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**ELIZABETHAE II REGINAE**

A.D. 1971

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**No. 36 of 1971**

An Act to provide for compensation to workmen and their dependants in respect of injuries suffered by workmen arising out of or in the course of their employment, and for purposes incidental thereto.

*[Assented to 22nd April, 1971]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the "Workmen's Compensation Act, 1971".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement of Act.

3. This Act is arranged as follows:—

PART I—PRELIMINARY.

PART II—RIGHT TO COMPENSATION.

## PART III—CLAIMS FOR COMPENSATION

DIVISION I—THE INDUSTRIAL COURT:

DIVISION II—PROCEDURE GENERALLY:

DIVISION III—AGREEMENTS:

DIVISION IV—DISPUTES:

DIVISION V—APPEALS.

## PART IV—AMOUNT OF COMPENSATION.

## PART V—PAYMENT AND INVESTMENT OF COMPENSATION.

## PART VI—ALTERNATIVE REMEDIES.

## PART VII—APPLICATION TO SPECIAL CLASSES OF PERSONS.

## PART VIII—INDUSTRIAL DISEASES.

## PART IX—SILICOSIS.

## PART X—INDUSTRIAL DISEASES CONTRACTED AT PORT PIRIE.

## PART XI—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS.

4. (1) The Acts and portions of the Acts specified in the first schedule to this Act are repealed. Repeal and savings.

(2) Notwithstanding such repeal—

(a) all regulations made under the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been made under this Act and to have effect as if the necessary power to make them had been enacted by this Act;

and

(b) such regulations may be amended or revoked by regulations made under this Act.

(3) Where in any other Act, in any rule or regulation, in any award or order, or in any document of any kind a reference is made to the repealed Act or any provision thereof, that reference shall so far as it is applicable be read as a reference to this Act or to the corresponding provision, if any, of this Act.

**PART I**

Pending proceedings to continue.

5. (1) All proceedings that had been commenced but had not been completed under the repealed Act immediately before the commencement of this Act shall be continued and completed in all respects (except as provided in this section) as if this Act had not been enacted.

(2) Where immediately before the commencement of this Act a workman was receiving or was entitled to receive weekly payments at the rates set out in section 18 of the repealed Act that workman shall on and after that commencement receive or be entitled to receive weekly payments at the rate set out in section 51 of this Act in lieu of those first-mentioned weekly payments but this subsection shall not apply so as to increase the total liability of the employer provided for under subsection (3) of section 18 of the repealed Act.

(3) Except as provided in subsection (4) of this section where on or after the commencement of this Act, the death of a workman results from an injury in respect of which compensation was paid or was payable under the repealed Act, compensation and other benefits shall be payable in accordance with this Act.

(4) Subsection (3) of this section shall not apply in any case where compensation has been paid to the workman, in respect of the injury, pursuant to section 26 or section 28 of the repealed Act.

Jurisdiction of Court in certain proceedings.

6. (1) Any proceedings that could have been commenced under the repealed Act immediately before the commencement of this Act but had not been so commenced shall be commenced, continued and completed in all respects but subject to this section as if this Act had not been enacted.

(2) For the purposes of any proceedings referred to in subsection (1) of this section the Court shall have and may exercise in all respects the jurisdiction conferred on the local court or a Judge thereof by the repealed Act, and for those purposes the local court or a Judge thereof shall not have or exercise that jurisdiction.

(3) For the purpose of giving full effect to this section the Court may by order give directions as it thinks necessary or desirable in respect of any matter or thing in relation to the procedure to be adopted in the conduct of proceedings referred to in subsection (1) of this section and such directions shall have effect as if they were enacted in this Act.

Application of this Act.

7. Except as expressly provided in this Act, this Act shall apply only to and in relation to a workman who has suffered an injury that occurred after the commencement of this Act.

8. (1) In this Act, unless the context otherwise requires—

“disease” includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development and also includes aggravation, acceleration, exacerbation, deterioration or recurrence of such an ailment, disorder, defect or condition:

“employer” includes—

(a) the Crown;

(b) any body of persons whether corporate or unincorporate;

or

(c) the legal personal representative of a deceased employer:

“husband” in relation to a workman who is a female includes a man who is not married to the workman but who is living with the workman on a permanent domestic basis as her *de facto* husband and in relation to such a workman the expression “widower” shall be construed accordingly:

“injury” means any physical or mental injury and without limiting the generality of the foregoing includes:—

(a) a disease contracted by the workman in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor;

and

(b) the aggravation, acceleration, exacerbation, deterioration or recurrence, of any pre-existing injury or disease where the employment was a contributing factor to that aggravation, acceleration, exacerbation, deterioration or recurrence,

and for the purposes of this definition the employment of a workman shall be taken to include any journey, attendance or temporary absence referred to in subsection (2) of section 9 of this Act:

“Judge” means—

(a) a Judge of the Industrial Court of South Australia appointed under the Industrial Code, 1967, as amended;

or

(b) a Judge as defined in section 4 of the Local and District Criminal Courts Act, 1926-1969, who is for the time being appointed pursuant to section 24 of this Act to have and exercise all of the powers and functions of a judge of the Industrial Court under this Act:

“member of family” in relation to a workman, means the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son or daughter whether legitimate or illegitimate, grandson, grand-daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, half-brother or half-sister of the workman and includes an adopted child of the workman and the sister of the father or mother of the workman and any person in relation to whom the workman stands *in loco parentis*:

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the home of that person or on premises not under the control or management of the person who gave out the materials or articles:

“Registrar” means the Industrial Registrar appointed under or continued in office under the Industrial Code, 1967, as amended, and includes a Deputy Industrial Registrar appointed or continued in office under that Act:

“ship” means any ship, vessel, boat or other craft:

“the Court” means the Industrial Court of South Australia continued under the Industrial Code, 1967, as amended:

“the repealed Act” means the Workmen's Compensation Act, 1932-1969:

“wife” in relation to a workman includes a woman who is not married to the workman but who is living with the workman on a permanent domestic basis as his *de facto* wife and in relation to a workman the expression “widow” shall be construed accordingly:

“workman” means a person (including a domestic servant) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is express or implied or is oral or in writing but does not include—

(a) an outworker;

(b) a person whose employment is of a casual nature and is not for the purposes of the employer's trade or business;

(c) in a case where the injury occurs outside the territorial jurisdiction of the State, a seaman;

or

(d) a member of the crew of a fishing vessel remunerated by a share in the profits or the gross earnings from the workings of the vessel.

(2) For the purposes of this Act—

(a) a reference to a workman shall where the workman is dead, unless the context otherwise requires, include a reference to the legal personal representatives of the workman and to the dependants of the workman or other persons to whom or for whose benefit compensation is payable;

(b) the exercise and performance of the powers, duties or functions of a statutory body shall be deemed to be the trade or business of that statutory body;

and

(c) a reference to the wife or widow of a workman shall where the workman is a female be read as a reference to the husband or widower, as the case requires, of the workman.

(3) In subsection (2) of this section "statutory body" means any body corporate or unincorporate constituted by an Act in respect of which the Governor or a Minister of the Crown has the right to appoint one or more of the persons comprised in the body or concerned in its management and includes a council as defined in the Local Government Act, 1934, as amended, or any body exercising the powers, duties or functions of such a council.

(4) For the purposes of this Act, in the case of an injury that is a disease, that injury shall be deemed to have occurred on the day upon which the workman became totally or partially physically or mentally incapacitated by reason of that injury or when that day cannot be ascertained the day on which a legally qualified medical practitioner has certified that the workman was so incapacitated by reason of that injury but the day on which the injury occurred shall not be ascertained by reference to the day so certified where the Court is satisfied that the injury occurred before the commencement of this Act.

(5) Where the Court is satisfied that the injury referred to in subsection (4) of this section occurred before the commencement of this Act, the Court shall if it is material to do so, fix a day that in its opinion is the nearest day, that can be determined having regard to all the circumstances, to the day on which that injury occurred and the day so fixed shall be deemed to be the day on which that injury occurred.

PART II

## PART II

## RIGHT TO COMPENSATION

Liability of employers to compensate workmen for injuries.

9. (1) If in any employment personal injury arising out of or in the course of the employment is caused to a workman, his employer shall, except as provided in this Act, be liable to pay compensation in accordance with this Act.

(2) Without limiting the generality of subsection (1) of this section, an injury shall be deemed to arise out of or in the course of the employment of a workman if it occurs—

- (a) while the workman is in the course of a daily or other periodic journey between his place of abode and his place of employment, whether such journey is to or from his place of employment;
- (b) while the workman is in the course of a journey between his place of employment or place of abode and an institution which he is required by law to attend, or which he attends at the request of or with the approval of the employer for the purpose of attending a class or undertaking training at such an institution;
- (c) while the workman is in attendance at an institution referred to in paragraph (b) of this subsection for a purpose referred to in that paragraph;
- (d) while the workman, on any working day on which he has attended at his place of employment pursuant to his contract of employment, is with the approval of his employer temporarily absent therefrom on that day during any authorized meal, tea or smoking break so long as the workman—
  - (i) was not guilty of any misconduct or breach of his employer's instructions;

and

- (ii) did not voluntarily subject himself to any abnormal risk of injury;

(e) while the workman is in the course of a journey between his place of abode or place of employment and any other place for the purposes of—

- (i) obtaining, in connection with any injury for which he has received compensation or for which a claim for compensation has been admitted, a medical certificate;

or

- (ii) receiving in connection with any such injury medical, surgical or hospital advice, attention or treatment,

or while the workman is in attendance at any such place for any such purpose;

or

- (f) during any period at which the workman is in attendance at his place of employment for reasons connected with his employment before he has commenced his work for the day or after he has concluded his work for the day or during any period at which the workman is in attendance at his place of employment during any authorized break in his work so long as the workman—

- (i) is not guilty of any misconduct or breach of his employer's instructions;

and

- (ii) did not voluntarily subject himself to any abnormal risk of injury.

(3) While a workman is in the course of a journey from his place of employment under one employer to his place of employment under another employer this section shall apply and have effect as if his first-mentioned place of employment were his place of abode.

(4) Notwithstanding any other law, a person, who ordinarily engages in employment in connection with which he customarily attends at a place of pick-up, shall be deemed to be working under a contract of service—

- (a) with the employer who selected and engaged him at that place of pick-up;

or

- (b) if no employer so selected or engaged him, with the last employer who selected and engaged him in that employment.

(5) Notwithstanding anything in this Act, no compensation under this Act shall be payable in respect of any injury that is consequent upon or attributable to the serious and wilful misconduct of the workman unless that injury results in the death or permanent total incapacity of the workman.



