

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

**New South Wales**



ANNO SEXTO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 97, 1967.**

An Act to increase rates of workers' compensation and otherwise to amend the law relating to workers' compensation; for these and other purposes to amend the Workers' Compensation Act, 1926, the Workers' Compensation (Silicosis) Act, 1942, the Workmen's Compensation (Broken Hill) Act, 1920, the Industrial Arbitration Act, 1940, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 18th December, 1967.]

BE

*Workers' Compensation (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by **No. 97, 1967** 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, 1967".

Short title, commencement and citation.

(2) This Act, sections four, seven and eight excepted, shall commence upon a day (in this Act referred to as the appointed day) to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette.

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

(4) The Principal Act, as amended by this Act, may be cited as the Workers' Compensation Act, 1926–1967.

(5) The Workmen's Compensation (Broken Hill) Act, 1920, as amended by subsequent Acts and by this Act, may be cited as the Workmen's Compensation (Broken Hill) Act, 1920–1967.

(6) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940–1967.

2. (1) The Principal Act is amended—

Amendment of Act No. 15, 1926.

(a) (i) by omitting from paragraph (a) of subsection one of section eight the words "eight thousand six hundred dollars" and by inserting in lieu thereof the words "ten thousand dollars";

Sec. 8. (Compensation payments (Death).)

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

(b) in addition thereto, an amount of five dollars per week in respect of—

(i) each dependent child of the worker under the age of sixteen

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sixteen years, such payments to continue in respect of each such child until he dies or attains the age of sixteen years, whichever event first occurs: Provided that where such a child on his attaining the age of sixteen years is a student, such payments shall continue in respect of that child until he dies, or attains the age of twenty-one years, or ceases to be a student, whichever event first occurs; and

- (ii) each dependent child of the worker being a student over the age of sixteen years but under the age of twenty-one years, such payments to continue in respect of each such child until he dies, or attains the age of twenty-one years, or ceases to be a student, whichever event first occurs.
- (iii) by inserting at the end of the same subsection the following words :—
- In this subsection "child of the worker" means child or stepchild of the worker and includes a person to whom the worker stood in loco parentis; "dependent child of the worker" means child of the worker who was wholly or in part dependent for support on the worker; and "student" means person receiving full time education at a school, college or university.
- (iv) by omitting from subsection three of the same section the words "two thousand dollars" and by inserting in lieu thereof the words "two thousand eight hundred dollars";

**(b)**

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- (b) (i) by omitting from paragraph (a) of subsection No. 97, 1967 one of section nine the words "twenty-three dollars fifty cents" and by inserting in lieu thereof the words "twenty-six dollars"; Sec. 9.  
(Total or partial incapacity.)
- (ii) by omitting from the same paragraph the words "sixteen dollars" and by inserting in lieu thereof the words "seventeen dollars fifty cents";
- (iii) by omitting from subparagraph (i) of paragraph (b) of the same subsection the words "six dollars thirty cents" and by inserting in lieu thereof the words "seven dollars";
- (iv) by omitting from subparagraph (ii) of the same paragraph the words "two dollars fifty cents" and by inserting in lieu thereof the words "three dollars";
- (v) by omitting from subparagraph (i) of paragraph (c) of the same subsection the words "six dollars thirty cents" and by inserting in lieu thereof the words "seven dollars";
- (vi) by omitting from subparagraph (ii) of the same paragraph the words "two dollars fifty cents" and by inserting in lieu thereof the words "three dollars";
- (vii) by omitting from paragraph (a) of subsection (1A) of the same section the figures "1964" and by inserting in lieu thereof the figures "1967";
- (viii) by omitting from subsection four of the same section the words "fourteen dollars fifty cents" and by inserting in lieu thereof the words "sixteen dollars";
- (ix) by omitting from the same subsection the words "eleven dollars" and by inserting in lieu thereof the words "twelve dollars";

(x)

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- (x) by omitting from subsection five of the same section the words "twenty-one dollars" and by inserting in lieu thereof the words "twenty-three dollars fifty cents";
- (xi) by omitting from the same subsection the words "sixteen dollars" and by inserting in lieu thereof the words "seventeen dollars fifty cents";

Sec. 16.  
(Com-  
pensation  
for  
certain  
injuries.)

- (c) (i) by omitting from paragraph (a) of subsection (1B) of section sixteen the words "four hundred dollars" and by inserting in lieu thereof the words "five hundred dollars";
- (ii) by omitting the table set forth at the end of the same section and by inserting in lieu thereof the following table :—

TABLE.

