

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

Act No. 21, 1953.

An Act to provide for certain increases in amounts payable by way of compensation under the Workers' Compensation 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, 20th November, 1953.]

Elizabeth II,
No. 21, 1953.

BE it enacted by the Queen'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, 1953".

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, 1926-1953.

2. The Principal Act is amended—

Amendment of
Act No. 13,
1926.

(a) (i) by omitting from paragraph (a) of the definition of "Worker" in subsection one of section six the words "one thousand two hundred and fifty pounds" and by inserting in lieu thereof the words "two thousand pounds";

Sec. 6.
(Definitions.)

(ii) by omitting from paragraph (a) of subsection five of the same section the words "the contractor shall, for the purposes of this Act,

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Act, be deemed to be a worker employed by the principal" and by inserting in lieu thereof the words "the contractor and any worker so employed by him shall, for the purposes of this Act, be deemed to be workers employed by the principal";

(iii) (a) by omitting from subsection (14B) of the same section the word "before" and by inserting in lieu thereof the words "for the purpose of";

(b) by inserting in the same subsection after the word "abode" the words "or, where he is not so selected, while travelling from such place of pick-up to his place of abode";

(iv) by omitting from subsection (14c) of the same section the words "or wrestler" and by inserting in lieu thereof the words "wrestler or referee";

(v) by omitting subsection fifteen of the same section;

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

(b) (i) by omitting from paragraph (b) of subsection one of section seven 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" and by inserting in lieu thereof the words "Provided that a worker (and in the case of the death of the worker, his dependants) shall be entitled to receive compensation under this paragraph notwithstanding that the injury was received during or after any substantial interruption of, or substantial deviation from or other break in any journey, if, in the circumstances of the particular case, the risk of injury was

was not materially increased by reason ^{No. 21, 1953.}
only of such substantial interruption,
substantial deviation or other break."

- (ii) by inserting next after subsection (2A) of the same section the following new subsections:—

(2B) Compensation shall be payable in accordance with the provisions of this Act to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of such period any payment, allowance or benefit for holidays, annual holidays or long service leave under any Act (Commonwealth or State), award or industrial agreement under any such Act, or contract of employment, and the amount of compensation so payable shall be the amount which would have been payable to the worker had he not received or been entitled to receive in respect of such period any such payment, allowance or benefit.

(2c) Where in respect of any period of incapacity a worker receives or is entitled to receive any payment, allowance or benefit for sick leave under any Act, award, industrial agreement or contract of employment he may elect to receive compensation in lieu of such payment, allowance or benefit, and the amount of compensation so payable shall be the amount which would have been payable to the worker had he not received or been entitled to receive in respect of such period any such payment, allowance or benefit.

Such election shall be made by the worker informing the employer of his election—

- (a) where such payment, allowance or benefit has been received by the worker, within a reasonable time after such receipt;

(b)

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- (b) in any other case at any time before the receipt of such payment, allowance or benefit.

Where the worker has received any such payment, allowance or benefit and has elected to receive compensation in lieu thereof such payment, allowance or benefit shall be refunded before compensation shall be payable to the worker.

Where a worker makes an election pursuant to the provisions of this subsection—

- (i) the employer, notwithstanding anything contained in any Act, award, industrial agreement or contract of employment, shall not be under any obligation in relation to sick leave to such worker in respect of any period to which such election relates; and
- (ii) the worker shall, in respect of any entitlement to sick leave or payment, allowance or benefit in respect thereof accruing after the expiration of the period to which such election relates, be deemed not to have been entitled to or granted, or to have received any payment, allowance or benefit for, sick leave during the period to which such election relates.
- (iii) by inserting next after subsection four of the same section the following new subsection:—

(4A) Where the injury is a disease which has been aggravated or accelerated by the worker's employment with two or more employers compensation shall be payable by that employer who last employed the worker in such employment.

Any

Any employers who, during the twelve months preceding a worker's incapacity, employed him in any such employment shall be liable to make to the employer by whom compensation is payable such contributions as, in default of agreement, may be determined by the Commission. No. 21, 1953.

The worker, or his dependants, shall furnish to the employer from whom compensation is claimed such information as to the names and addresses of all the other employers who employed the worker during the twelve months preceding the injury as he or they may possess.

- (iv) by omitting from subsection five of the same section the words "subsection four" and by inserting in lieu thereof the words and symbols "subsections four and (4A)".