## (6) For the purposes of this section—

“institution” means any trade, technical or other school, university or other place of tertiary education:

“journey” means the passage by any reasonable, direct or convenient route between two places but does not include any substantial deviation from that route for purposes unconnected with the employment or other purpose for which the journey was undertaken or any substantial interruption of that passage for purposes unconnected with the employment or other purpose for which the journey was undertaken unless in the circumstances of that substantial deviation or substantial interruption the nature, extent, degree or content of the risk of injury to the workman was not materially changed or increased by reason only of the deviation or interruption:

“place of abode” in relation to a workman, includes any place at which, under the terms of his employment, or at the request of his employer, he resides temporarily or at which it is necessary or convenient for him to reside temporarily for the purposes of his employment:

“place of employment” includes place of pick-up and where there is no fixed place of employment, the whole area, scope or ambit of the employment:

“place of pick-up” means any pre-arranged place at which persons attend and at which employers select and engage persons for employment.

Acting in  
employment.

10. For the purposes of section 9 of this Act, a workman shall be deemed to be acting in the course of his employment notwithstanding the fact that—

(a) he was acting in contravention of any statutory or other regulation applicable to the employment;

or

(b) he was acting without instructions from his employer,

if he was so acting for the purposes of and in connection with his employer's trade or business.

Application of  
Act to injury  
outside State.

11. (1) Where any employer, who resides or has a place of business in the State, employs in the State a workman—

(a) whose employment is partly carried on in the State and partly in one or more other States or Territories of the

Commonwealth and that employment necessarily involves a journey or journeys between the State and another State or Territory of the Commonwealth;

(b) whose employment is wholly carried on in the State but whose place of abode (as defined for the purposes of section 9 of this Act) is in some other State or Territory of the Commonwealth;

or

(c) whose employment is wholly or partly carried on outside the State though not in any other State or Territory of the Commonwealth,

and personal injury is caused to the workman outside the State this Act shall apply and have effect in all respects as if that injury had been caused to the workman within the State.

(2) Nothing in this section shall be construed as entitling a workman to receive compensation for the same injury under this Act and the corresponding enactment of another State or Territory.

12. If the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall for the purposes of this Act be deemed to continue to be the employer of the workman while he is working for that other person.

Provision where services of employee are lent by employer.

13. (1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workmen employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him.

Sub-contracting

(2) Where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

14. Where the principal is liable to pay compensation under section 13 of this Act he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the

Indemnity of principal.

## PART II

workman independently of that section, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by the Court.

Saving of right to recover from contractor.

15. Nothing in section 13 or section 14 of this Act shall be construed as preventing a workman from recovering compensation under this Act from the contractor instead of the principal.

Provision as to liability of master or agent of ship.

16. (1) Where a ship belongs to or is chartered by a person whose principal place of business is out of Australia and the master of the ship or any person acting on behalf of the owner or charterer thereof employs any workman to do work in, on, or about the ship (including loading or unloading) that master or other person shall for all purposes of this Act be deemed to be the employer of the workman as if he had acted as principal in employing the workman.

(2) Where a workman has recovered compensation under this Act against a person who, by virtue of this section, was liable to pay such compensation, the owner or charterer of the ship on whose behalf the workman was employed shall indemnify that person for the amount of such compensation and any costs incurred by that person in relation to the recovery of the compensation.

(3) This section shall not confer any right to compensation on any person who, if this section had not been enacted, would not have had that right.

Provisions as to cases of insolvency of employer.

17. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, and becomes insolvent, or makes a composition or arrangement with his creditors, or, being a company, has commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding any Act relating to insolvency or to the winding-up of companies, be transferred to and vest in the workman.

(2) Upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, but shall not be under any greater liability to the workman than they would have been under to the employer.

(3) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency or liquidation.

Application of s. 292 of the Companies Act.

18. (1) For the purposes of section 292 of the Companies Act, 1962, as amended, where any compensation under this Act is a weekly payment, the amount due in respect thereof shall be the

amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer had made an application for that purpose under section 72 of this Act.

(2) The provisions of this section do not apply where the company has entered into such a contract of insurance as is mentioned in section 17 of this Act.

19. Section 17 and section 18 of this Act shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Sections not to apply to voluntary winding-up for certain purposes.

20. (1) Where an injury results in the death of a workman the members of the family of the workman who were wholly or partly dependant on the earnings of the workman at the time of his death or who would, but for any incapacity due to the injury, have been so dependant, are entitled to claim compensation under this Act.

Persons entitled to compensation on death.

(2) For the purposes of determining who were the members of the family of a workman wholly or partly dependant upon the earnings of the workman a posthumous child of the workman referred to in subsection (1) of this section shall be deemed to have been born before the death of the workman.

### PART III

### PART III

#### CLAIMS FOR COMPENSATION

##### DIVISION I—THE INDUSTRIAL COURT

##### DIVISION I

21. The Industrial Court of South Australia shall have jurisdiction to hear and determine any question or dispute concerning any matter or thing arising out of or connected with the liability to pay, or the amount of compensation under this Act and all matters and things ancillary thereto.

Jurisdiction of the Industrial Court.

22. Notwithstanding anything in section 10 of the Industrial Code, 1967, as amended, for the purposes of proceedings under this Act, the Court shall not be constituted of an industrial magistrate unless it is expressly provided by this Act that the Court may be so constituted.

Court constituted of the industrial magistrate.

**PART III**  
**DIVISION I**

Effect of,  
and appeal  
from order or  
decision of  
industrial  
magistrate.

**23.** (1) Subject to subsection (2) of this section every order or decision of an industrial magistrate constituting the Court shall be as valid and binding on, and be enforced in the same manner against, all parties concerned as an order or decision of a Judge.

(2) Any person affected by an order or decision of an industrial magistrate may forthwith, or within such time as is prescribed by Rules of Court, and subject to any conditions prescribed by those rules, appeal from that order or decision to the Court constituted of a Judge.

Appointment  
of certain  
Local Court  
Judges.

**24.** (1) The Governor may appoint a Judge as defined in the Local and District Criminal Courts Act, 1926-1969, as amended, to have and exercise all of the powers and functions of a Judge of the Court and the Governor may revoke any such appointment.

(2) A Judge appointed pursuant to subsection (1) of this section shall for the purposes of proceedings under this Act be deemed to be a Judge of the Court and for the purpose of those proceedings shall have and may exercise all the powers and functions of a Deputy President of the Industrial Court of South Australia.

Representation.

**25.** Notwithstanding anything in section 21 of the Industrial Code, 1967, as amended, in proceedings under this Act before the Court a party may only be represented by a legal practitioner as defined in the Legal Practitioners Act, 1936, as amended.

**DIVISION II**

**DIVISION II—PROCEDURE GENERALLY**

Notice of  
injury.

**26.** (1) A workman who suffers an injury to which this Act applies, shall give notice of that injury to his employer.

(2) It shall be sufficient for the purposes of this section if the notice referred to in subsection (1) of this section discloses in ordinary language—

- (a) the nature of the injury;
- (b) the cause of the injury;
- (c) the day on which the injury occurred;
- and
- (d) the place at which the injury occurred,

in so far as those matters lie within the knowledge of the workman.

(3) For the purposes of this section and without prejudice to any other method of giving the notice, notice of injury shall be deemed to have been given to the employer—

- (a) if it is served by post on the employer at any place of business of the employer;

or

- (b) if it is given orally to the employer or to any person having authority or apparently having authority to receive such a notice on behalf of the employer.

27. (1) Except as provided in this section, proceedings for the recovery of compensation under this Act for an injury shall not be maintained unless—

Effect of failure to give notice.

- (a) notice of the injury was given as soon as practicable after the occurrence of the injury;  
and  
(b) the claim for compensation with respect to the injury has been made within six months of the day of occurrence of the injury or where the injury results in the death of the workman within six months of the day of the death,
- (2) The—

(a) want of or any defect or inaccuracy in a notice shall not be a bar to the maintenance of proceedings referred to in subsection (1) of this section—

(i) if in such proceedings it is proved that the employer had knowledge of the injury from some other source;

(ii) if in such proceedings or in any such proceedings after an adjournment it is made to appear to the Court that the employer is not prejudiced in his defence by the want, defect or inaccuracy;

or

(iii) if in such proceedings it is made to appear to the court that the want, defect or inaccuracy was occasioned by ignorance of the workman of the provisions of this Act, mistake or absence from the State of the workman or other reasonable cause;

and

(b) failure to make a claim within the period referred to in paragraph (b) of subsection (1) of this section shall not be a bar to the maintenance of proceedings referred to in that subsection if in any such proceedings it is made to appear to the Court that—

(i) the employer was not prejudiced in his defence by the failure;

or

(ii) the failure was occasioned by ignorance of the workman of the provisions of this Act, mistake or absence from the State of the workman or other reasonable cause.

(3) Without limiting the generality of the expression "reasonable cause" in paragraphs (a) or (b) of subsection (2) of this section, the expression shall include—

(a) the making of a payment to a workman that he believes to be a payment of compensation under this Act;

or

(b) any representation that is made to the workman that he believes is made by or on behalf of the employer to the effect that compensation under this Act will or will not be payable.

Periodical  
medical  
examination  
during period  
of compensa-  
tion.

28. (1) Where a workman—

(a) has suffered an injury that may give rise to a claim for compensation under this Act;

(b) has given notice of an injury under this Act;

or

(c) is receiving weekly payments under this Act,

that workman shall, if so required by the employer, from time to time submit himself for examination by a legally qualified medical practitioner provided and paid for by the employer, and if the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to weekly payments or other compensation under this Act shall be suspended until that examination has taken place.

(2) The employer shall reimburse the workman the amount of any costs or out of pocket expenses reasonably incurred by the workman for the purpose of submitting himself to any medical examination referred to in subsection (1) of this section.

Regulations  
as to such  
examinations.

29. A workman shall not be required to submit himself for examination by a medical practitioner under section 28 of this Act otherwise than in accordance with regulations, nor at more frequent intervals than are prescribed.

Cost of  
medical and  
surgical  
treatment.

30. If, during the period of his incapacity, a workman at the request of the employer, receives medical or surgical treatment, the cost of and incidental to such treatment shall not be a payment, allowance, or benefit within the meaning of subsection (1) of section 68 of this Act.

PART III  
DIVISION II

Reference to  
medical  
referee.

31. (1) Where a workman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after he or his representative has received the report of such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the Court, which may be constituted by an industrial magistrate, on application being made by both parties may, on payment by the applicants of such fee, as is prescribed by any Rule of Court, refer the matter to a medical referee.

(2) The medical referee to whom the matter is so referred, shall, in accordance with regulations, give a certificate as to the condition of the workman and his fitness for employment specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(3) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the injury, the provisions of this section shall, subject to any regulations made for that purpose, apply as if the question were a question as to the condition of the workman.

(4) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

(5) Rules of Court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this section and for the forms to be used for those purposes, and as to the fee to be paid under this section.