Nature of injury.	Amount payable.
	\$
Loss of either arm, or of the greater part thereof . . . . .	5,300
Loss of lower part of either arm, either hand, or five fingers of either hand . . . . .	4,500
Loss of a leg or of the greater part thereof . . . . .	4,900
Loss of the lower part of a leg . . . . .	4,200
Loss of a foot . . . . .	4,000
Loss of sight of one eye, with serious diminution of the sight of the other . . . . .	4,900
*Loss of sight of one eye . . . . .	2,800
Loss of hearing of both ears . . . . .	4,000
†Loss of hearing of one ear . . . . .	1,900
‡Loss of power of speech . . . . .	4,000
Loss of a thumb . . . . .	1,900
Loss of a forefinger . . . . .	1,300
Loss of a joint of a thumb . . . . .	1,200
Loss of little finger, middle finger or ring finger . . . . .	700
Loss of a toe or the joint of a finger . . . . .	600
Loss of a joint of a toe . . . . .	350
Loss of great toe . . . . .	1,300
Loss of joint of forefinger or of joint of great toe . . . . .	700

\* 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.

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

‡ For the partial loss of the power of speech there shall be payable such percentage of the amount that would be payable for the total loss of that power as is equal to the percentage of the diminution of that power.

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(2) (a) The amendments made by subparagraphs (ii) and (iii) of paragraph (a) and subparagraphs (i), (ii), (iii), (iv), (v), (vi), (viii), (ix), (x) and (xi) of paragraph (b) of subsection one of this section shall be deemed to extend to, and, on and from the appointed day, apply in respect of all persons and institutions in receipt of or entitled to weekly payments under the provisions of section eight or nine of the Principal Act or under the provisions of the Workers' Compensation (Silicosis) Act, 1942, as amended by subsequent Acts, as well as to all persons and institutions becoming entitled to weekly payments under any of such provisions on or after that day.

(b) The compensation prescribed by section eight of the Principal Act, as amended by paragraph (a) of subsection one of this section, shall be payable in accordance with the said section eight in respect of the death of any worker which on or after the appointed day results from an injury received whether before, on or after that day.

(c) The compensation prescribed by section sixteen of the Principal Act, as amended by paragraph (c) of subsection one of this section, for an injury of a particular kind shall be payable for—

- (i) any injury of that kind received on or after the appointed day;
- (ii) any injury of that kind received before the appointed day by a worker who has not before that day been awarded, or has not received or agreed to receive for that injury the compensation prescribed by section sixteen of the Principal Act.

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

Further  
amendment  
of Act No.  
15, 1926.

- (a) (i) by omitting paragraph (b) of the definition of "Worker" in subsection one of section six;
- (ii)

Sec. 6.  
(Defini-  
tions.)

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- (ii) by omitting from paragraph (e) of the same definition the words "two hundred and twenty dollars" and by inserting in lieu thereof the words "seven hundred dollars";
- (iii) by omitting from paragraph (f) of the same definition the words "two hundred and twenty dollars" and by inserting in lieu thereof the words "seven hundred dollars";
- (iv) by inserting in subsection (3A) of the same section before the words "is made" the words ", or to perform any work as an outworker,";

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

- (b) by inserting at the end of paragraph (d) of subsection one of section seven the following new subparagraph :—

- (iv) between the worker's place of abode and place of employment, where the journey is made for the purpose of receiving payment of any wages or other moneys due to him under the terms of his employment and which pursuant to the terms of his employment or any agreement or arrangement between him and his employer are available or are reasonably expected by the worker to be available for collection by the worker at the place of employment.

Sec. 10A.  
(Damages to  
artificial  
limbs,  
etc.)

- (c) by inserting at the end of section 10A the following new subsection :—

- (3) For the purposes of this section, the cost of repairing or replacing any article shall be deemed to include any fees and charges paid by the worker to medical practitioners, dentists or other qualified persons for such services by way of consultations, examinations, or prescriptions as are reasonably rendered in connection with the repairing or replacing, as the case may be, of the article.

(d)

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(d) by omitting from subsection two of section eleven **No. 97, 1967** the words "his pre-injury employment" and by inserting in lieu thereof the word "work"; Sec. 11.  
(Partial incapacity.)

(e) (i) by inserting next after paragraph (a) of subsection (1B) of section sixteen the following new paragraph :— Sec. 16.  
(Compensation for certain injuries.)

(a1) A worker who has received an injury which has resulted in total or partial loss of the sense of smell or of the sense of taste shall be entitled to receive by way of compensation for that injury, in addition to any other compensation prescribed by this Act, such amount, not exceeding in any case—

(i) six hundred dollars in respect of that total or partial loss of the sense of smell;

(ii) six hundred dollars in respect of that total or partial loss of the sense of taste,

as may be agreed upon or, in default of agreement, as may be assessed as appropriate by a medical board in accordance with the provisions of this subsection.

