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# VICTORIÆ REGINÆ.

A.D. 1900.

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## No. 739.

An Act relating to Compensation for Workmen's Injuries.

[Assented to, December 5th, 1900.]

**B**E it Enacted by the Governor, with the advice and consent of the Parliament of South Australia, as follows:

1. This Act may be cited as "The Workmen's Compensation Act, 1900." Short title.

2. In this Act—

Definitions.

"Dependants" means the wife, husband, parent, grandparent, child, grandchild, and stepchild of a workman wholly or in part dependent upon his earnings at the time of his death:

"Employer" includes any body of persons corporate or unincorporate, and the legal personal representative of a deceased employer:

"Engineering work" means any work of construction or alteration or repair of a railroad, harbor, dock, canal, sewer, or tunnel, telegraph, telephone, or electric power, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Factory" means any manufactory, workshop, workroom, or premises wherein or whereon manual labor is exercised for the purpose of gain in or incidental to the making, altering, or repairing any article by way of trade or for purpose of

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of gain or for sale, and includes any ship or boat in port, dock, wharf, quay, or warehouse, so far as relates to machinery and plant used in the process of loading or unloading therefrom or thereto, and every laundry worked by steam, water, or other mechanical power:

“Injury” means personal injury or loss of life by accident arising out of and in course of employment or injury to health or loss of life arising out of or consequent upon any employment declared by Proclamation to be dangerous to health or dangerous to life or limb: Provided that no such Proclamation shall issue except on addresses of both Houses of Parliament:

“Proclamation” means Proclamation by the Governor in the *Government Gazette*:

“Workman” includes every person who is engaged in an employment to which this Act applies, whether by way of manual labor or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing, and includes seaman and the personal representative and the dependants of a deceased workman.

**Application of Act.**

**3.** This Act applies only to injuries to workmen employed by employers—

- i. On or in or about a railway, waterwork, tramway, electric-lighting work, factory, mine, quarry, or engineering or building work:
- ii. On or in or about any employment declared by Proclamation to be dangerous or injurious to health or dangerous to life or limb: Provided that no such Proclamation shall issue except pursuant to addresses from both Houses of Parliament.

**Liability of employer.**

**4.** When personal injury arising out of and in the course of his employment is caused to a workman his employer shall be liable to pay compensation, except in the following cases—

- (a) When the injury is attributable to the serious and wilful misconduct of the workman injured, and to no other cause; or
- (b) When the workman is not disabled for at least one week from earning full wages at the work in which he was employed.

**Scale and conditions of compensation.**

**5.** The compensation for which an employer shall be liable pursuant to the preceding section shall be subject to the scale and conditions in the First Schedule.

**6.** (1) Where

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**6.** (1) Where personal injury is caused to a workman by the personal negligence or wilful act of his employer, or of some person for whose act or default such employer is responsible, such workman may, at his option, either claim compensation under this Act, or take proceedings to recover compensation independently of this Act.

Personal negligence  
of employer.

(2) No employer shall be liable to pay compensation both under this Act and independently of this Act.

**7.** If in an action to recover compensation for personal injury, independently of this Act, brought by a workman against an employer —

Action to recover  
compensation  
independently of this  
Act.

(a) In the case of an injury not causing death within six months from the occurrence of the injury :

(b) In case of an injury causing death within six months after the time of death :

the Court determines that the employer is not liable in such action, the Court shall determine whether the employer is liable to pay compensation under this Act ; and if the Court determines that the employer is so liable it shall proceed to assess the compensation under this Act, and to give judgment therefor.

The Court may deduct from such compensation such amount as it shall think proper for costs caused by the action being brought for compensation independently of this Act, instead of proceedings being taken for compensation under this Act.

**8.** (1) Notice of the injury in respect of which it is intended to claim compensation shall be given to the employer as soon as practicable after the occurrence of such injury, or within three months thereafter, and the action must be commenced within six months after the occurrence of the injury, or in case of death within six months after the time of death.

Notice of injury.

(2) The want of notice, or any defect or inaccuracy in any notice, shall not be a bar to the right to compensation—

(a) If the employer is not seriously prejudiced in his defence ; or

(b) If such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause :

(3) The notice shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date on which it was sustained.

(4) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served, or may be sent by post by a registered letter addressed to such person at his last known place of residence or place of business.

(5) If there is more than one employer, service on one shall be deemed sufficient.

(6) A

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(6) A notice served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post.

(7) Where the employer is a body of persons, corporate or unincorporate, the notice may be served by delivering the same at or by sending it by post in a registered letter, addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

Contracting out.

9. (1) If the Public Actuary, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation or insurance for the workmen in any employment is on the whole, under all the circumstances of the case, not less favorable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the first day of October, one thousand nine hundred.

(2) The Public Actuary may give a certificate to expire at the end of a limited period not more than five years.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4) If complaint is made to the Public Actuary by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favorable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered by the employer, or that satisfactory reasons exist for revoking the certificate, the Public Actuary shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate. When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Public Actuary in the event of a difference of opinion.

(5) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Public Actuary.

(6) The Public Actuary shall annually report the particulars of his proceedings under this Act.