32. Where a workman is required to submit himself to an examination under this Act, the employer shall at the request of the workman or at the request of any representative of the workman, forthwith supply or cause to be supplied to the workman or the representative—

Reports of any  
medical  
examination.

- (a) a copy of every report furnished to the employer or his representative by the medical practitioner who conducted the examination;



PART III  
DIVISION II

and

- (b) a statement in writing of all the facts, conclusions and opinions of the medical practitioner relating to the condition of the workman which have been communicated by the medical practitioner to the employer or to his representative.

Penalty: One hundred dollars.

Copies of statements given by the workman.

33. An employer shall upon a request being made by or on behalf of the workman forthwith supply or cause to be supplied to a workman a copy of any statement, that has been reduced to writing, made by the workman to the employer, or any representative of the employer, in connection with any injury suffered by the workman whilst in the employ of the employer.

Penalty: One hundred dollars.

Inspection of premises, etc.

34. A person who is in charge of any—

- (a) premises or place;  
or  
(b) plant or machinery,

at or in relation to which an injury to a workman has occurred, shall not unreasonably refuse to allow the workman, or a person nominated by the workman, to make a reasonable inspection or examination of those premises, that place or that plant or machinery.

Penalty: One hundred dollars.

DIVISION III

## DIVISION III—AGREEMENTS

Registration of agreements.

35. (1) If the parties agree as to the payment of a lump sum by way of compensation under this Act that agreement shall be registered as provided for in this section and until it is so registered no agreement shall have any force or effect.

(2) Registration of an agreement shall be effected when the Registrar registers the agreement.

(3) If the Registrar is of the opinion that on the face of it the agreement appears to work injustice to the workman or the employer the Registrar may—

- (a) refuse to register the agreement;  
or

(b) refuse to register the agreement until the agreement has been amended in accordance with his directions.

(4) An appeal shall lie to a Judge from a refusal of or a direction from the Registrar.

36. (1) A registered agreement may be amended—

(a) by an order of the Court;

or

(b) by registration of an agreement amending that registered agreement.

Amendment of  
a registered  
agreement.

(2) Section 35 of this Act shall apply to and in relation to the registration of an agreement amending a registered agreement as if the amending agreement were an agreement referred to in that section.

37. Subject to this Division, a registered agreement shall have effect for all purposes as if it were an order of the Court.

Registered  
agreement to  
have effect as  
if it were an  
order of the  
Court.

38. (1) Where—

(a) a dispute arises between the workman and his employer in relation to the liability to pay compensation or as to the continuation of a weekly payment, or any amount thereof;

(b) the workman reasonably incurs legal or other out-of-pocket expenses, in relation to that dispute;

and

(c) the employer subsequently makes the weekly payment or pays the compensation claimed by the workman without the matter being submitted to the Court,

Expenses  
where dispute  
does not come  
to Court.

the employer shall be liable to pay to the workman the amount of the costs or expenses paid or payable by the workman as the Court which may be constituted by an industrial magistrate shall, on taxation, allow as being fair and reasonable.

(2) The sum so allowed on taxation shall be recoverable by the workman from the employer as a debt and the certificate of the Court shall be conclusive evidence that the amount mentioned therein is due to the person named therein.

## PART III

## DIVISION IV

## DIVISION IV—DISPUTES

## Summary list.

39. (1) If the parties cannot agree as to the liability to pay, or the amount of, compensation under this Act, the matter may, on the application of either of the parties, be brought before the Court for hearing and determination.

(2) Any matter referred to in subsection (1) of this section shall be in the first place put in a list, in this Act referred to as the "summary list" for hearing and determination.

(3) Matters in the summary list shall, subject to section 40 of this Act, be heard and determined expeditiously and informally and upon the hearing the Court may—

- (a) determine the matter at issue upon such information and in such manner as it thinks fit;
- (b) with the consent of the parties admit evidence not on oath; and
- (c) admit evidence that under the rules relating to evidence would not be admissible.

(4) For the purposes of hearing and determining any application in the summary list made pursuant to section 52 or section 53 of this Act the Court may be constituted by an industrial magistrate.

## Removal from summary list.

40. On the application of a party to proceedings that have been put in the summary list the Court, which may be constituted by an industrial magistrate, shall, by order, cause the proceedings to be removed from the summary list for hearing and determination by the court in the manner provided for by the Rules of Court.

## Costs.

41. (1) In any proceedings under this Act the Court may award costs against any party thereto or order that such costs be taxed by the Court which may be constituted by an industrial magistrate upon the scale fixed by the Rules of Court.

(2) No solicitor for the person claiming compensation under this Act shall be entitled to recover from that person any costs in respect of any proceedings under this Act or to claim a lien in respect of such costs on or to deduct such costs from any sum awarded as compensation unless those costs have been awarded by the Court.

(3) No agreement by a person claiming compensation to pay any amount by way of costs greater than the amount awarded by the Court shall be binding on that person and any amount paid by that person by way of costs in excess of the amount so awarded shall be recoverable by that person as a debt due to him.

42. Unless so directed by the Court, it shall not be necessary upon any proceedings, or any application connected therewith, for dependants who are married women, infants, or persons of unsound mind or under any legal disability, to be represented.

**PART III**  
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Persons under disability need not be represented.

43. The Court shall, in all cases where it thinks it necessary, direct the manner in which dependants who are married women, infants, or persons of unsound mind or under any legal disability, shall be represented, and may make any direction which it deems proper for the representation of any class of dependants by a member of such class or otherwise.

Directions for representation.

#### DIVISION V—APPEALS

#### DIVISION V

44. The Full Industrial Court shall be the Court comprised of not less than three Judges.

Full Industrial Court.

45. An appeal shall lie from any order or decision of the Court to the Full Industrial Court.

Appeals from Industrial Court.

46. In any proceedings under this Act before the Court constituted by a single Judge, that Judge may state a case for the consideration of the Full Court as defined by section 5 of the Supreme Court Act, 1935, as amended.

Case stated for Full Court.

47. An appeal shall lie from any order or decision of the Full Industrial Court on a matter of law to the Full Court as defined by section 5 of the Supreme Court Act, 1935, as amended.

Appeal on matter of law to Supreme Court.

48. In any proceedings under this Act before the Full Industrial Court, that court may state a case for the consideration of the Full Court as defined by section 5 of the Supreme Court Act, 1935, as amended.

Case stated.

PART IV

## PART IV

## AMOUNT OF COMPENSATION

Amount of  
compensation  
when workman  
dies leaving  
dependants.

49. (1) Where a workman dies as the result of his injury and leaves any dependants wholly dependent upon his earnings the amount of compensation shall, subject to the limits prescribed in this section, be a sum equal to his earnings in the employment of the same employer during the six years next preceding the injury, plus three hundred dollars for each dependant child: Provided that the amount of compensation payable under this subsection shall be—

(a) not less than five thousand dollars, plus three hundred dollars for each dependent child;

and

(b) not more than fifteen thousand dollars plus three hundred dollars for each dependent child.

(2) Where a workman dies as the result of his injury and leaves no dependants wholly dependent on his earnings but leaves dependants in part dependent upon his earnings, the amount of compensation shall be such sum not exceeding the amount payable under subsection (1) of this section as is agreed upon, or in default of agreement as is determined by the Court under this Act to be reasonable and proportionate to the degree of dependency of the dependants.

(3) Amounts paid or payable before the death of the workman as weekly payments of compensation for total or partial incapacity for work resulting from the injury shall not be deducted from, but shall be payable in addition to, the compensation payable under subsection (1) or (2) of this section.

(4) If the workman has not been in employment with the employer mentioned in subsection (1) of this section throughout the period of six years mentioned in that subsection his earnings during the period of six years mentioned in that subsection shall be deemed to be three hundred and twelve times his average weekly earnings during the period of his continuous employment with that employer.

(5) In addition to the compensation provided for by the other provisions of this section the dependants of the workman who have paid or are liable to pay the funeral expenses of the workman shall be entitled to the amount so paid or payable, not exceeding three hundred dollars.

(6) In this section "dependent child" means a child who was under the age of eighteen years at the time of the workman's death and who was at that time totally or mainly dependent on the earnings of the workman.

(7) In determining for purposes of this section, whether or to what extent a child is dependent on the earnings of a workman, no regard shall be paid to any payments which have been or may be paid in respect of the child under the laws of the Commonwealth relating to child endowment.

50. Where a workman dies as the result of his injury and leaves no dependants the compensation shall be—

Amount of compensation where workman leaves no dependants.

(a) the expenses specified in section 59 of this Act;

and

(b) the reasonable expenses of his funeral not exceeding three hundred dollars.

51. (1) Where total or partial incapacity for work results from the injury, the amount of compensation shall be a weekly payment during the incapacity not exceeding a sum equal to eighty-five per centum of the average weekly earnings of the workman during the previous twelve months if the workman 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, plus five dollars per week for each child totally or mainly dependent upon the earnings of the workman and, if the workman at the time of the injury had or during the incapacity has a wife or any member of his family of or over the age of eighteen years, not being a child of the workman, totally or mainly dependent upon his earnings, an additional sum of thirteen dollars a week payable from the date of such dependency.

Compensation for incapacity.

(2) The weekly payment to a workman having a wife or any member of his family of or over the age of eighteen years or a child totally or mainly dependent on his earnings shall not exceed sixty-five dollars a week or his average weekly earnings during the period aforesaid, whichever is lower.

(3) The weekly payment to a workman not having a wife or any member of his family of or over the age of eighteen years or a child totally or mainly dependent on his earnings shall not exceed forty-three dollars a week.

(4) The total liability of the employer in respect of payments under this section shall not—

(a) exceed the sum of twelve thousand dollars unless the injury results in total permanent incapacity for work;

and

(b) in any case, exceed the sum of fifteen thousand dollars.

(5) No workman shall receive during total incapacity a less sum per week than the following amount—

(a) if the workman is under twenty-one years of age and has no wife or child totally or mainly dependent on his earnings, and his average weekly earnings during the period mentioned in subsection (1) of this section were less than nineteen dollars—the amount of those weekly earnings;

and

(b) in any other case—nineteen dollars.

The minimum amount of compensation prescribed by paragraph (b) of this subsection shall be payable notwithstanding that it exceeds the average weekly earnings of the workman during the period mentioned in subsection (1) of this section.

(6) Where a workman was at the time of the injury, working under an award or industrial agreement fixing his wages, his average weekly earnings during the period mentioned in subsection (1) of this section shall be deemed to be not less than the weekly wage to which the workman was at the time of the injury entitled under that award or agreement.

Unlawful  
discontinuance  
of weekly  
payments.