(ii) by inserting in paragraph (b) of the same subsection after the words "severe facial disfigurement" the words "or, as the case may require, whether any loss of the sense of smell or of the sense of taste";

(iii) by inserting in paragraph (c) of the same subsection after the word "practicable," the words "in the case of an application by a person claiming to be entitled to compensation under paragraph (a) of this subsection,";

(iv)



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(iv) by inserting next after the same subsection the following new subsection :—

(1c) (a) Where a worker has received an injury and obtains from a legally qualified medical practitioner a certificate—

(i) that the injury is one referred to in the said table or subsection (1B) of this section; or

(ii) specifying, in respect of the injury, any percentage of diminution referred to in the footnotes to that table or in subsection five of this section,

the worker shall, subject to this subsection, be entitled to receive by way of compensation from his employer the amount of any fees or charges reasonably paid by the worker to the medical practitioner in respect of the examination of the worker for, and the issue of, such certificate.

(b) For the purposes of paragraphs (b) and (c) of subsection four of section ten of this Act, any sum for which an employer becomes liable to a worker under this subsection in respect of an injury shall be deemed to be a sum payable under the said subsection four by the employer to the worker in respect of medical treatment for that injury.

(c) Where a worker has obtained a certificate referred to in this subsection he shall, as soon as practicable thereafter, give notice to the employer of that fact and furnish to the employer the certificate or a true copy thereof and, subject to paragraph (d) of this subsection, section fifty-three of this Act shall, *mutatis mutandis*, apply to and in respect of compensation payable under this subsection

as

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as if a notice of injury referred to in that section were a notice referred to in this paragraph. No. 97, 1967

(d) For the purposes of paragraph (c) of this subsection, section fifty-three of this Act shall be deemed to be amended—

- (i) by omitting from subsection one the words “after the happening thereof, and before the worker has voluntarily left the employment in which he was at the time of the injury”;
  - (ii) by omitting from subsection two the words “state in ordinary language the cause of the injury and the date on which the injury happened” and by inserting in lieu thereof the words “be accompanied by the medical certificate referred to in subsection (1c) of section sixteen of this Act, or a true copy thereof”;
  - (iii) by omitting subsection four;
  - (iv) by omitting subsection seven.
- (f) by inserting next after subsection three of section eighteen the following new subsection :— Sec. 18.  
(Compulsory insurance.)
- (3A) Every policy of insurance or indemnity obtained by an employer on or after the day appointed pursuant to section one of the Workers' Compensation (Amendment) Act, 1967, in respect of workers in any business or occupation shall, notwithstanding anything contained in that policy, apply to and have effect in respect of all workers employed by the employer in that business or occupation.
- (g) by omitting from paragraph (g) of section thirty-eight the words “has been made fraudulently” and by inserting in lieu thereof the words “was frivolous or vexatious or was made fraudulently or without proper justification”; Sec. 38.  
(Proceedings of Commission.)

(h)

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- No. 97, 1967**  
**Sec. 51.**  
 (Medical inspection.)
- (h) by omitting from subsection four of section fifty-one the word "six" and by inserting in lieu thereof the word "thirty";
- Sec. 57.**  
 (Payment into Commission on death.)
- (i) by omitting from subsection two of section fifty-seven the following words:—
- Provided that where the injury was received after the commencement of the Workers' Compensation (Amendment) Act, 1958, and a widow under no disability is the only person entitled thereto or a widow and dependants referred to in paragraph (b) of subsection one of section eight of this Act are the only persons entitled thereto the compensation shall be paid out to such widow in a lump sum unless where there are any such dependants the Commission is of the opinion that such widow will not undertake or is not a fit and proper person to undertake the care, maintenance and upbringing of those dependants.
- Sec. 64A.**  
 (In actions for damages no reference to be made to compensation.)
- (j) by omitting section 64A;
- Sec. 67.**  
 (General penalty.)
- (k) by inserting at the end of section sixty-seven the following words:—
- Where a person by failing to perform any act at or within a time specified for its performance by or under this Act is guilty of an offence against this Act, such offence shall be deemed to continue from day to day until that person performs that act.
- (2) (a) The amendment made by paragraph (d) of subsection one of this section shall, as on and from the appointed day, apply to and in respect of injuries received before that day as well as to injuries received on or after that day.