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

Further amendment of Act No. 14, 1926.

- (a) (i) by omitting from paragraph (a) of subsection one of section eight the words "eight hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (ii) by omitting from the same paragraph the words "two thousand pounds" and by inserting in lieu thereof the words "two thousand five hundred pounds";
- (iii) by omitting from paragraph (b) of the same subsection the words "seventy-five pounds" and by inserting in lieu thereof the words "one hundred pounds";
- (iv) by omitting from subsection three of the same section the words "eight hundred pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (v) by inserting in subsection four of the same section after the word "burial" the words "or cremation";

Sec. 8.
(Compensation payments—Death.)

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Sec. 9.
(Total or
partial
incapacity.)

(vi) by inserting in the same subsection after the words "sixty pounds" the words "or such other sum as may be prescribed";

(b) (i) by omitting from paragraph (a) of subsection one of section nine the words "five pounds fifteen shillings" and by inserting in lieu thereof the words "eight pounds sixteen shillings";

(ii) by omitting from the same paragraph the words "four pounds ten shillings" and by inserting in lieu thereof the words "five pounds fifteen shillings";

(iii) by omitting from subparagraph (i) of paragraph (b) of the same subsection the words "two pounds" and by inserting in lieu thereof the words "two pounds ten shillings";

(iv) by inserting in the same subparagraph after the word "wife" the words "or husband";

(v) by omitting from subparagraph (ii) of the same paragraph the words "fifteen shillings" and by inserting in lieu thereof the words "one pound";

(vi) by omitting from the same subparagraph the words "the school leaving age" wherever occurring and by inserting in lieu thereof the words "the age of sixteen years";

(vii) by omitting from subparagraph (i) of paragraph (c) of the same subsection the words "two pounds" and by inserting in lieu thereof the words "two pounds ten shillings";

(viii) by omitting from subparagraph (ii) of the same paragraph the words "fifteen shillings" and by inserting in lieu thereof the words "one pound";

(ix)

- (ix) by omitting from the same subparagraph the words "the school leaving age" and by inserting in lieu thereof the words "the age of sixteen years"; No. 21, 1953.
- (x) by omitting from paragraph (a) of subsection (1A) of the same section the figures "1951" and by inserting in lieu thereof the figures "1953";
- (xi) by omitting from subsection two of the same section the words "nine pounds" and by inserting in lieu thereof the words "twelve pounds sixteen shillings";
- (xii) by omitting from subsection four of the same section the words "four pounds" and by inserting in lieu thereof the words "five pounds five shillings";
- (xiii) by omitting from the same subsection the words "three pounds five shillings" and by inserting in lieu thereof the words "four pounds five shillings";
- (xiv) by omitting from subsection five of the same section the words "six pounds" and by inserting in lieu thereof the words "seven pounds thirteen shillings";
- (xv) by omitting from the same subsection the words "four pounds ten shillings" and by inserting in lieu thereof the words "five pounds fifteen shillings";
- (xvi) by omitting from subsection six of the same section the words "the school leaving age" wherever occurring and by inserting in lieu thereof the words "the age of sixteen years".

(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

Increased weekly payments—retroactive.
Act No. 20, 1951, s. 3
(2).

Workers' Compensation (Amendment) Act.

No. 21, 1953. 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.

Further
amendment of
Act No. 15,
1926.

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

4. The Principal Act is further amended—

- (a) (i) by inserting in paragraph (b) of subsection three of section ten after the words "per treatment" the words "or such greater sum as may be prescribed";
- (ii) by inserting in the same paragraph after the words "per week" the words "or such greater sum as may be prescribed";
- (iii) by inserting in paragraph (c) of the same subsection after the words "one hundred and fifty pounds" the words "or such greater sum as may be prescribed";
- (iv) by inserting in paragraph (b) of subsection four of the same section after the words "one hundred and fifty pounds" the words "or such greater sum as may be prescribed";
- (v) by inserting at the end of the same section the following new subsection:—

(9) Any regulation prescribing a greater sum than that prescribed by this section for medical or hospital treatment or ambulance service may provide that such greater sum shall apply to medical or hospital treatment or ambulance service after the date such regulation takes effect in respect of an injury received before such date as well as to medical or hospital treatment or ambulance service in respect of an injury received after such date.