52. (1) Weekly payments provided for by this Part shall not be discontinued or diminished without the consent of the workman except where the workman has returned to work or a legally qualified medical practitioner has certified that the workman has wholly or partially recovered or that the incapacity is no longer a result of the injury and a copy of the certificate (which shall set out the grounds of the opinion of the legally qualified medical practitioner) together with at least twenty-one clear days prior notice of the intention of the employer to discontinue the weekly payment or to diminish it by such amount as is stated in the notice has been served by the employer upon the workman and unless within that period of twenty-one days the workman has not made an application to the Court under subsection (2) of this section.

(2) A workman who disputes the right of his employer to discontinue or diminish the weekly payments referred to in subsection (1) of this section may within the period of twenty-one days referred to in that subsection take out an application to the Court for an order that the weekly payments shall not be discontinued or diminished and such application shall be heard and determined as a proceeding in the summary list.

(3) Upon the hearing of an application referred to in subsection (2) of this section the Court may—

- (a) adjourn the application on such terms as it thinks fit;
- (b) dismiss the application in which case the weekly payments may be discontinued or, as the case may be, diminished;
- or
- (c) make such order as to the continuance of the weekly payments as it thinks fit.

(4) Section 40 of this Act shall not apply to a proceeding referred to in subsection (2) of this section.

(5) If any weekly payments are discontinued or diminished otherwise than in accordance with this section the employer shall be guilty of an offence and liable upon conviction to a penalty not exceeding two hundred dollars.

(6) A conviction for an offence that is a contravention of subsection (5) of this section shall not affect any liability for the making of weekly payments pursuant to this Part.

53. (1) Except as provided in this section, the first of the weekly payments provided for by this Part shall be made as soon as possible and in any case not more than two weeks after the workman has provided evidence of his incapacity, which evidence shall be in the form of a certificate from a legally qualified medical practitioner, and shall be made on the day on which but for the incapacity the workman would have been paid his wages and thereafter such payments shall be made on the employer's usual pay days. Weekly payments.

(2) An employer who disputes his liability to pay compensation under this Act may within the period of two weeks referred to in subsection (1) of this section take out an application to the Court for an order that that subsection shall not apply and such application shall be heard and determined as a proceeding in the summary list and the application of that subsection shall be suspended, pending the results of that hearing and determination.

(3) Upon the hearing of the application referred to in subsection (2) of this section the Court may—

- (a) dismiss or adjourn the application upon such terms as it thinks fit and if it dismisses the application it shall make such order as to the modification of the application of subsection (1) of this section as it thinks fit and thereupon subsection (1) of this section shall apply and have effect accordingly;

or

20



## PART IV

(b) if it considers that a genuine dispute exists concerning the liability of the employer to pay compensation under this Act, order that subsection (1) of this section shall not apply and thereupon that subsection shall not apply.

(4) The fact that an application referred to in subsection (3) of this section has been dismissed shall not be taken into account by the Court in any other proceedings under this Act.

(5) Section 40 of this Act shall not apply to a proceeding referred to in subsection (2) of this section.

Payment for  
public holidays.

**54.** (1) Where during any period in respect of which weekly payments are payable to a workman pursuant to this Act a public holiday occurs the workman shall, notwithstanding anything in section 51 of this Act, be paid in respect of that holiday an amount not less than the amount of the wages he would have received in respect of that holiday in his employment if he had been in that employment and had not been required to work on that holiday and the amount of the relevant weekly payment shall be adjusted accordingly.

(2) Where during any period in respect of which weekly payments are payable to the workman pursuant to this Act, a workman receives or is entitled to receive pursuant to his contract of service with his employer or pursuant to any award a payment for a public holiday, the relevant weekly payment adjusted pursuant to subsection (1) of this section shall be reduced by the amount of that payment.

Making of  
weekly  
payment not  
admission of  
liability.

**55.** (1) For the purposes of this Act the making of a weekly payment referred to in this Part shall not of itself constitute an admission of liability to pay compensation under this Act.

(2) The fact that an employer is found by the Court not to be liable to pay compensation under this Act in respect of an injury shall not entitle any person who made any weekly payment under this Part to sue for and recover from the workman the amount of any such weekly payment unless in any proceedings for the recovery of the amount it appears to the court before which those proceedings are brought that payment of the weekly payments to the workman was obtained by fraud or misrepresentation on the part of the workman.

Workman  
ceasing to  
reside in the  
Common-  
wealth.

**56.** (1) If a workman receiving a weekly payment ceases to reside in the Commonwealth, he shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee, on a reference made in accordance with Rules of Court, or as may be determined by the Court in any particular case, certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

(2) If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by Rules of Court, or as may be determined by the Court in any particular case his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

57. A weekly payment, or a sum paid by way of redemption thereof, 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, nor shall any deduction be made from any such payment or sum for the purpose of paying hospital, medical, ambulance, or other expenses, pursuant to the Hospitals Act, 1934, as amended.

Payments not assignable.

58. Where under this Act a right to compensation is suspended, no weekly payments shall be payable in respect of the period of suspension.

Suspension of payment.

59. (1) Where a workman is entitled to compensation under the other provisions of this Act or by reason of subsection (6) of this section, the employer shall be liable to pay as compensation to the workman such reasonable expenses incurred as a result of his injury by the workman for medical services, hospital services, nursing services, constant attendance services, rehabilitation services and ambulance services and such reasonable expenses not exceeding sixty dollars for repairing or replacing damaged clothing, and such reasonable expenses not exceeding two hundred dollars for repairing or replacing damaged tools of trade where that damage was associated with his injury.

Additional compensation

(2) In this section—

“ambulance services” means transport by a vehicle to a hospital or other place for medical examination or medical treatment or rehabilitation and where necessary on the return journey:

“constant attendance services” means the service not being nursing services of a person in any case where the injury is of such a nature that the workman must have the regular or constant personal attendances of another person:

“hospital services” means—

(a) maintenance, attendance and treatment in a hospital;

(b) the provision by a hospital of medical and nursing services, medical, surgical and other curative materials, appliances and apparatus;

or

(c) other usual or necessary hospital services:

“medical services” means—

(a) attendance, examination or treatment of any kind administered by a legally qualified medical practitioner, by a registered dentist, by a registered optician or on the prescription of a legally qualified medical practitioner by a registered physiotherapist or by a registered chiropodist;

(b) the provision and the repair, adjustment or replacement of skiagrams, artificial limbs, eyes or teeth, crutches, splints, spectacles, and other medical and surgical aids and curative appliances or apparatus;

(c) the repair or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles or other medical or surgical aids or curative appliances destroyed or damaged at the time of the injury;

(d) the provision to or for the workman, otherwise than as a patient in a hospital, of medical or surgical aids to rehabilitation or treatment or assistance for or with regard to his industrial rehabilitation or of curative appliances;

(e) the provision by a registered pharmaceutical chemist of medicines or curative appliances or material on the prescription of a legally qualified medical practitioner;

or

(f) the provision by a legally qualified medical practitioner, registered dentist, registered physiotherapist, registered optician or registered chiropodist of any certificate required by the workman, his legal personal representatives or his dependants for the purposes of this Act:

“nursing services” means nursing services rendered by a registered nurse otherwise than as a member of the nursing staff of a hospital:

“rehabilitation services” means—

(a) the treatment and training at a rehabilitation centre;

- (b) the supply of artificial aids or appliances by a rehabilitation centre and the maintenance thereof;
- or
- (c) the supply of material in respect of any occupational therapy projects undertaken at a rehabilitation centre.

(3) Where a person or authority has rendered to or provided for a workman any medical services, hospital services, nursing services, constant attendance services, rehabilitation services or ambulance services for the cost of which the employer is required to compensate the workman pursuant to this section, and has not been paid the full amount to which he or it is entitled for those services, the employer may pay to the said person or authority the whole or any part of the amount owing to him or it and such a payment shall, to the extent of the amount paid, be a discharge of the liability of the employer to the workman under this section and of the liability of the workman to such person or authority for the services.

(4) The regulations may prescribe the maximum amounts which may be charged and recovered for any medical services, hospital services, nursing services, constant attendance services, rehabilitation services or ambulance services the cost of which is payable as compensation under this section.

(5) The compensation payable under this section shall be in addition to all other compensation payable to the workman, and the fact that a workman is entitled to compensation under this section shall not restrict the compensation payable to him under any other provision of this Act.

(6) Where in any employment personal injury arising out of or in the course of the employment is caused to a workman, and the workman is not disabled for at least one day from earning full wages at his work, this section shall apply to the same extent as if the workman were so disabled for at least one day and whether or not the workman is entitled to compensation other than compensation for the expenses mentioned in this section.

60. Average weekly earnings on which the amount of any compensation is fixed shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated; however, where, by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average

Computation of "earnings" and "average weekly earnings".

PART IV

weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

Meaning of employment by the same employer.

**61.** Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the injury uninterrupted by the absence from work due to illness or any other unavoidable cause.

Average weekly earnings where workmen employed by more than one employer.

**62.** Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the injury.

Special allowances.

**63.** Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

Computation of average weekly earnings when workman under twenty-one or improver is permanently incapacitated.

**64.** When a workman is at the time of the injury under the age of twenty-one years, or is an indentured apprentice, and his incapacity, whether total or partial, is permanent his average weekly earnings at the time of the injury shall be deemed to be the weekly sum which he would probably have been able to earn if he had then attained the age of twenty-one years, or had completed his apprenticeship, as the case may be, being in no case less than the amount of the minimum wage for the time being included in any award pursuant to section 37a of the Industrial Code, 1967, as amended and the difference between the amount of the average weekly earnings of the workman before the injury and average weekly amount which he is earning or able to earn in some suitable employment or business after the injury, shall be deemed to be the difference between the weekly sum aforesaid and the amount which the workman will probably be able to earn after attaining the age of twenty-one years, or after the expiration of the time when the apprenticeship would in the ordinary course of events have come to an end, as the case may be.

Absences from employment not to affect certain leave.

**65.** Where a workman is temporarily absent from his employment and that absence is due to an injury to the workman in respect of which compensation has been paid or is payable under this Act then for the purposes of—

(a) any law of this State;

or

(b) any award or agreement under any such law,

relating to sick leave or annual leave, that absence shall be regarded as service by the workman in the employment.

66. Where, by virtue of an industrial award under a law of the Commonwealth or of a State of the Commonwealth other than this State, for the purpose of calculating the entitlement of a workman to annual leave, any period that a workman is temporarily absent from his employment due to an injury to the workman in respect of which compensation has been paid or is payable under this Act, is not regarded as service in that employment, upon—

Additional compensation payable to certain workmen.

(a) the return by that workman to his employment;

and

(b) at the time that the workman would have been granted that annual leave but for that period of temporary absence,

the workman shall be entitled to be paid by way of compensation under this Act, in addition to any such compensation payable otherwise than under this section, the monetary value of the annual leave that he would have been granted but for that period of temporary absence.

