

**WORKERS' COMPENSATION (RATES)
AMENDMENT ACT, 1977**

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 124, 1977.

An Act to amend the Workers' Compensation Act, 1926, so as to increase workers' compensation under that Act and to provide for the indexation of certain weekly payments of compensation under that Act. [Assented to, 9th December, 1977.]

BE

Workers' Compensation (Rates) Amendment.

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. This Act may be cited as the "Workers' Compensation (Rates) Amendment Act, 1977". Short title.

2. The Workers' Compensation Act, 1926, is referred to in this Act as the Principal Act. Principal Act.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—TRANSITIONAL AND SAVINGS PROVISIONS.

4. The Principal Act is amended in the manner set forth in Schedule 1. Amendment of Act No. 15, 1926.

5. Schedule 2 has effect. Transitional and savings provisions.

SCHEDULE

Workers' Compensation (Rates) Amendment.

Sec. 4.**SCHEDULE 1.****AMENDMENTS TO THE PRINCIPAL ACT.****(1) Section 6 (1), definition of "Worker"—**

From paragraph (g), omit "this Act and ending on 31st December, 1977", insert instead "the Workers' Compensation (Further Amendment) Act, 1977, and ending on 1st March, 1978".

(2) (a) Section 8 (1) (a)—

Omit "\$20,000", insert instead "\$25,000".

(b) Section 8 (1) (b)—

Omit "\$11", insert instead "\$14".

(c) Section 8 (3)—

Omit "\$5,600", insert instead "\$7,000".

(3) (a) Section 9 (1)—

Omit "10 and 11", insert instead "11 and 13".

(b) Section 9 (1) (a)—

Omit "a weekly payment", insert instead "the worker's current weekly wage rate in respect of any period of incapacity which together with any other such periods (whether occurring before or after the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977) of incapacity resulting from the one injury do not total more than 26 weeks, and, in respect of any subsequent period, a weekly payment".

(c) Section 9 (1) (a)—

Omit "eighty-five", insert instead "90".

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 9 (1) (a)—

Omit "shall not exceed \$64 per week, and in the case of an adult worker shall not be less than \$42 per week in the case of total incapacity", insert instead "in respect of any period of incapacity occurring after a period of incapacity of, or periods of incapacity totalling, 26 weeks shall not exceed \$83 per week, and shall be not less, in the case of an adult worker, than \$66 per week for total incapacity".

(e) Section 9 (1) (b), (c)—

After "in addition" wherever occurring, insert "(except during any period during which the compensation payable under paragraph (a) is at the worker's current weekly wage rate)".

(f) Section 9 (1) (b) (i), (c) (i)—

Omit "\$16" wherever occurring, insert instead "\$19".

(g) Section 9 (1) (b) (ii), (c) (ii)—

Omit "\$8" wherever occurring, insert instead "\$9.50".

(h) Section 9 (1A) (a)—

Omit "Workers' Compensation (Amendment) Act, 1975", insert instead "Workers' Compensation (Rates) Amendment Act, 1977".

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(i) Section 9 (2)—

Omit the subsection, insert instead :—

(2) The total weekly payment by the employer under subsection (1) shall not, after a period of incapacity resulting from an injury to the worker of, or periods of incapacity resulting from the one injury to the worker totalling, 26 weeks, exceed an amount equal to the worker's current weekly wage rate.

(j) Section 9 (4)—

Omit "\$38", insert instead "\$60".

(k) Section 9 (4)—

Omit "eighty-five", insert instead "90".

(l) Section 9 (4)—

Omit "\$32", insert instead "\$54".

