

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

Act No. 26, 1957.

An Act to make further provisions in relation to the payment of compensation to workers who suffer death or disablement owing to silicosis or certain other diseases; for this and other purposes to amend the Workers' Compensation (Silicosis) Act, 1942, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 30th April, 1957.]

Elizabeth II,
No. 26, 1957.

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 (Silicosis) Amendment Act, 1957".

Short title,
citation and
commence-
ment.

(2) The Workers' Compensation (Silicosis) Act, 1942, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation (Silicosis) Act, 1942-1957.

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

2.

Workers' Compensation (Silicosis) Amendment Act.

No. 26, 1957. **2.** The Workers' Compensation (Silicosis) Act, 1942, Amendment as amended by subsequent Acts, is amended—
of Act
No. 14, 1942.

Sec. 3.
(Defini-
tions).

(a) by inserting at the end of section three the following new definition:—

“Worker” does not include a worker in or about a Broken Hill mine or a mine to which the Coal Mines Regulation Act, 1912, as amended by subsequent Acts, applies.

Sec. 4.
(Applica-
tion of this
Act.)

(b) by omitting section four;

Sec. 5.
(Workers'
Compensa-
tion Silicosis
Committee.)

(c) by omitting from paragraph (a) of subsection two of section five the words “in respect of a worker to whom this Act applies” and by inserting in lieu thereof the words “under this Act”;

Sec. 6.
(Constitu-
tion of
Fund.)

(d) by omitting from subsection two of section six the words “in respect of disablement or death of a worker to whom this Act applies from disease as defined by this Act or payable under subsection (1A) of section eight of this Act” and by inserting in lieu thereof the words “under this Act”;

Sec. 7.
(Medical
authority.)

(e) by inserting in subsection five of section seven after the word “shall” the words “except as to any of the matters found in an award made by the Commission in the circumstances mentioned in subsection five of section eight of this Act”;

Sec. 8.
(Certificate
of medical
authority.)

(f) (i) by omitting subsections one, (1A) and two of section eight and by inserting in lieu thereof the following subsections:—

(1) Subject to this Act—

(a) where the medical authority certifies that a person is totally or partially disabled for work from the
the

the disease and that his disablement was reasonably attributable to his exposure to the inhalation of silica dust in an occupation to the nature of which the disease was due, such person shall, if the committee finds—

No. 26, 1957.

(i) that such person was a worker during the whole of the time he was engaged in such occupation; or

(ii) that such person was a worker during only part of the time he was engaged in such occupation, and the medical authority further certifies that his disablement was reasonably attributable to his exposure to the inhalation of silica dust in such occupation during the time that the committee has found that he was a worker in such occupation,

be entitled to an award from the committee, and to receive compensation at the prescribed rates from the Fund;

(b) where the medical authority certifies that a person died from the disease and that his death was reasonably attributable to his exposure to the inhalation of silica dust in an occupation to the nature of which the disease was due, the dependants of such person shall, if the committee finds—

(i) that such person was a worker during the whole of the time he was engaged in such occupation; or

(ii)

No. 28, 1957.

- (ii) that such person was worker during only part the time he was engaged such occupation, and the medical authority further certifies that his death was reasonably attributable to his exposure to the inhalation of silica dust in such occupation during the time that the committee has found that he was a worker in such occupation,

be entitled to an award from the committee, and to receive compensation at the prescribed rates from the Fund;

- (c) where a person dies and immediately before his death—
 - (i) he was receiving; or
 - (ii) he was entitled under an award of the committee to receive; or
 - (iii) he was a person in respect of whom the medical authority had certified in terms of paragraph (a) of this subsection and he was entitled under that paragraph to an award from the committee and under such award would have been entitled to receive,

continuing payments of compensation at the prescribed rates from the Fund in respect of his disablement for work from the disease, the dependants of such person shall, if they are not entitled under paragraph (b) of this subsection
to

to an award from the committee ^{No. 26, 1957.} and to receive compensation at the prescribed rates from the Fund, be entitled under this paragraph to an award from the committee and to receive compensation at the prescribed rates from the Fund.