67. (1) If—

(a) a workman has so far recovered from an injury as to be fit for some employment;

and

(b) employment for which the workman is fitted is not reasonably available to the workman,

the Court for the purposes of ascertaining the amount of weekly payments pursuant to section 51 of this Act shall order that the workman's incapacity shall be treated as total incapacity resulting from the injury for such period and subject to such conditions as are provided by the order, but without prejudice to the right of review conferred by this Act.

Partial incapacity to be treated as total.

(2) In any proceedings under subsection (1) of this section it shall lie upon the employer to prove that employment for which the workman is fitted is reasonably available to the workman.

68. (1) Subject to section 30 of this Act in fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity.

Regard to be had to payments, allowances, etc., to workman.

(2) In the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the injury and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the injury, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(3) For the purposes of subsection (2) of this section in computing the amount of the average weekly earnings of the workman before the injury regard shall be had to variations in the average weekly earnings which would have applied to the workman if he had continued in the same employment.

(4) A pension received by a workman on retirement from his employment shall not be regarded as a payment, allowance or benefit within the meaning of subsection (1) of this section.

Fixed rates of compensation for certain injuries.

69. (1) The compensation payable for the injuries mentioned in the first column of the table hereinafter set forth shall be assessed in the manner indicated in the second column of that table unless the workman by notice in writing given to the employer or his insurer before the amount of the compensation is settled states that he does not desire to have the compensation assessed under this section, and if the workman duly gives such notice, the compensation shall be assessed as if this section had not been enacted.

(2) Nothing in this section or section 70 of this Act shall limit the amount of compensation payable for any injury referred to in either of those sections during any period of incapacity resulting from that injury occurring before an assessment of compensation is made in accordance with either of those sections.

(3) Section 72 of this Act shall not apply to any payment made under this section; but any such payment may by agreement or by order of the Court be invested or otherwise applied for the benefit of the person entitled thereto.

(4) For the purposes of this section an eye or foot or other member shall be deemed to be lost if it is rendered permanently and wholly useless, and a finger shall be deemed to be lost if two joints thereof are severed from the hand or rendered permanently and wholly useless.

(5) Where a workman suffers injury to any limb, member, faculty, organ, power or sense mentioned in the said table so that the workman

permanently has less than the full efficient use thereof, the workman shall be entitled to a percentage of the compensation payable under this section for the total loss of that limb, member, faculty, organ, power or sense, equal to the percentage of the full efficient use thereof lost by the workman.

(6) For the purpose of determining the percentage of the full and efficient use lost by the workman of any limb, member, faculty, organ, power or sense mentioned in the said table, no regard shall be had to the extent to which that loss may be reduced or limited by the use by the workman of any external and removeable artificial aid or appliance but where a workman has suffered an injury to his eye the percentage of the full and efficient use of that eye lost by the workman shall be determined by reference to the vision of that eye as corrected except where a refractive error of the eye has been produced or changed by the injury when the percentage of the full and efficient use of that eye lost by the workman shall be determined by reference to the corrected vision or uncorrected vision whichever reference discloses the greater loss.

(7) Where a workman suffers by the same occurrence from more than one of the injuries mentioned in the said table, he shall not be entitled in any case to receive in respect of fixed sums mentioned in the said table more than twelve thousand dollars.

(8) Notwithstanding anything in subsection (1) of this section, where a workman suffers a subsequent injury in respect of which he is entitled to have compensation assessed under this section the amount of compensation payable under this section shall be the difference between the amount otherwise payable under this section and the amount of compensation that has been paid under this section or under section 26 of the repealed Act in respect of the prior injury.

(9) In subsection (8) of this section—

“prior injury” means any injury or disease in respect of which compensation has been paid under this section or section 26 of the repealed Act:

“subsequent injury in relation to a prior injury” means an injury or disease that is an aggravation, acceleration, exacerbation, deterioration or recurrence of the prior injury.

(10) The Governor may by proclamation add to the said table by assigning specified amounts of compensation as payable for additional specified injuries; and the table in force for the time being as so added to shall be deemed to be the table referred to in this section.



TABLE

Nature of Injury	Ratio which the fixed sum payable as compensation under this section bears to \$12,000 per centum
Permanent and incurable loss of mental capacity resulting in total inability to work .....	100
Total and incurable paralysis of the limbs .....	100
Eye Injuries—	
Total loss of sight of both eyes .....	100
Total loss of sight of one eye .....	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellens type with correction or absent .....	100
Hearing Injuries—	
Total loss of hearing .....	75
Speech Loss—	
Total loss of the power of speech .....	75
Sensory Loss—	
Total loss of senses of taste and smell .....	50
Total loss of sense of taste .....	25
Total loss of sense of smell .....	25
Arm Injuries—	
Loss of arm at or above elbow .....	90
Loss of arm below elbow .....	80
Hand Injuries—	
Loss of both hands .....	100
Loss of hand or loss of thumb and four fingers ..	80
Loss of thumb .....	35
Loss of forefinger .....	25
Loss of middle finger .....	20
Loss of ring finger .....	20
Loss of little finger .....	14
Total loss of movement of joint of thumb .....	15
Loss of distal phalanx of thumb .....	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx .....	15
Loss of distal phalanx of forefinger .....	11
Loss of distal phalanx of other fingers .....	9

TABLE—*continued*

Nature of Injury	Ratio which the fixed sum Payable as compensation under this section bears to \$12,000 per centum
<b>Leg Injuries—</b>	
Loss of leg at or above knee .....	90
Loss of leg below knee .....	80
<b>Foot Injuries—</b>	
Loss of both feet .....	100
Loss of foot and hand .....	100
Loss of foot .....	75
Loss of great toe .....	25
Loss of any other toe .....	10
Loss of two phalanges of any other toe .....	8
Loss of phalanx of great toe .....	11
Loss of phalanx of any other toe .....	7

70. (1) If the workman suffers a permanent injury not mentioned in the table set forth in section 69 of this Act and that injury results in either total or partial incapacity for work whether such incapacity is actual or potential or that injury is an injury referred to in subsection (3) of this section, compensation for that injury shall subject to subsection (2) of this section be assessed by the court as if—

**Injuries not mentioned in the table.**

(a) the injury were set out in that table;

and

(b) a percentage fixed by the court having regard to—

(i) the nature of the injury;

and

(ii) the employment or occupation for which the workman was suited before the occurrence of the injury and the employment or occupation for which the workman is suited after the occurrence of the injury,

was set out in that table opposite the description of the injury, and section 69 of this Act shall apply and have effect in all respects as if the injury were set out in the table and the percentage fixed by the Court were set out in the table opposite the description of the injury.

(2) Where the workman by notice in writing given to the employer or his insurer before the amount of compensation is settled states

that he does not desire to have the compensation assessed in the manner provided for by this section, compensation shall be assessed as if this section had not been enacted.

(3) Notwithstanding anything in this section or in section 69 of this Act, where compensation is to be assessed in the manner provided for by this section in respect of an injury being—

(a) loss of genital organs;

(b) permanent loss of the capacity to engage in sexual intercourse;

or

(c) severe bodily or facial scarring or disfigurement,

the amount of that compensation shall not exceed the sum of nine thousand dollars.

Review of  
weekly  
Payment.

71. Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review, which in default of agreement shall be by way of proceedings under this Act, may be ended, diminished, or increased subject to the maximum above provided, as from such date as the Court, having regard to the past or present condition of the workman, may see fit. On any such review regard shall also be had to variations in the average weekly earnings which would have applied to the workman if he had continued in the same employment as that in which he was engaged before the injury.

Lump sum in  
redemption of  
weekly  
payments.

72. (1) The liability for weekly payments or other compensation under this Act may, on application by or on behalf of either the workman or the employer, be redeemed by the payment of a lump sum to be settled, in default of agreement, by proceedings under this Act, and such lump sum may be ordered by the Court to be invested or otherwise applied as abovementioned, and where permanent total or partial incapacity for work results from the injury, any weekly payments made prior to an application under this section shall, notwithstanding anything in this Act, be in addition to any such lump sum but nothing in this section shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(2) In settling a lump sum pursuant to subsection (1) of this section in respect of a workman to whom an order under section 67 of this Act was in force immediately before that lump sum was so settled the Court may if it thinks fit treat the total liability under subsection (4) of section 51 of this Act as being a sum not exceeding fifteen thousand dollars.

(3) In settling a lump sum pursuant to subsection (1) of this section the Court shall treat a workman as totally incapacitated for work as a result of the injury if he is fitted only for employment of a kind that is not reasonably available to him.

73. (1) Subject to this section, in ascertaining, for the purposes of section 69 of this Act, the percentage of the diminution of hearing in respect of noise induced hearing loss of a workman who is over the prescribed age, it shall be conclusively presumed that his loss of hearing is, to the extent of the prescribed number of decibels for each complete year of his age in excess of the prescribed age, to be attributed to presbycusis.

Noise induced hearing loss.

(2) For the purposes of this section—

(a) the prescribed age is fifty years;

and

(b) the prescribed number of decibels is one-half or, where some other number is prescribed, the number so prescribed.

(3) Regulations made for the purposes of paragraph (b) of subsection (2) of this section may prescribe different numbers of decibels in respect of different methods of ascertaining the extent of diminution of hearing, and any number thereby prescribed may be or include a fraction.

(4) Nothing in this section applies in a case of total loss of hearing of either ear.

74. If compensation under this Act is claimed in respect of the injury known as noise induced hearing loss and that injury was not a prior injury as defined in subsection (9) of section 69 of this Act that compensation shall be assessed as if the whole of the loss of function arising from that injury occurred immediately before the notice of that injury was given.

Compensation for noise induced hearing loss.

PART V

## PART V

## PAYMENT AND INVESTMENT OF COMPENSATION

Investment of  
payment in  
case of  
death.

75. (1) The payment in case of death shall, unless otherwise ordered as hereinafter provided, be paid into the Court and the receipt of the Registrar shall be a sufficient discharge in respect of the amount paid into the Court.

(2) The Court, which may be constituted by an industrial magistrate, may invest, apply, or otherwise deal with any sum so paid into the Court in such manner as it, in its discretion, thinks fit for the benefit of the persons entitled thereto under this Act or may pay the sum or direct it to be paid to the Public Trustee whose receipt shall be a sufficient discharge in respect of the amount paid to him and the Public Trustee may invest the sum as he thinks proper.

(3) If so agreed the payment in case of death shall if the workman leaves no dependants be made to his legal personal representative or if he has no such representative to the person to whom the expenses of medical attendance and burial are due.

Payment of  
weekly sum  
due to person  
under disability.