(b)

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(b) The amendment made by paragraph (i) of **No. 97, 1967** subsection one of this section shall apply to and in respect of every sum paid pursuant to subsection one of section fifty-seven of the Principal Act on or after the appointed day whether in a case of death which occurred before, or in a case of death occurring on or after, that day.

**4. (1) The Principal Act is further amended—**

Further amendment of Act No. 15, 1926.

- (a) by omitting from subsection one of section thirty-one the words "such number of persons, being not less than three, as he may, from time to time, determine by notification published in the Gazette, to be";
- (b) by omitting from the same subsection the words "An appointment may, notwithstanding the foregoing provisions of this subsection, be made by the Governor to fill the office of a member about to retire and who has been granted leave of absence pending his retirement.";
- (c) by omitting from the same subsection the words "such persons" and by inserting in lieu thereof "the members".

(2) This section shall be deemed to have commenced on the twenty-fifth day of December, one thousand nine hundred and sixty-four.

**5. The Principal Act is further amended—**

Further amendment of Act No. 15, 1926.

- (a) by inserting next after section 17B the following new section :—

New sec. 17BA.

17BA. For the purposes of this Part of this Act—

- (a) a person when engaged at or about the scene of a bush fire in supplying food or refreshments to persons fighting the fire shall be deemed to be fighting the fire; and

(b)

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- (b) any journeying or conveyance of a person, if made for the purpose of his engaging in supplying food or refreshments to persons fighting a bush fire, shall be deemed to be made for the purpose of his engaging in fighting the fire.

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

- (b) by inserting at the end of section 17D the following new subsections :—

(2) (a) Subject to this subsection, where the Commission is satisfied that—

- (i) a vehicle or other thing has been destroyed or damaged;
- (ii) in respect of that destruction or damage, a certain amount would, but for the operation of paragraph (iii) of the proviso to subsection one of this section, have been payable from the Bush Fire Fighters Compensation Fund pursuant to that subsection;
- (iii) that destruction or damage resulted from the act or omission of a fire fighter but was not wilfully or maliciously caused by him;
- (iv) at the time of the destruction or damage the fire fighter was engaged in fighting a bush fire or in preventive operations or preparatory work or was journeying as referred to in paragraph (b) or (ii) of the definition of "Injury" in subsection one of section 17B of this Act;
- (v) the fire fighter is liable for, or was liable for and has paid, damages for that destruction or damage; and
- (vi) the fire fighter is not entitled to indemnity or adequate indemnity in respect of such liability under any policy of insurance or from any other source whatsoever,

there

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there shall be payable from the said Fund in respect of such liability or, where the fire fighter has paid damages, to reimburse him, such amount not exceeding that referred to in subparagraph (ii) of this paragraph as the Commission may, having regard to all the circumstances of the case, consider reasonable. No. 97, 1967

(b) Any amount payable from the Bush Fire Fighters Compensation Fund under paragraph (a) of this subsection shall be payable to the fire fighter referred to in that paragraph or, if the Commission in its discretion so orders, to the person to whom the damages mentioned in that paragraph are payable, and in the latter case the payment shall to the extent thereof be a discharge of the liability to pay such damages.

(c) For the purposes of this subsection a fire fighter shall be deemed to have become liable for any damages if he has received a demand for such damages and the Commission considers it to be reasonable and prudent for him to have paid, or that there be paid, an amount in full or part satisfaction of that demand.

(3) (a) In this subsection—

“Bush fire damage” means, in relation to a vehicle, damage that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage an amount was payable from the Bush Fire Fighters Compensation Fund under subsection one of this section, or would have been so payable but for the operation of paragraph (iii) of the proviso to that subsection.

“Insurance policy” means policy of insurance, or of indemnity, in respect of damage to or destruction or loss of a vehicle.

“Insurer”

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"Insurer" means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

(b) No insurer shall demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for bush fire damage, any greater or other amount than, in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by him, he would have charged in that case as the premium for such issue or renewal, as the case may be, if the vehicle had not at any time been the subject of a claim for bush fire damage.

(c) Any insurer who demands or receives any amount contrary to this subsection shall be liable to a penalty not exceeding five hundred dollars.

(d) Any amount received by an insurer contrary to this subsection may be recovered from him as a debt by the person who paid it.

(e) No insurance policy shall be illegal, void or unenforceable by reason only of any provisions of this subsection.

Subsisting  
policies.

6. Any policy of insurance against liability under the Workers' Compensation Act, 1926, or any amendment of that Act, being maintained in force on the appointed day 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 made by this Act.

7.

*Workers' Compensation (Amendment).*

7. (1) The Workmen's Compensation (Broken Hill) Act, 1920, as amended by subsequent Acts, is amended—

No. 97, 1967  
Amendment  
of Act No.  
36, 1920.