Sub-contracting.

10. Where, in an employment to which this Act applies, the undertakers contract with any person for the execution by or under such

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such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act, or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be payable if such contractor were an employer to whom this Act applies: Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely auxiliary or incidental to, and is no part of or process in the trade or business carried on by such undertakers respectively.

In this section the word "undertakers" means—(1) In the case of a railway, waterwork, tramway, or electric lighting work, the person on whose behalf the railway, waterwork, tramway, or electric lighting work is being constructed, altered, or repaired, or to whom the same belongs; (2) in the case of a factory, the occupier thereof; (3) in the case of a mine or quarry, the owner thereof; (4) in case of an engineering work, the person undertaking construction, alteration, or repair thereof; (5) in the case of building work, the person undertaking the construction, alteration, repair, or demolition thereof.

**11.** This Act shall apply only to employment by the undertakers hereinbefore defined on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinbefore defined on or in or about any building which is either being constructed or repaired, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof.

Application of Act.

**12.** Where any employer becomes liable under this Act to pay compensation, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company, of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and any Special Magistrate may direct the insurers to pay such sum into the Savings Bank in the name of the Public Trustee, and the same shall be applied in accordance with the provisions of the First Schedule hereto.

Compensation to workmen in case of bankruptcy of employer.

**13.** Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability

Recovery of damages from stranger.

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liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Non-application to agricultural and pastoral pursuits and application to workmen in employment of Crown.

**14.** This Act shall only apply to workmen engaged in agricultural or pastoral pursuits when steam, water, oil, gas, electricity, compressed air, or other like mechanical power is used in the factory; and this Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

Provision as to existing contracts.

**15.** Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for injury arising out of and in the course of his employment, shall not for the purposes of this Act be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

Commencement of Act.

**16.** This Act shall come into operation on a date to be fixed by Proclamation, not earlier than the first day of June, one thousand nine hundred and one.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

TENNYSON, Governor.

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## THE FIRST SCHEDULE REFERRED TO.

## SCALE AND CONDITIONS OF COMPENSATION.

*Scale.*

(1) The amount of compensation under this Act shall be—

(a) Where death results from injury—

- I. If the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of One Hundred and Fifty Pounds, whichever of those sums is the larger, but not exceeding in any case Three Hundred Pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum; and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 15<sup>6</sup> times his average weekly earnings during the period of his actual employment under the said employer:
- II. If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants: and
- III. If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding Fifty Pounds:

(b) Where total or partial incapacity for work results from injury, a weekly payment during the incapacity after the first week not exceeding fifty per centum of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed One Pound, nor in case of total incapacity to be less than Seven Shillings and Sixpence per week. Such payments shall not in the aggregate exceed Three Hundred Pounds.

(2) In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman before the injury and the average amount which he is able to earn after the injury, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3) Where a workman has given notice of injury he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation and any proceeding under this Act in relation to compensation shall be suspended until such examination takes place.

(4) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative, shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7) Any

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(7) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested by the Public Trustee.

(8) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer; but if the workman objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule hereto, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(9) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(10) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of either the workman or the employer, be redeemed by the payment of a lump sum, not exceeding Three Hundred Pounds, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(11) A weekly payment shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

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## THE SECOND SCHEDULE REFERRED TO.

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### ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

(1) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by a Special Magistrate, according to the procedure prescribed by rules made under this Act.

(3) Any arbitrator appointed by Special Magistrate shall, for the purposes of this Act, have all the powers of a Local Court, and shall be paid out of moneys to be provided by Parliament.

(4) The Arbitration Act, 1891, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of a Local Court of full jurisdiction, and the decision of the Court on any question of law, either on such submission or in any case where he himself settles the matter under this Act, shall be final; unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Supreme Court; and the Local Court or the arbitrator shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in a Local Court.

(5) In any arbitration under this Act any party may appear by any person duly appointed on his behalf.

(6) The



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(6) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the Local Court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent by the said committee or arbitrator, or by any party interested, to the clerk of the Local Court for the district in which any person entitled to such compensation resides, who shall, on being satisfied as to its genuineness, record such memorandum in a special register without charge, and thereupon the said memorandum shall for all purposes be enforceable as a Local Court judgment: Provided that a Special Magistrate may at any time rectify such register.

(8) Where any matter under this Act is to be done in a Local Court, or by, to, or before the Special Magistrate, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the Special Magistrate of the Local Court of the district in which all the parties concerned reside, or if they reside in different districts, the district in which the injury out of which the matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(9) The duty of a Special Magistrate under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the Local Court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects Local Courts, or an arbitrator appointed by a Special Magistrate, and proceedings in a Local Court or before any such arbitrator.

(10) The Governor may make or repeal regulations providing for rules of court, and generally for carrying this Act into effect.

(11) No court fee shall be payable by any party in respect of any proceedings under this Act in a Local Court prior to the award.

(12) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him or to claim a lien on or deduct any amount for costs from the said sum awarded for any costs except such as have been awarded in the arbitration. On an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13) The Governor may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or Special Magistrate may, subject to regulations made by the Governor, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to such regulations, be paid out of moneys to be provided by Parliament.