76. Where a weekly payment is payable under this Act to a person under any legal disability, the Court, which may be constituted by an industrial magistrate, may, on application being made in accordance with Rules of Court, order that the weekly payment be paid during the disability into the Court, and the provisions of this Act with respect to sums required by this Act to be paid into court shall apply to sums paid into court in pursuance of any such order.

Power to vary  
order or  
award.

77. Where, on application being made in accordance with Rules of Court, it appears to the Court which may be constituted by an industrial magistrate that, on account of neglect of children on the part of a widow, or on account of variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the Court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the Court hearing the application may make such order for the variation of the former order or the award as in the circumstances of the case it may think just.

Investment  
insurance  
society.

78. Any sum which under this Act is ordered to be invested may be invested in the purchase of an annuity from any life insurance society approved by the Court, which may be constituted by an industrial magistrate, or the Public Trustee investing such sum.

PART V

79. Any sum to be invested in an annuity pursuant to section 78 of this Act may be accepted by the Savings Bank of South Australia as a deposit in the name of the Registrar.

Deposit in Savings Bank.

80. The provisions of any Act or regulations as to the limits of deposits in the Savings Bank shall not apply in respect of sums which under this Act are ordered to be invested and the whole amount of any sum deposited in the said bank under this Act shall, notwithstanding the provision of any Act or regulations limiting the interest bearing amount of deposits or otherwise, bear interest at the rate allowed to ordinary depositors in the said bank.

Limits as to deposits and interest not to apply.

81. No part of any money deposited in the name of the Registrar in the Savings Bank under this Act shall be paid out except upon an order drawn on the Savings Bank and signed by the Registrar and such order shall be a sufficient discharge to the bank in respect of the money paid out pursuant thereto.

Payment out of bank.

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PART VI

PART VI

## ALTERNATIVE REMEDIES

82. (1) Except as expressly provided in this Act, nothing in this Act shall affect any liability which exists independently of this Act.

Liability independently of this Act.

(2) Where a workman has received or is entitled to receive compensation under this Act or under the repealed Act, in respect of an injury, he shall not bring an action against the employer for damages in respect of the same injury unless he commences that action within three years from the day on which that injury occurred.

(3) When a workman has recovered judgment against an employer independently of this Act for damages in respect of an injury, he shall not commence or continue any proceedings for or in relation to compensation under this Act in respect of the same injury.

(4) A workman shall not commence or continue any proceedings against his employer for damages independently of this Act in respect of any injury—

(a) after he has obtained a final award against his employer under which his employer is liable to pay compensation under this Act in respect of the same injury;

or

(b) after a memorandum of an agreement has been registered under section 35 of this Act, by which the amount of compensation payable to the workman in respect of the same injury has been agreed upon and the workman has expressly agreed not to bring any proceedings against the employer in respect of such injury independently of this Act.

(5) Any sum received by a workman from an employer by way of damages in respect of an injury shall be deducted from the sum recoverable by the workman from the employer by way of compensation under this Act in respect of the same injury.

(6) Any sum received by a workman from an employer by way of compensation under this Act or under a law of any other State or of the Commonwealth in respect of an injury shall be deducted from the sum recoverable by the workman from the employer by way of damages in respect of the same injury.

Where action  
brought for  
injury for  
which  
compensation  
is payable  
under this Act.

83. (1) If within the time in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for an injury, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if either party so chooses, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(2) If within the time in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for an injury and it is determined in such action that—

(a) the person against whom the action was brought would have been liable to pay compensation under this Act in respect of that injury;

and

(b) the damages that would have been recovered in that action would have been less than the amount of compensation that the person would have been liable to pay under this Act,

proceedings in the action may be stayed and the court in which the action is tried shall, if either party so chooses, proceed to assess such compensation but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(3) In any proceedings under this section, when the court in which the action is tried assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award of the Court under this Act.

(4) A copy of the certificate referred to in subsection (3) of this section shall be transmitted to the Registrar by the proper officer of the court referred to in that subsection.

**84.** Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer (which other person is hereinafter called "the third party") to pay damages in respect thereof the following provisions shall apply—

Remedies  
against  
employer and  
stranger.

- (a) the workman may take proceedings both against the third party to recover damages and against the employer for compensation;
- (b) a workman who receives any money from a third party in respect of an injury and compensation under this Act shall repay to the employer such amount of that compensation as does not exceed the amount recovered from the third party;
- (c) upon notice to the third party, the employer shall have a first charge on moneys payable by the third party to the workman, to the extent of any compensation which the employer has paid to the workman;
- (d) if the workman has received compensation under this Act, but no damages or less than the full amount of the damages to which he is entitled, the third party shall be liable to indemnify the employer against so much of the compensation paid to the workman as does not exceed the damages for which the third party is still liable and the employer may enforce the indemnity against the third party by action;

and

- (e) payment of money by a third party to the employer pursuant to paragraph (d) of this section shall, to the extent of the amount paid, be a satisfaction of the liability of the third party to the workman.



PART VI

Where claim exists elsewhere as well as in this State.

85. If a claim for compensation has already been made by the claimant in respect of the injury under any law not being a law of this State, and compensation has been recovered under that claim compensation under this Act shall not be allowed to the claimant, nor shall any person having such a claim under any such law claim under this Act unless he declares in writing that he has not claimed, and will not claim, compensation or damages for the injury under any such law.

Contracting out.

86. This Act shall apply notwithstanding any contract to the contrary.

PART VII

## PART VII

## APPLICATION TO SPECIAL CLASSES OF PERSONS

Application to workmen in employment of Crown.

87. (1) This Act applies to workmen employed by or under the Crown.

(2) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

(3) In all claims against the Crown, whether arising out of injuries to workmen employed by or under the Crown, or in respect of any other claim under this Act, by any other person, proceedings may be taken and prosecuted under this Act by suit against the Attorney-General as representing the Crown in his representative capacity and without imposing any personal liability upon the occupant of the office of Attorney-General.

Act to apply as to accidents to persons employed on "South Australian ships".

88. (1) This Act applies in respect of an injury happening to a workman employed on a South Australian ship, as defined in this section, if the accident happens in the course of his employment provided that it happens within the State or within the jurisdiction of this State.

(2) In this Act the term "South Australian ship" means any ship which—

(a) is registered in the State;

(b) is owned by a body corporate established under the laws of the State or having its principal office or place of business in the State or is in the possession of any such body corporate by virtue of a charter;

- (c) is owned by any person or body corporate whose chief office or place of business in respect of the management of such ship is in the State, or is in the possession of any such person or body corporate by virtue of a charter;
- or
- (d) is owned by the Crown in respect of the Government of the State, or is in the possession of the Crown in that respect by virtue of a charter.

89. The application of this Act in respect to an injury occurring to a workman employed on a South Australian ship, as defined in section 88 of this Act, shall be subject to the following modifications:—

Modifications  
of Act in case  
of accidents to  
seamen.

- (a) the notice of injury and the claim for compensation may, except where the person injured is the master, be served on the master of a ship as if he were the employer, but where the injury happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the injury;
- (b) in the case of the death of the workman, the claim for compensation shall be made within six months after news of the death has been received by the claimant;
- (c) in the case of the death of a workman leaving no dependants, no compensation shall be payable if the owner of the ship is under the Marine Act, 1936, as amended, or any Act amending or substituted for that Act, liable to pay the expense of a burial;
- (d) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Marine Act, 1936, as amended, or any Act amending or substituted for that Act, liable to defray the expenses of maintenance of the injured workman;
- (e) any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section 503 of the Merchant Shipping Act, 1894 of the United Kingdom (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury;

PART VII

(f) section 154 of the Navigation Act 1912 of the Commonwealth, as amended, (which relates to the recovery of wages due to deceased seamen) as applied by section 127 of the Marine Act, 1936, as amended, shall apply with respect to proceedings for the recovery of compensation by the dependants of a workman lost with his ship as it applies with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

PART VIII

## PART VIII

## INDUSTRIAL DISEASES

Diseases  
contracted by  
gradual  
process.

90. (1) Where an injury is a disease that is of such a nature as to be contracted by a gradual process, compensation shall be payable by the employer in whose employment, to the nature of which the injury was due, the workman was when the injury occurred or if at that time the workman was not so employed by the employer who last employed the workman in employment to the nature of which the injury was due but if it is proved that the workman, having been informed of the consequences of his action, wilfully and falsely represented himself in writing as not having previously suffered from the particular injury, compensation in respect of that injury shall not be payable under this Act.

(2) An employer who at any time during the period of three years immediately preceding the day on which the injury referred to in subsection (1) of this section occurred, employed the workman in any employment to the nature of which the injury was due, shall be liable to make to an employer referred to in that subsection such contribution as, in default of agreement, may be determined by the Court.

Information to  
be supplied.

91. A workman referred to in subsection (1) of section 90 of this Act shall on demand by an employer referred to in that subsection furnish that employer with such information as to the name and address of any employer liable, pursuant to subsection (2) of that section, to make a contribution, as lies within his knowledge.

Penalty: One hundred dollars.

PART VIII

92. The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

How amount of compensation calculated.

93. The employer to whom notice of the death or injury is to be given shall be the employer who last employed the workman in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

Employer to whom notice to be given.

94. (1) If the workman at or immediately before the date of the injury was employed in any process mentioned in the second column of the second schedule to this Act and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

Certain diseases deemed to be due to nature of employment unless contrary certified.

(2) Where a workman contracts silicosis as defined in section 96 of this Act and that workman is not entitled to compensation under Part IX of this Act, subsection (1) of this section shall apply and have effect to and in relation to that workman as if silicosis as so defined appeared in the first column of the second schedule to this Act and the passage "any process involving exposure to silica dust" appeared in the second column of that schedule opposite that definition.

95. (1) The Governor may, by proclamation from time to time extend the provisions of this Part to diseases and processes other than those mentioned in the second schedule, and to injuries due to the nature of any employment specified in the proclamation not being injuries by accident, either without modification or subject to such modifications as may be contained in the proclamation.

Extension of Part to other diseases and processes.

(2) Every such proclamation shall, upon publication and while in force, have the same effect as if the diseases and processes mentioned therein were inserted in the second schedule.

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PART IX

## PART IX

## SILICOSIS

## Definition.

**96.** In this Part unless the contrary intention appears—

“scheme” means a scheme having effect under this Part and includes any scheme deemed to be such a scheme:

“silicosis” includes fibroid phthisis or silicosis of the lungs, or that disease accompanied by tuberculosis, or any other disease of the pulmonary or respiratory organs caused by the exposure to silica dust:

“the committee” means a committee provided for by paragraph (a) of subsection (1) of section 102 of this Act.

## Schemes for payment of compensation.

**97.** The Minister shall by scheme provide for the payment of compensation by the employers to workmen in any specified industry or process or group of industries or processes involving exposure to silica dust—

(a) who are certified in such manner as may be prescribed by the scheme to have suffered death or total disablement from silicosis;

or

(b) who, though not totally disabled, are certified in like manner to be suffering from silicosis and are thereby disabled to such a degree as to make it dangerous to continue work in any such industry or process and are for that reason suspended from employment.