(b)

(b) by omitting the Table set forth at the end of section sixteen and by inserting in lieu thereof the following Table:—

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Sec. 16.
(Compensation for certain injuries.)

TABLE.

Nature of injury.	Amount payable.		
	£.	s.	d.
Loss of either arm, or of the greater part thereof	1,900	0	0
Loss of lower part of either arm, either hand, or five fingers of either hand	1,600	0	0
Loss of a leg or of the greater part thereof	1,750	0	0
Loss of the lower part of a leg ..	1,500	0	0
Loss of a foot	1,450	0	0
Loss of sight of one eye, with serious diminution of the sight of the other	1,750	0	0
*Loss of sight of one eye	975	0	0
Loss of hearing	1,450	0	0
Complete deafness of one ear	650	0	0
Loss of a thumb	650	0	0
Loss of a forefinger	450	0	0
Loss of joint of a thumb	400	0	0
Loss of little finger, middle finger or ring finger	250	0	0
Loss of a toe or the joint of a finger ..	200	0	0
Loss of a joint of a toe	125	0	0
Loss of great toe	450	0	0
Loss of joint of forefinger or of joint of great toe	250	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. The Principal Act is further amended—

Further amendment of Act No. 15, 1926.

(a) (i) by inserting after the definition of "Bush Fire Fighters Compensation Fund" in subsection one of section 17B the following new definition:—

Sec. 17B.
(Interpretation.)

"Bush fire preventive operation" means the burning, ploughing or clearing of fire breaks or any other operation

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operation where such burning, ploughing, clearing or other operation has been or is to be carried out by a bush fire brigade for the purpose of preventing the outbreak of bush fires or of preventing or restricting the spread of bush fires should they occur.

- (ii) by omitting from the definition of "Fire fighter" in the same subsection the words "group captain" wherever occurring;
- (iii) by inserting in the same definition after the word "brigade" wherever occurring the words "or the group captain or deputy group captain of any bush fire brigades";
- (iv) by omitting from the definition of "Injury" in the same subsection the words "and includes a disease which is contracted in the course of fighting a bush fire or journeying as aforesaid and to which such fighting or journeying was a contributing factor" and by inserting in lieu thereof the words "and includes personal injury resulting in incapacity or death received by the captain or deputy captain, or any member of a bush fire brigade, or the group captain or deputy group captain of any bush fire brigades—
 - (i) arising out of or in the course of carrying out bush fire preventive operations; or
 - (ii) arising out of or in the course of journeying between the place of abode or place of employment of such captain, deputy captain, member, group captain or deputy group captain and the place where bush fire preventive operations were or are to be carried out, where such journeying was made exclusively and bona fide for the purpose

purpose of engaging in the carrying out of such preventive operations,

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and also includes a disease which is contracted in the course of fighting a bush fire or carrying out bush fire preventive operations or journeying as referred to in paragraph (b) or (ii) of this definition and to which such fighting or the carrying out of such preventive operations or such journeying was a contributing factor”;

(b) by inserting in subsection three of section 17c after the words “bush fire” the words “or carrying out the bush fire preventive operations”;

Sec. 17c.
(Compensation payable to fire fighters for injury received.)

(c) (i) by inserting in paragraph (a) of section 17D after the words “bush fire” the words “or upon the captain, deputy captain, or any member of a bush fire brigade or the group captain or deputy group captain of any bush fire brigades whilst carrying out bush fire preventive operations”;

Sec 17D.
(Indemnity for destruction of or damage to personal effects, vehicles, etc.)

(ii) by inserting in paragraph (b) of the same section after the words “fire fighter” the words “or used in connection with bush fire preventive operations at or near the place where such operations were being carried out and owned by or in the possession or custody of such captain, deputy captain, member, group captain or deputy group captain”.

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

Further amendment of Act No. 15, 1926.

(a) (i) by inserting in subsection one of section eighteen after the word “him” the words “and for an amount of at least three thousand

Sec. 18.
(Compulsory insurance.)

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thousand pounds in respect of his liability independently of this Act for any injury to any such worker”;

(ii) by omitting from the same subsection the words “the liability to pay compensation to his own workers” and by inserting in lieu thereof the words “the liability referred to in this subsection”;

(iii) by inserting at the end of the same subsection the words “In this Act—

‘policy of insurance or indemnity’ means a policy of insurance or indemnity which an employer is required to obtain in pursuance of the provisions of this subsection”;

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

(3) (a) Every policy of insurance or indemnity shall, in so far as it relates to any liability referred to in subsection one of this section, contain only such provisions as are prescribed, but may contain such other provisions relating to any other liability at common law or under any Act or Commonwealth Act as are appropriate to any particular case.