(m) Section 9 (8)–(13)—

After section 9 (7), insert :—

(8) Subject to subsections (10), (11) and (12), a reference in subsection (1) to the current weekly wage rate of a worker, being a worker who is incapacitated for work, whether totally or partially, and who, immediately before he was incapacitated—

- (a) was remunerated under an award fixing or providing for the fixing of a rate for a weekly or longer period—is, at any time during that incapacity, a

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

reference to the rate of remuneration under that award at that time for 1 week in respect of the work being performed by him immediately before he was incapacitated;

- (b) was an employee of the Crown or of an employer constituted by an Act and was remunerated, pursuant to a determination made by the Crown or made under section 14A of the Public Service Act, 1902, or under the provisions of any other Act, being a determination fixing or providing for the fixing of a rate for a weekly or longer period—is, at any time during that incapacity, a reference to the rate of remuneration under that determination at that time for 1 week in respect of the work being performed by him immediately before he was incapacitated; or

- (c) was remunerated otherwise than as referred to in paragraph (a) or (b)—is a reference to—

(i) except as provided in subparagraph (ii), \$144.57; or

(ii) where another amount has been prescribed, that other amount.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) For the purposes of subsection (8) (a), where a worker is not remunerated in respect of the work performed by him under an award fixing or providing for the fixing of a rate for a weekly or longer period but—

(a) there is such an award under which he would be entitled to be remunerated if he performed that work under a contract of service, he shall be deemed to be remunerated in respect of that work under that lastmentioned award;
or

(b) although paragraph (a) does not apply, there is an award fixing or providing for the fixing of a rate for a weekly or longer period which, having regard to the nature of that work, it would be fair and reasonable to apply to and in respect of that work, he shall be deemed to be remunerated in respect of that work under that last-mentioned award.

(10) Subject to subsections (11) and (12), where the amount of a worker's current weekly wage rate, as determined under subsection (8), exceeds his average weekly earnings referred to in subsection (1) (a) a reference in subsection (1) to that worker's current weekly wage rate is a reference to those average weekly earnings.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(11) In determining a worker's current weekly wage rate in accordance with subsection (8) (a) or (b) or (10), any amount paid or payable to him—

- (a) in respect of shift work, overtime or other penalty rates;
- (b) under the terms of his employment in excess of the ordinary rate fixed by any award for the work performed by him; or
- (c) to cover special expenses incurred by him by the nature of his employment,

shall be disregarded.

(12) A reference in subsection (1) to the current weekly wage rate of a worker, being a worker who—

- (a) at the time of his injury, was employed under 2 or more contracts of service under which he worked at one time for one employer and at another time for another employer; and
- (b) is incapacitated (totally or partially) from performing work under any 2 or more of those contracts,

is a reference—

- (c) except as provided in paragraph (d) —to the sum of the current weekly wage rates applicable to him under subsection (8) or (10) as a worker

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

employed by each of the employers by whom he was employed under the contracts referred to in paragraph (b); or

- (d) where the total of his ordinary weekly hours of work under the contracts referred to in paragraph (b) exceeded 40—to an amount that bears to the sum referred to in paragraph (c) the same proportion as 40 bears to that total,

and the current weekly wage rate of such a worker, as determined under this section, shall be deemed to be his current weekly wage rate as a worker in the employment of the employer for whom he was working at the time of his injury to the exclusion of any other employers.

(13) In this section, “award” means—

- (a) an award in force under the Industrial Arbitration Act, 1940, or under the Apprentices Act, 1969, or an award, within the meaning of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth or any Act amending or replacing that Act, that is in force;
- (b) an industrial agreement in force under the Industrial Arbitration Act, 1940, or an apprenticeship agreement for the time being in force under the Apprentices Act, 1969; or

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) an agreement made under section 14B of the Public Service Act, 1902, or an agreement with respect to wages or salaries entered into under the provisions of any other Act by an employer constituted by that other Act with any association or organisation representing any group or class of employees,

and includes any such award, industrial agreement or other agreement as from time to time amended.