## To whom compensation payable.

**98.** The compensation shall be payable to or for the benefit of the workman or, in the event of his death, to or for the benefit of his dependants.

## Conditions of compensation.

**99.** No compensation shall be payable under this Part on the disablement or death of a workman unless such death or disablement was caused by silicosis wholly or mainly attributable to his employment in South Australia in an industry or process specified in the scheme.

## Amount of compensation.

**100.** The amount of compensation payable upon the disablement or death of any workman to whom any scheme under this Part applies shall be the same as that which would be payable pursuant to the provisions of this Act if such disablement or death resulted from personal injury arising out of or in the course of the employment of such workman.

**101.** The dependants entitled to compensation upon the death of any workman to whom any scheme under this Part applies shall be those persons who would be entitled to compensation under this Act if such death resulted from personal injury arising out of or in the course of the employment of such workman.

**102. (1)** Any scheme under this Part may provide—

- (a) for the establishment of a general compensation fund to be administered by a committee in such manner as may be provided by the scheme;
- (b) for the payment of subscriptions by employers to such fund and for the recovery out of such fund of any compensation payable under the scheme and of any expenses of and incidental to the administration and management of the scheme;
- (c) for enabling the Minister to reduce, to such extent as he deems just in each case, the rate of subscription payable by an employer if—
  - (i) the works or premises of such employer are constructed, to the satisfaction of the Minister, so as to reduce the risk of his employees contracting silicosis;
  - or
  - (ii) if the silicosis content of the materials used or handled at the works of such employer is in the opinion of the Minister unusually low;
- (d) for empowering the committee to require any employer who fails to pay a subscription under the scheme within one month after the prescribed time for payment, to pay an additional amount not exceeding ten per cent of the subscription;
- (e) for the settlement of claims and other matters arising under the scheme by committees representative of both employers and workmen with independent chairmen and for the appointment of and the procedure to be adopted before such committees;
- (f) for the appointment and remuneration of medical officers, medical boards and advisory medical bodies and for their duties and powers in connection with the scheme;
- (g) for workmen to whom the scheme applies—
  - (i) to submit themselves to periodical medical examinations;

and

(ii) to furnish information with respect to their previous employment or medical history;

(h) for making the right to compensation of any workman to whom the scheme applies conditional upon compliance with any requirement on his part contained in the scheme;

(i) for the suspension from employment in any industry or process specified in the scheme of any workman who is found at any time to be suffering from silicosis or who, when first medically examined in pursuance of the scheme, fails to satisfy such requirements with respect to physique as may be prescribed by the scheme;

and

(j) for the application either with or without modification of any of the provisions of this Act and for defining the industries or processes to which the scheme applies and generally for such further or supplemental matters including provisions for the settlement of disputes arising between employers and the authority administering the fund as appear necessary or desirable for giving full effect to the scheme.

(2) A scheme may provide that a contravention of or failure to comply with a provision or requirement thereof shall be an offence.

(3) An offence against a provision of a scheme shall be punishable on summary conviction by a fine not exceeding two hundred dollars.

Variation and effect of schemes.

**103.** The provisions of any scheme under this Part may be extended or varied by any subsequent scheme made in like manner and shall be effectual for all purposes as if enacted in this Part and such subsequent scheme need only set out the extensions or variations of the scheme which it extends or varies.

Publication of schemes and disallowance by Parliament.

**104.** (1) Any scheme under this Part shall—

(a) be published in the *Gazette*;

(b) take effect from the date of publication or from a later date to be specified in such scheme;

and

(c) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is then in session, and if not, then within fourteen days of the commencement of the session next after such publication.

(2) If either House of Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after such scheme has been laid before such House, disallowing the scheme or any part thereof, such scheme or part shall thereupon cease to have effect.

**105.** A scheme that had effect under Part IXA of the repealed Act immediately before the commencement of this Act shall for the purpose of this Part be deemed to be a scheme under this Part.

Schemes under Part IXA of the repealed Act.

**106.** Notwithstanding any other provision of this Act no employer to whom any scheme under this Part applies shall be obliged to insure against liability for any compensation payable to a workman under any such scheme.

Exemption from duty to insure.

**107.** An appeal shall lie from a decision of a committee provided for by paragraph (e) of subsection (1) of section 102 of this Act, to the Court.

Appeal from decision of committee.

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PART X

PART X

INDUSTRIAL DISEASES CONTRACTED AT  
PORT PIRIE

**108.** In this Part, unless inconsistent with or repugnant to the context, or some other meaning is clearly intended—

Interpretation.

“board” means the Medical Board continued in operation under this Part:

“disease” means any disease mentioned in the second schedule, and any disease to which Part VIII of this Act is extended by proclamation:

“smelters” means the works at Port Pirie in the State known at the time of the passing of this Act as the Broken Hill Associated Smelters, and any addition thereto or extension thereof:

“Smelting Company” means The Broken Hill Associated Smelters Proprietary Limited:

“workman” means any workman as defined in this Act who is or was at the date of disablement employed in or upon the smelters by the Smelting Company.



**PART X**

Establishment  
of Medical  
Board.

**109.** (1) The Medical Board constituted under Part X of the repealed Act is hereby continued as consisting of three legally qualified medical practitioners residing and practising in the municipality of Port Pirie appointed and whose successors shall be appointed by the Governor.

(2) No medical practitioner who holds any appointment as medical officer for the Smelting Company or to any trade union consisting wholly or partially of workmen employed by the Smelting Company shall be appointed to or hold office on the board.

(3) Every member of the board shall hold office for a period of two years, and shall, upon the expiration of his term of office, be eligible for re-appointment.

(4) The decision of any two members of the board on any matter shall be deemed to be the decision of the whole board.

(5) There shall be a secretary to the board who shall be the person for the time being holding the office of secretary of the Public Hospital at Port Pirie aforesaid, and the secretary shall, when so instructed by any member of the board, convene meetings of the board, and when so authorized by the board shall issue certificates as prescribed by the regulations for and on behalf of the board.

(6) The members of the board and the secretary thereof shall be paid such fees and allowances as are prescribed.

(7) Any fees and allowances payable to members of the board and to the secretary, and any expenses incurred by the board shall, subject to any regulations made by the Governor, be paid out of the general revenue of the State which to the necessary extent is hereby appropriated.

(8) One-half of the said fees, allowances, and expenses paid out of the said general revenue in each year shall be a debt due by the Smelting Company to the Treasurer, and shall be payable by the company within one month after the Treasurer notifies the Smelting Company in writing of the amount due, and may be recovered by the Treasurer by action in the name of the Treasurer in any court of competent jurisdiction in like manner as if the Treasurer were a private individual.

Powers of  
the board.

**110.** (1) Subject to section 111 of this Act, the board shall exclusively exercise the powers and perform the functions of a medical referee under this Act, in respect of workmen disabled or alleged to be disabled by a disease, and who were at the time of contracting such disease employed by the Smelting Company in or upon the smelters.

(2) Subject to the provisions of subsection (1) of this section, and notwithstanding section 120 of this Act, it shall be lawful for any member of the board to do or join with the other members of the board in doing any act or thing which he or the board is authorized, required, or permitted by this Part to do in respect of any workman although such member has been employed as a medical practitioner in connection with such workman's case by or on behalf of the Smelting Company, the workman, or any insurers interested.

111. (1) If a workman or the Smelting Company is aggrieved by a decision of the board to give or refuse to give a certificate, or by any other decision of the board, the workman or company may request the Minister to refer the matter to a board of review under this section.

Reference of  
decision of  
board to  
referees.

(2) Every such request shall be made within fourteen days after the giving of the decision by the board.

(3) The Minister shall upon receipt of such a request forthwith constitute a board of review consisting of three medical practitioners selected from the panel provided for in this section and shall refer the case to that board.

(4) The board of review shall inquire into the case and may either affirm, vary, or reverse the decision of the board. The inquiry shall be commenced not later than fourteen days after the case is referred to the board of review.

(5) The decision of the board of review on any such reference shall be final.

(6) The decision of any two members of a board of review shall be deemed to be the decision of the whole board.

(7) For the purposes of this section the Governor, on the nomination of the Council of the South Australian Branch of the Australian Medical Association, shall appoint not less than six legally qualified medical practitioners to be a panel of medical referees from whom boards of review under this section shall be constituted as required from time to time.

(8) The persons so nominated shall be persons who, in the opinion of the said Council, are qualified to diagnose industrial diseases.

(9) Every person so appointed shall hold office as a medical referee for three years, unless during that period the Governor decides that just cause exists for removing that person's name from the panel, and directs accordingly.

PART X

(10) The Governor shall from time to time make appointments to fill casual vacancies on the panel. A person appointed to a casual vacancy on the panel shall hold office for the balance only of the term of the person in whose place he was appointed.

(11) If on a reference to a board of review under this section the decision is in favour of the workman, the workman shall be entitled to be paid by the Smelting Company the amount of any fares and travelling expenses reasonably incurred by the workman for the purpose of appearing before the board of review.

Periodical  
medical  
examination of  
workmen by  
the board.

112. (1) Any workman who has been certified by the board as suffering from a disease may, if he so desires, and shall, if the Smelting Company so requires, submit himself for examination by the board, and if he refuses to submit himself for such examination when required to do so by the Smelting Company, or in any way obstructs the same, his right to further compensation shall be suspended until such examination has taken place.

(2) When the board issues a certificate of fitness for employment the workman's right to compensation shall thereupon terminate.

(3) A workman shall not be required by the Smelting Company to submit himself for examination under this section otherwise than in accordance with regulations made by the Governor.

(4) The provisions of sections 28, 29 and 31 of this Act shall not apply as regards any workman to whom this section applies.

(5) A workman who has been certified by the board as suffering from a disease shall from time to time at the request of the board present himself to the board to be medically examined.

(6) If a workman refuses to present himself for medical examination when so requested by the board, or in any way obstructs such examination, his right to compensation and to take or prosecute any proceedings to recover compensation under this Act, shall be suspended until he undergoes such examination.

(7) If the board after examination certifies that the workman who has been disabled by a disease has recovered therefrom, his right to compensation shall thereupon be terminated notwithstanding any other provision of this Act.

Application of  
Act to  
industrial  
diseases.

113. Notwithstanding any other provision of this Act relating to the time for taking proceedings, proceedings for the recovery of compensation in respect of a disease shall not be maintainable unless the claim for compensation has been made within twelve months from the time the workman voluntarily or otherwise left the employ of the Smelting Company.

