

(iii) by inserting at the end of the same paragraph the words “The Chairman of the Commission shall, subject to this section, hold his office during ability and good behaviour,

behaviour, shall have the same rank, title, status and precedence, and the same salary, pension and other rights as the Chairman of the District Court Judges, and shall be removable from office in the same manner only as a District Court Judge is by law liable to be removed from his office.”

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- (d) by inserting at the end of section thirty-four the following new subsection:—

Sec. 34.
(Summoning witnesses, etc.)

(2) In addition to the powers conferred by subsection one of this section the Commission, for the purpose of conducting any inquiry, investigation or hearing under this Act, shall have all such powers, rights and privileges as are vested in a District Court or any judge thereof in or in relation to any action or trial, in respect of the following matters:—

- (a) compelling the attendance of witnesses;
- (b) compelling witnesses to answer questions which the Commission deems to be relevant to the inquiry, investigation or hearing;
- (c) compelling the production of books, documents and writings;
- (d) punishing persons guilty of disobedience of any order or summons made or issued by the Commission.

- (e) (i) by omitting paragraph (c) of section thirty-eight;

Sec. 38.
(Proceedings of Commission.)

- (ii) by inserting in paragraph (g) of the same section after the word “just” the words “to the extent of the fees and costs actually incurred or to be incurred by the worker”;

- (iii) by inserting at the end of the same paragraph the following words:—

“Provided that any such order or assessment shall not exceed the fees and costs provided by the highest scale applicable

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applicable to proceedings in the Supreme Court of New South Wales in its common law jurisdiction.

The amount of costs shall in respect of the attendance of any medical witness be the actual cost of such attendance to the party calling the witness, or calculated according to the scale of costs applicable to proceedings in the Supreme Court of New South Wales in its common law jurisdiction, whichever is the less.

The Commission shall not order the payment of costs by a worker unless it is satisfied that his application has been made fraudulently."

Sec. 47.
(Workers
of Crown.)

(f) (i) by omitting from subsection one of section forty-seven the words "but any such worker shall not, save to the extent indicated in subsection two of this section, be entitled to receive compensation or benefits under this Act as well as benefits under any other Act";

(ii) by omitting subsections two and three of the same section;

Sec. 51.
(Medical
inspection.)

(g) by inserting at the end of section fifty-one the following new subsection:—

(11) Where a worker is required by an employer to submit himself for examination pursuant to this section he shall be entitled to recover from the employer, in addition to any compensation otherwise provided, the amount of any wages lost by him by reason of his so submitting himself for examination together with the cost to him of any fares, travelling expenses and maintenance necessarily and reasonably incurred by him in so submitting himself.

Sec. 53.
(Time for
taking
proceed-
ings.)

(h) by inserting in subsection one of section fifty-three after the words "occasioned by" wherever occurring the word "ignorance";

(i)

- (i) by omitting from subsection two of section sixty the word "before" and by inserting in lieu thereof the words "the application for the review is made before or within six months after"; No. 20, 1951.
Sec. 60.
(Review.)
- (j) (i) by inserting in paragraph (a) of subsection three of section 63A after the words "class of cases" the words "or by a law clerk of the applicant's solicitor authorised in writing in that behalf by the registrar of the Commission, either generally or for any particular case or class of cases"; Sec. 63A.
(Notice or election.)
- (ii) by inserting in the same paragraph after the words "clerk of petty sessions" where secondly occurring the words "law clerk";
- (k) by inserting in subsection one of section sixty-six after the word "regulations" where firstly occurring the words "not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed." Sec. 66.
(Regulations and rules.)

(2) The amendments made by subparagraphs (ii) and (iii) of paragraph (c) of subsection one of this section shall be deemed to have commenced upon the twentieth day of May, one thousand nine hundred and fifty.

6. 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, as amended by subsequent Acts, made by this Act. 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 Act. Subsisting policies.
Act No. 40,
1948, s. 2
(2) (b).

SUPPLY