(4) Section 9A—

After section 9, insert :—

9A. (1) In this section—

**Indexation
of amounts.**

“adjustable amount” means each of the amounts of \$14, \$83, \$66, \$19, \$9.50, \$60 and \$54 referred to in section 8 (1) (b) or 9 (1) (a), (b) or (c) or (4);

“adjustment date” means 1st April or 1st October in any year;

“base rate” means 144.57;

“latest weekly rate”, in relation to an adjustment date, means—

(a) where—

- (i) the adjustment date is 1st April in any year—the number, relating to New South

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Wales, shown in the first preliminary table published by the Australian Statistician for the preceding month of December; or

- (ii) the adjustment date is 1st October in any year—the number, relating to New South Wales, shown in the first preliminary table published by the Australian Statistician for the preceding month of June,

as being the weighted average minimum weekly rate, in dollars, payable for all industry groups to adult males for a full week's work (excluding overtime), as prescribed in awards, determinations and collective agreements; or

- (b) where there is, under paragraph (a), no latest weekly rate in relation to an adjustment date—such number as may be prescribed in respect of that date.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) On any adjustment date, each adjustable amount shall—

- (a) if the latest weekly rate relating to that adjustment date exceeds the base rate, be redetermined in accordance with the following formula :—

$$A = B + \left(\frac{L - B}{B} \times 100 \right)$$

or

- (b) if the latest weekly rate relating to that adjustment date is less than the base rate, be redetermined in accordance with the following formula :—

$$A = B - \left(\frac{B - L}{B} \times 100 \right)$$

where—

A is the adjustable amount as redetermined;

L is the latest weekly rate; and

B is the base rate.

(3) On and from any adjustment date, a reference in section 8 (1) (b) or 9 (1) (a), (b) or (c) or (4) to any amount which is an adjustable

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

amount shall, if that adjustable amount has at any time been redetermined under subsection (2), be read and construed as a reference to that adjustable amount as last so redetermined on or before that adjustment date, but disregarding any remaining part of the redetermined adjustable amount that is less than 5 cents and treating any remaining part of the redetermined adjustable amount that is 5 cents or more but is less than 10 cents as if it were 10 cents.

(5) (a) Section 16 (1B) (a)—

Omit "\$1,050", insert instead "\$1,850".

(b) Section 16 (1B) (a1)—

Omit "\$2,250" wherever occurring, insert instead "\$3,950".

(c) Section 16 (1B) (a1)—

Omit "\$1,500", insert instead "\$2,650".

(d) Section 16 (1BA) (b)—

Omit "\$3,000" wherever occurring, insert instead "\$5,250".

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(e) Section 16, table—

Omit the table, insert instead :—

TABLE.

| Nature of Injury. | Amount payable. |
|---|-----------------|
| | \$ |
| Loss of either arm, or of the greater part thereof | 18,400 |
| Loss of lower part of either arm, either hand, or five fingers of either hand | 15,750 |
| Loss of a leg or of the greater part thereof | 16,800 |
| Loss of the lower part of a leg | 14,450 |
| Loss of a foot | 14,000 |
| Loss of sight of one eye, with serious diminution of the sight of the other | 16,800 |
| Loss of the sight of both eyes | 23,650 |
| *Loss of sight of one eye | 9,800 |
| Loss of hearing of both ears | 14,450 |
| †Loss of hearing of one ear | 6,850 |
| ‡Loss of power of speech | 14,450 |
| Loss of a thumb | 6,850 |
| Loss of a forefinger | 4,550 |
| Loss of a joint of a thumb | 4,200 |
| Loss of a little finger, middle finger or ring finger | 2,400 |
| Loss of a toe or the joint of a finger | 2,100 |
| Loss of a joint of a toe | 1,350 |
| Loss of a great toe | 4,550 |
| Loss of joint of forefinger or of joint of great toe | 2,400 |

* 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.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 30AB (6) (c)—

After “amount”, insert “or, if the committee so determines, includes such part as the committee determines of any amount”.

(7) (a) Section 30J (1)—

Omit “prescribed contributions”, insert instead “contributions prescribed for the purposes of any of the provisions of section 30K”.

(b) Section 30J (2)—

After “(1)”, insert “for the purposes of section 30K (1)”.