Any contravention of this provision shall not annul such policy or diminish or affect the liability of the insurer to the person insured under such policy.

Every such policy shall provide that the insurer shall as well as the employer be directly liable to any worker insured under such policy and in the event of his death, to his dependants, to pay the compensation or other amount for which the employer is liable, and that the insurer shall be bound by and subject to any judgment,

judgment, order, decision, or award given or made against the employer of such worker in respect of the injury for which such compensation or amount is payable. No. 21, 1953.

In this paragraph the expression "other amount" means an amount not exceeding the amount for which the employer has obtained a policy of insurance or indemnity in respect of his liability independently of this Act for any injury to any such worker.

(b) The regulations made under the provisions of subsection three of this section as enacted immediately before the commencement of the Workers' Compensation (Amendment) Act, 1953, shall continue in force as if made under the provisions of this subsection but may be amended or repealed.

(v) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) Proceedings in respect of a failure to comply with any of the provisions of subsection one of this section may be instituted at any time within twelve months after such failure.

(vi) by omitting from subsection six of the same section the words "to pay compensation in respect of" and by inserting in lieu thereof the words "in respect of an injury to";

(vii) by omitting from paragraph (a) of subsection seven of the same section the words "against liability under this Act";

(b) by omitting from paragraph (a) of subsection one of section 18A the words "indemnifying him against his liability under this Act"; Sec. 18A.
(Inspection of policies.)

(c)

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Sec. 18B.

(Worker's
right to in-
formation.)

Sec. 19.

(Deposits
by
insurers.)

(c) by omitting from section 18B the words
“against his liability under this Act”;

(d) by inserting in paragraph (b) of subsection
four of section nineteen after the word “Act”
the words “and at common law”.

(2) Any policy of insurance or indemnity 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—

(a) where such policy does not insure the employer
against his liability independently of the Prin-
cipal Act for an amount of at least three
thousand pounds for any injury to any worker
employed by him, be deemed to insure the
employer against his liability independently of
the Principal Act to the extent of three
thousand pounds in respect of any injury to
any worker employed by him; and

(b) be deemed to contain such provisions as were,
immediately before the commencement of this
Act, prescribed under subsection three of
section eighteen of the Principal Act.

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

Further
amendment of
Act No. 15,
1926.

Sec. 31.

(Appointment
of
Commission.)

(a) (i) by inserting in subsection one of section
thirty-one after the words “Workers’
Compensation Commission” the words
“which shall be a court of record”;

(ii) by inserting at the end of subsection (6B) of
the same section the following new para-
graph:—

(c) A member shall, whilst the duties and
powers of the chairman devolve on him, have
the same salary as the chairman.

Sec. 60.

(Review.)

(b) by inserting at the end of subsection two of
section sixty the words “Provided that the
failure to make an application for a review
within six months after the worker attains the
age

age of twenty-one years shall not be a bar to such review if it is found that the failure was occasioned by ignorance, mistake, absence from the State, or other reasonable cause";

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- (c) (i) by omitting subsection two of section sixty-three and by inserting in lieu thereof the following subsection:—

Sec. 63.
(Negligence.)

(2) In such case the worker may proceed both under this Act and independently of this Act but where he obtains judgment against his employer independently of this Act he shall not be entitled to any compensation under this Act other than compensation paid to him before such judgment.

- (ii) by omitting from paragraph (a) of subsection three of the same section the words "twelve months" where firstly, secondly and thirdly occurring and by inserting in lieu thereof the words "three years";

- (iii) by omitting paragraph (c) of the same subsection;

- (d) by omitting section 63A.

Sec. 63A.
(Notice of election.)

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

(3) The amendment made by subparagraph (i) of paragraph (c) of subsection one of this section shall apply to and in respect of workers who have received an injury before the commencement of this Act and who have not signed a notice of election pursuant to section 63A of the Workers' Compensation Acts, 1926-1951, as well as to workers receiving an injury after such commencement.

8. 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

Subsisting policies.
Act No. 25, 1951, s. 2 (2).

Medical Practitioners (Amendment) Act.

No. 21, 1953. 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.