- (a) (i) by omitting from subparagraph (a) of paragraph 6 of Part II of the Schedule the figures "10.00" and by inserting in lieu thereof the figures "12.00";
- (ii) by omitting from the same subparagraph the figures "6.50" wherever occurring and by inserting in lieu thereof the figures "7.00";
- (iii) by omitting from the same subparagraph the figures "2.50" wherever occurring and by inserting in lieu thereof the figures "3.00";
- (iv) by omitting from subparagraph (b) of the same paragraph the figures "10.00" and by inserting in lieu thereof the figures "12.00";
- (v) by omitting from the same subparagraph the figures "4.00" and by inserting in lieu thereof the figures "5.00";
- (vi) by omitting from the same subparagraph the figures "2.50" and by inserting in lieu thereof the figures "3.00";
- (vii) by omitting from subparagraph (c) of the same paragraph the figures "7.00" and by inserting in lieu thereof the figures "10.00";
- (b) (i) by omitting from subparagraph (b) of paragraph 6A of Part II of the Schedule the figures "13.50" wherever occurring and by inserting in lieu thereof the figures "14.00";
- (ii) by omitting from the same subparagraph the figures "2.30" and by inserting in lieu thereof the figures "2.00";
- (iii) by omitting from the same subparagraph the figures "8.00" and by inserting in lieu thereof the figures "6.00".

(2)



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**No. 97, 1967** (2) The amendments made by subsection one of this section shall be deemed to extend to, and from the commencement of this section, apply in respect of all persons who were immediately before such commencement in receipt of compensation under the Workmen's Compensation (Broken Hill) Act, 1920-1965, as well as to all persons becoming entitled to compensation thereunder after such commencement.

(3) This section shall commence upon a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette.

Further amendment of Act No. 36, 1920.

**8.** (1) The Workmen's Compensation (Broken Hill) Act, 1920, as amended by subsequent Acts, is further amended—

Schedule, par. 6.

(a) by omitting from paragraph 6 of Part II of the Schedule the words "The rates" and by inserting in lieu thereof the words "(1) Subject to clause (2) of this paragraph, the rates";

(b) by omitting from subparagraph (a) of the same paragraph the following words and figures :—

"Provided that the total additional sum in respect of dependents shall not exceed

11 50";

(c) by omitting from the same paragraph the following words :—

"Provided that except to the extent provided for in paragraph 6A of this scheme in no case shall the total weekly payment to be made under this scheme exceed the sum of twenty-one dollars per week :";

(d) by inserting at the end of the same paragraph the following new clause :—

(2) (a) Where, but for this clause, the rate of compensation payable under clause (1) of this paragraph to a beneficiary (not being a person who

immediately

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immediately before the commencement of section **No. 97, 1967** eight of the Workers' Compensation (Amendment) Act, 1967, was in receipt of compensation under this scheme) in respect of his disablement, together with any additional amount per week he is eligible to be paid under paragraph 6A of this scheme, would exceed his average weekly earnings, such excess shall be deducted from the rate of compensation that would otherwise be payable to him under clause (1) of this paragraph.

(b) For the purposes of this clause "average weekly earnings" means the weekly sum to which the total weekly payment of compensation would have been for the time being limited by subsection two of section nine of the Workers' Compensation Act, 1926, as amended by subsequent Acts (whether enacted before or after the day appointed pursuant to section one of the Workers' Compensation (Amendment) Act, 1967)—

- (i) if the disablement in respect of which the beneficiary is entitled to compensation under this scheme were an injury as defined by the Workers' Compensation Act, 1926, as so amended; and
- (ii) if the beneficiary were entitled under that Act, as so amended, to a weekly payment of compensation for incapacity for work resulting from such injury.

(2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall be deemed to extend to, and from the commencement of this section, apply in respect of all persons who were immediately before such commencement in receipt of compensation under the Workmen's Compensation (Broken Hill) Act, 1920-1965, as well as to all persons becoming entitled to compensation thereunder after such commencement.

(3) This section shall be deemed to have commenced on the eighth day of June, one thousand nine hundred and sixty-seven.

**No. 97, 1967** 9. The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
2, 1940.

**Sec. 5.**

(a) by inserting in subparagraph (ii) of paragraph (a) of subsection two of section five after the figures and symbol "1944," the word "and";

(Interpre-  
tation.)

(b) by omitting from the same subparagraph the words "and the Workers' Compensation Act, 1926,";

(c) by omitting from the same subparagraph the word "any" where secondly occurring and by inserting in lieu thereof the word "either".

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