(c) Section 30J (3A)—

After section 30J (3), insert :—

(3A) Prescribed contributions other than those referred to in subsection (2) shall be paid within such periods as are prescribed in respect of the contributions.

(8) (a) Section 30K (1) (a)—

After “Part”, insert “but excluding any additional weekly compensation payable and paid by him under any amendment made by the Workers' Compensation (Rates) Amendment Act, 1977”.

(b) Section 30K (1) (a)—

After “1975,” where secondly occurring, insert “and the Workers' Compensation (Rates) Amendment Act, 1977,”.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 30K (1) (b)—

After "Part", insert "but before the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977".

(d) Section 30K (1A)—

After section 30K (1), insert :—

(1A) Subject to subsection (3), there shall be payable from the Contribution Fund to an insurer—

- (a) the difference between the weekly compensation payable and paid by him after the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977, pursuant to a policy in respect of an injury received by a worker before that date and the weekly compensation that would have been payable by him in respect of that injury if that Act had not been enacted; and
- (b) the prescribed amount in respect of any lump sum paid by him after the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977, pursuant to a policy, in redemption wholly or in part of the liability to pay weekly compensation in respect of an injury received by a worker before 1st May, 1975; and

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) the prescribed proportion of any lump sum paid by him after the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977, pursuant to a policy, in redemption wholly or in part of the liability to pay weekly compensation in respect of an injury received by a worker on or after 1st May, 1975, and before that date of assent.

(e) Section 30K (2A), (2B)—

After section 30K (2), insert :—

(2A) The prescribed amount referred to in subsection (1A) (b) is the sum of—

- (a) the amount that would have been payable from the Fund if—
- (i) the lump sum so referred to had been reduced by the prescribed proportion referred to in subsection (2B); and
 - (ii) the redemption had been effected before the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977; and

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the amount that would have been payable from the Fund if the redemption so referred to—
 - (i) had been for a lump sum equal to the amount of the reduction referred to in paragraph (a); and
 - (ii) had been in respect of an injury suffered on or after 1st May, 1975, and before the date of assent to the Workers' Compensation (Rates) Amendment Act, 1977.

- (2B) The prescribed proportion referred to in subsection (1A) (c) is—
 - (a) except as provided in paragraph (b) —the proportion agreed upon between the insurer referred to in that subsection and the Government Insurance Office; or
 - (b) in the absence of agreement, or where that insurer is the Government Insurance Office—the proportion that the difference between—
 - (i) the rate of weekly compensation that was payable, immediately before the redemption, in respect of the injury; and

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (ii) the rate of weekly compensation that would then have been so payable if the Workers' Compensation (Rates) Amendment Act, 1977, had not been enacted,

bears to the rate of weekly compensation referred to in subparagraph (i).

(f) Section 30κ (3)—

After "subsection (1)", insert "or (1A)".

(g) Section 30κ (3)—

After "prescribed", insert "in respect of subsection (1) or (1A), as the case may be,".

(h) Section 30κ (4) (b)—

After "(1) (a)", insert "or (1A) (a)".

(i) Section 30κ (5) (a)—

After "(1) (a)", insert "or (1A) (a)".

(9) Section 60 (2A)—

After section 60 (2), insert :—

(2A) Subsection (2) does not authorise an increase in the current weekly wage rate payable in respect of a worker under section 9 (1) (a).

Workers' Compensation (Rates) Amendment.

SCHEDULE 2.

Sec. 5.

TRANSITIONAL AND SAVINGS PROVISIONS.

1. The period referred to in paragraph (g) of the definition of "Worker" in section 6 (1) of the Principal Act shall be deemed always to have commenced on the date of assent to the Workers' Compensation (Further Amendment) Act, 1977.

2. Where, at the date of assent to this Act, a worker is incapacitated, his weekly entitlement shall on and from that date and until he first ceases to be incapacitated after that date, be—

- (a) notwithstanding any other provision of this Act, his weekly entitlement immediately before that date; or
- (b) his weekly entitlement under the Principal Act, as amended by this Act,

whichever is the greater.