(2) The prescribed rates of compensation payable under an award of the committee made pursuant to subsection one of this section shall be—

- (a) where the award is made pursuant to paragraph (a) of that subsection—the weekly compensation payments prescribed by section nine of the Principal Act;
- (b) where the award is made pursuant to paragraph (b) of that subsection—the compensation payments prescribed by section eight of the Principal Act, calculated as if that section as in force at the date of death had been in force at the date of the injury to the person whose dependants are entitled to the award;
- (c) where the award is made pursuant to paragraph (c) of that subsection and the disablement for work from the disease was—
 - (i) total—the compensation payments prescribed by section eight of the Principal Act, calculated as if that section as in force at the date of death had been in force at the date of the injury to the person whose dependants are entitled to the award;
 - (ii)

No. 26, 1957.

(ii) partial—such percentage of the compensation payments that would have been payable under subparagraph (i) of this paragraph had the disablement been total as is equal to the percentage of the person's disablement for work from the disease as certified by the medical authority at the last examination of the person made by the medical authority before his death;

(d) where medical or hospital treatment or ambulance service becomes reasonably necessary as a result of the disease—the benefits prescribed by section ten of the Principal Act.

All compensation payments authorised to be made under this Act shall be made from the Fund established by section six of this Act.

(2A) Where a person dies without dependants, but if he had died with dependants they would have been entitled to an award from the committee under paragraph (c) of subsection one of this section, the committee shall pay from the Fund the reasonable expenses of his burial or cremation not exceeding the sum prescribed by or under subsection four of section eight of the Principal Act.

(ii) by omitting from subsection three of the same section the words "paragraph (a) or paragraph (b) of";

(iii)

- (iii) by inserting at the end of the same subsection the following words and new subsection:—

No. 28, 1957.

Without prejudice to the generality of the foregoing provisions of this subsection, the provisions of the said section sixty shall, for the purposes of the application of the provisions of that section to any such award, be deemed to be amended—

- (a) by omitting from subsection one the words “Commission at the request of either the employer or” and by inserting in lieu thereof the words “committee, either of its own motion or at the request of”; and
- (b) by omitting from the same subsection the word “Commission” where secondly occurring and by inserting in lieu thereof the word “committee”.

(3A) In the application to any award of the provisions of sections eight, nine, eleven and fourteen of the Principal Act, the injury to the person who is or whose dependants are entitled to the award shall be deemed to have happened at the time when that person was last employed as a worker in an occupation to the nature of which the disease contracted by him was due:

Provided that if the committee, on the report of the medical authority, is satisfied that such person's employment in such occupation did not materially contribute to his disablement or death it may, for the purposes of this subsection, disregard that employment and have regard to the last previous employment of such person which the committee, on the report of the medical authority, is satisfied did materially contribute to such person's disablement or death.

No. 26, 1957.

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

(5) Where in proceedings before the Commission it is claimed that a person's injury is a disease caused by the inhalation of dusts, other than silica dust, and the Commission finds in its award that the injury is a disease caused by silica dust, the Commission shall in its award make findings as to the following matters:—

- (a) (i) where such person is not dead, whether or not such person is totally or partially disabled for work from the disease, as defined in section three of this Act, and whether or not his disablement was reasonably attributable to his exposure to the inhalation of silica dust in an occupation to the nature of which the disease was due; or
- (ii) where such person is dead, whether or not such person died from the disease, as defined in section three of this Act, and whether or not his death was reasonably attributable to his exposure to the inhalation of silica dust in an occupation to the nature of which the disease was due; and
- (b) (i) whether or not such person was a worker during the whole of the time he was engaged in such occupation; or
- (ii) where the Commission finds that such person was not a worker during the whole of that

that time, whether or not he was a worker during part of that time and, if so, whether or not his disablement or death was reasonably attributable to his exposure to the inhalation of silica dust in such occupation during the time that he was a worker in such occupation.

No. 26, 1957.

Such award shall be conclusive evidence before the committee as to the matters so found, and the matters so found (other than the finding whether or not such person was a worker during the whole of the time he was engaged in such occupation, or whether or not such person was a worker during only part of the time he was engaged in such occupation) shall be deemed to have been certified by the medical authority pursuant to subsection one of this section.