3. The weekly payments prescribed by the Principal Act, as amended by this Act, are payable, on and from the date of assent to this Act, in respect of all persons and institutions who or which immediately before that date were in receipt of or entitled to weekly payments under the provisions of section 8 or 9 of the Principal Act as well as to all persons and institutions becoming entitled to weekly payments under any of those provisions on or after that date.

4. The compensation prescribed by section 8 of the Principal Act, as amended by this Act, shall be payable in accordance with that section in respect of the death of any worker which on or after the date of assent to this Act results from an injury whether received before, on or after that date.

5. The compensation prescribed by section 16 of the Principal Act, as amended by this Act, for an injury of a particular kind shall be payable for—

- (a) any injury of that kind received on or after the date of assent to this Act; and
- (b) any injury of that kind received before that date by a worker who has not before that date been awarded, or has not received or agreed to receive, for that injury the compensation prescribed by section 16 of the Principal Act, as in force immediately before that date.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 2—*continued.*TRANSITIONAL AND SAVINGS PROVISIONS—*continued.*

6. (1) A policy of insurance or indemnity against liability under the Principal Act being maintained in force on the date of assent to this Act shall be deemed to insure and always to have insured the employer against any additional liability to which he may become subject during the currency of the policy under any amendment made by this Act.

(2) Where a policy of insurance or indemnity against liability under the Principal Act—

(a) was in force at the date of an injury that occurred before the date of assent to this Act; and

(b) was not being maintained in force on that date,

the policy shall be deemed always to have insured the employer against any additional liability to which he may become subject on or after that date in respect of that injury by reason of any amendment made by this Act.

(3) Where a person who received an injury before the date of assent to this Act is not receiving compensation in respect of that injury immediately before that date, an insurer liable to pay compensation on or after that date in respect of that injury is liable to pay the compensation at the rates prescribed by the Principal Act, as amended by this Act.

(4) Where a person is in receipt of compensation on the date of assent to this Act and the compensation is payable by an insurer, the insurer is liable to pay any additional compensation to which that person becomes entitled by reason of any amendment made by this Act.

7. (1) Without prejudice to the operation of clause 6, where, on the date of assent to this Act, a policy of insurance or indemnity against liability under the Principal Act would, if this subclause and clause 7 had not been enacted, have indemnified an employer to any extent against any additional liability to which he may become subject under any amendment made by this Act, the policy ceases to that extent to have any force or effect on and from the date of assent to this Act and the employer is entitled to be paid by the insurer the amount of an appropriate reduction of the premium paid in respect of the policy.

SCHEDULE

Workers' Compensation (Rates) Amendment.

SCHEDULE 2—*continued.*

TRANSITIONAL AND SAVINGS PROVISIONS—*continued.*

(2) Where, immediately before the date of assent to this Act, a policy of insurance or indemnity against liability under the Principal Act was in force for a period that expires on or after that date, the insurer is entitled to charge an additional premium for the policy, being an amount that does not exceed the lesser of—

- (a) 15 per centum of that part of the premium for the policy that is attributable to the unexpired portion of the period of the policy at that date; and
- (b) such an amount as will provide a total premium for the policy that does not exceed by more than 10 per centum the rate of premium recommended for the policy by the New South Wales Workers' Compensation Rates of Premium Scheme, 1976, as amended by the New South Wales Workers' Compensation Rates of Premium (Amendment) Scheme, 1976.

(3) The Commission may—

- (a) on the application of an employer, order an insurer to pay to the employer the amount of a reduction of premium that, in the opinion of the Commission, is required by subclause (1) of this clause to be paid to the employer; or
 - (b) on the application of an insurer, order an employer to pay to the insurer the amount of an additional premium that, in the opinion of the Commission, is required by subclause (2) of this clause to be paid to the insurer.
-
-