(v) by omitting from subsection six of the same section the words "Workers' Compensation Act, 1926-1942," and by inserting in lieu thereof the words "Principal Act";

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

(7) Weekly compensation payments under an award made pursuant to paragraph (a) of subsection one of this section shall be payable as from the date when the application for compensation is received by the committee.

(g) by omitting from section 8A the words "mentioned in paragraph (b) of subsection two of section eight of this Act" and by inserting in lieu thereof the words "made by a joint committee constituted under a scheme made under the Workmen's Compensation (Silicosis) Act, 1920-1936, as amended by subsequent Acts";

Sec. 8A.
(Power to vary awards for certain purposes.)

(h)

No. 26, 1957.

New secs.
8B, 8C and
8D.Interim
award.

(h) by inserting next after section 8A the following new sections:—

8B. (1) The committee may, where it is satisfied that compensation is payable under this Act to any person, and pending its final determination as to the amount of such compensation, make an interim award for the payment of such amount of compensation to that person as does not exceed the least compensation to which he is, in the opinion of the committee, entitled.

(2) Upon the making of an award in favour of such person pursuant to subsection one of section eight of this Act, the interim award in his favour shall terminate and the amounts which have been paid under the interim award shall be deducted from the amount payable under the award made under that subsection.

(3) An interim award made in favour of any person may be terminated by the committee at any time before the making of an award in favour of that person pursuant to subsection one of section eight of this Act.

Power to
terminate
or vary
awards.

8C. Where the committee is satisfied that by reason of any mistake of law or of fact an award was wrongly made or any amount of compensation specified in an award was wrongly calculated, it may terminate or vary such award, and the compensation payable thereunder, accordingly.

Power to
resume
weekly
payments
ended under
section 60
of Principal
Act.

8D. Where either before or after the commencement of the Workers' Compensation (Silicosis) Amendment Act, 1957, any weekly payments to any person made under this Act have been ended pursuant to the committee's powers under section sixty of the Principal Act and the committee, upon an application for resumption of such weekly payments made by such person, is satisfied that such weekly payments would, if they were in force, not be ended pursuant

Workers' Compensation (Silicosis) Amendment Act.

117

pursuant to such powers, the committee may resume making weekly payments to such person of such amount not exceeding the maximum provided by this Act as the committee may determine. No. 26, 1957.

3. (1) All payments of compensation from the Fund made before the commencement of this Act pursuant to any award made by the committee, or purporting to have been so made before such commencement, and which but for this subsection would have been invalid, are hereby validated. Validation
of certain
awards.

(2) Any award—

(a) made by the committee under the Workers' Compensation (Silicosis) Act, 1942, or any Act amending that Act, or purporting to have been so made, before the commencement of this Act, or deemed to have been made under any such Act; or

(b) continued in force by the Workers' Compensation (Silicosis) Act, 1942, and continuing in force immediately before the commencement of this Act, shall continue in force after such commencement, but shall be subject to the provisions of the Workers' Compensation (Silicosis) Act, 1942, as amended by subsequent Acts and by this Act.

(3) Where immediately before the commencement of this Act a person was entitled to an award from the committee, or where but for this Act a person would have been so entitled, nothing in this Act shall affect such entitlement, but the award shall be subject to the provisions of the Workers' Compensation (Silicosis) Act, 1942, as amended by subsequent Acts and by this Act.

(4) In any case where the committee after the first day of March, one thousand nine hundred and fifty-five, and before the commencement of this Act made an award in respect of the death of any person and if, had this Act been in force at the date of such award, the dependants of such person would have been entitled to an award of an amount greater than that so awarded, such dependants shall be entitled to an award of such greater amount, less the amount already so awarded.

4.

No. 26, 1957.

Dependants
of certain
persons
dying before
commence-
ment of this
Act entitled
to awards.

4. Where a person died before the commencement of this Act and he was immediately before his death receiving weekly payments of compensation from the Fund pursuant to an award made, or purporting to have been made, by the committee, the dependants of such person shall, if they were not entitled to an award under subsection one or (1A) of the Workers' Compensation (Silicosis) Act, 1942-1953, be entitled to an award from the committee as if the amendments made by section *two* of this Act had been in force at the date of such person's death, and to receive compensation at the prescribed rates from the Fund.