PART X

**114.** (1) Any workman in receipt of weekly payments of compensation shall from time to time when required by the Smelting Company submit himself for medical examination by a medical practitioner, provided and paid by the Smelting Company.

Medical examination.

(2) If any workman refuses to submit himself to medical examination, as provided in subsection (1) of this section, or in any way obstructs the same, his right to compensation and to take or prosecute any proceedings under this Act shall be suspended until such examination has taken place.

**115.** (1) Any medical practitioner attending any workman employed by the Smelting Company whom he has reasonable grounds for believing to be suffering from a disease contracted in or upon the smelters shall forthwith give notice thereof in writing to the board.

Notification to the board of cases of lead poisoning.

(2) The board may require any workman in relation to whom a notice mentioned in subsection (1) of this section is given to present himself to the board, and the workman shall so present himself and submit to medical examination.

(3) The board shall furnish to the workman a certificate as to the result of the examination and shall forward to the Smelting Company a copy of such certificate.

(4) Any person who fails to comply with any requirement of this section shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding forty dollars.

**116.** If the smelters are at any time worked by any person, firm, or company other than the Smelting Company, then this Part shall so long as the smelters are so worked apply to such other person, firm, or company and his or its workmen in the same way as it now applies to the Smelting Company and its workmen.

Application of Act to assignees of the Smelting Company.

**117.** Where under this Part a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Suspension of payments.

**118.** The Governor may make any such regulations as are necessary or convenient for carrying out the provisions of this Part, and may by such regulations impose any penalty not exceeding one hundred dollars for any breach thereof.

Regulations.

PART XI

## PART XI

## ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Appointment and remuneration of medical referees and practitioners.

**119.** The Minister may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may determine and the remuneration of, and expenses incurred by, medical referees under this Act shall, subject to the regulations be paid out of moneys provided by Parliament.

Referee not to act if previously employed.

**120.** Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

Order for detention of ship.

**121.** (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in the State or in any water within the territorial jurisdiction of the State, a Judge may, upon its being shown to him by any person applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners reside in this State, issue an order directed to any officer of the Court, or of the Department of Marine and Harbors, named in the order requiring such officer to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by a Judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

(2) The officer to whom the order is directed may detain the ship in accordance with the order.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the Judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State of South Australia if it has an office in the said State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship and also the owner, and any person who sends the ship to sea, if that owner or party is privy to the offence, shall be liable to a penalty not exceeding one thousand dollars.

(6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the master thereof shall each be liable to pay a further penalty at the rate of two hundred and fifty dollars for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

**122.** Where for the purpose of making a claim for compensation under this Act a workman or a representative of the workman requests a person to supply any information, as lies within his knowledge, as to the identity of an employer or former employer of the workman, that person shall not refuse or fail forthwith to supply that information to the workman or his representative.

Certain  
information  
to be supplied.

Penalty: One hundred dollars.

**123. (1)** No employer shall employ any workman unless he has obtained from an insurance office a policy of insurance for the full amount of his liability to pay compensation under this Act to all workmen employed by him.

Compulsory  
insurance.

(2) Notwithstanding any Act or law, whether written or unwritten, to the contrary a policy of insurance referred to in subsection (1) of this section shall not be avoided or abrogated on the ground that—

- (a) the policy was obtained by a mis-statement or non-disclosure;
  - (b) the employer has committed a breach of, or has failed to comply with, a term, condition or warranty of the policy;
- or
- (c) the employer has failed to comply with a provision of this Act or any other Act or enactment.

(3) An insurer who is by reason of subsection (2) of this section liable under a policy of insurance may, in addition to any other remedy he may have, recover from the employer liable to pay compensation and if two or more employers were so liable from those employers jointly and severally—

- (a) such sums as the insurer has paid in payment, settlement or compromise of a claim or judgment against the employer;
- and
- (b) any costs or expenses incurred by the insurer in relation to the payment, settlement or compromise.

(4) Any employer who fails to comply with this section shall be liable to a penalty not exceeding one hundred dollars in respect of each uninsured workman employed by him.

(5) This section shall not apply to—

(a) the Crown;

(b) the South Australian Railways Commissioner;

or

(c) any employer who, in the opinion of the Minister, has adequate financial resources to meet all probable claims under this Act, and who obtains a certificate of exemption from the provisions of this section under the hand of the Minister.

(6) No prosecution for a contravention of this section shall be instituted without the consent of the Minister and such consent may be proved by the production of a document purporting to be signed by the Minister and giving consent to the prosecution.

Deductions  
towards  
compensation  
not lawful.

**124.** No employer, insurer, or other person on behalf of any employer or insurer shall directly or indirectly take or receive any money from any workman, whether by way of deduction from wages or otherwise in respect of any liability of an employer to pay compensation under this Act and all moneys so taken or received as aforesaid from any workman, whether with the consent of such workman or not, may be recovered in any court of competent jurisdiction as a debt due to him by the employer, insurer, or person who took or received it.

Order of the  
Court for  
payment of  
money.

**125.** (1) If the Court makes an order directing a person to pay a sum of money to another person, and the sum, or any part thereof, is not paid within fourteen days of the date of the order, or such other time as the Court may allow, that other person may obtain from the Registrar a certificate of that order containing the following particulars:—

(a) the name, place of residence and occupation or description of the person to whom the money was ordered to be paid;

(b) the name and place of residence or place of business of the person ordered to pay the money;

(c) the date of the order;

and

(d) the amount ordered to be paid.

(2) The Registrar shall, on application duly made in writing, grant such a certificate referred to in subsection (1) of this section under the seal of the Court.

(3) Upon production of a certificate granted under this section to the Clerk of a local court, the Clerk shall forthwith register the certificate by entering the particulars contained in it in a book to be kept by him and to be called the "Register of Industrial Court Orders".

(4) From the date of registration the certificate, granted under this section, shall be a record of the local court in which it is registered and shall have the same force and effect in all respects as a judgment or order of that court, and the like proceedings may be taken upon the certificate as if the order mentioned therein were a judgment or order of that court and the person against whom it was made were the defendant and the person to whom the money was ordered to be paid were the plaintiff.

(5) The costs of and incidental to registering a certificate, granted under this section, and of any proceedings under the certificate shall be added to the amount payable under the certificate and payment thereof shall be enforceable accordingly.

(6) No execution shall be issued or other proceedings taken upon any certificate granted under this section unless there is first filed in the local court an affidavit, made by the person to whom the money was ordered to be paid or by some other person cognizant of the facts, within thirty days immediately before the execution is issued or the proceedings are taken or within such further time as a special magistrate may order stating that the amount for which it is proposed to issue execution, or in respect of which it is proposed to take other proceedings, is actually due and unpaid and any such order of a special magistrate may be made *ex parte*.

(7) The local court in which any certificate, granted under this section, has been registered shall, in respect of execution upon the certificate and the enforcement of the order, have the same control and jurisdiction over the order as if it were a judgment or order of that local court.

(8) The local court in which any certificate granted under this section has been registered may, on the application of any person against whom the order has been made, order a stay of proceedings upon that certificate and such order may be given on such terms as to giving security or otherwise as the local court thinks fit.

(9) The powers conferred by section 28 of the Local and District Criminal Courts Act, 1926-1969, as amended, shall include power to make rules for regulating the practice and procedure relating to the registration of certificates under this section and proceedings subsequent thereto, and the court fees payable thereon.



**PART XI****Regulations.**

**126. (1)** The Governor may make regulations for any purpose for which this Act authorizes regulations to be made, or for which it is by this Act contemplated that regulations may or will be made, and generally such regulations as may be necessary or convenient for carrying out or giving effect to the provisions of this Act.

(2) The power conferred by subsection (1) of this section shall include power to make regulations—

(a) requiring information required for the purposes of this Act to be provided periodically by—

(i) employers of workmen;

and

(ii) persons engaged in the business of issuing policies of insurance against liability to pay compensation under this Act;

(b) prescribing the amounts or rates of the premiums chargeable for policies of insurance against liability to pay compensation under this Act;

(c) providing for the appointment of an Advisory Committee to make recommendations as to the amounts or rates of premiums to be so prescribed;

and

(d) prescribing any matters necessary or convenient to be prescribed for ensuring that the prescribed amounts or rates of premiums are charged.

(3) Any such regulations may prescribe penalties for any breach thereof, or of other regulations, not exceeding one hundred dollars for any such breach.

**Powers of  
Inspectors.**

**127. (1)** An inspector may by notice in writing to an employer require that employer to furnish to that inspector evidence to the satisfaction of the inspector that—

(a) the employer is complying with the requirements of subsection (1) of section 123 of this Act;

or

(b) section 123 of this Act does not apply to that employer.

(2) An employer shall not refuse or fail to comply with a requirement made pursuant to subsection (1) of this section.

Penalty: One hundred dollars.

(3) In this section "an inspector" means an inspector as defined by section 5 of the Industrial Code 1967 as amended.

**128.** An employer who receives a request from a workman shall not refuse or fail to supply to that workman information, in a form approved by the Minister, concerning the matters mentioned in paragraphs (a) and (b) of subsection (1) of Section 127 of this Act.

Request by  
workman.

Penalty: One hundred dollars.

**129.** (1) Rules of Court may be made under the Supreme Court Act, 1935, as amended, for the regulation of all matters relating to the practice and procedure of the Supreme Court on appeals thereto under this Act, and generally as to all matters connected with such appeals, or for the regulation of any other matter in which the Supreme Court has jurisdiction under this Act; and such rules may also prescribe such forms and such scales of fees, costs, and expenses as may be necessary or convenient for the purposes of this Act.

Rules of  
Supreme  
Court.

(2) Rules of Court provided for under section 111 of the repealed Act shall, for the purpose of this Act, continue in force and have effect as if they were rules provided for by subsection (1) of this section.

**130.** The power to make rules under section 160 of the Industrial Code, 1967, as amended, shall include power to make Rules of Court, notwithstanding that those Rules of Court may be inconsistent with the Industrial Code, 1967, as amended, for any purpose for which this Act authorizes Rules of Court (not being rules of the Supreme Court) to be made and also for generally regulating the practice of the Court, the practice of the Full Industrial Court generally and in relation to appeals and officers of the Court, and for carrying into effect this Act so far as it relates to or affects the Court or officers of the Court and such rules may also prescribe such forms and scales of fees, costs and expenses as may be necessary or convenient for the purposes of this Act.

Rules of Court  
of Industrial  
Court.

**131.** Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or any Act hereby repealed, and any receipt given for or upon the payment of any money payable under this Act, or any Act hereby repealed, or under any such agreement aforesaid, shall be exempt from any stamp duties chargeable under the Stamp Duties Act, 1923, as amended, or under any Act substituted for that Act.

Agreement and  
receipts under  
the Act exempt  
from stamp  
duty.

**132.** All proceedings in respect of offences against this Act shall be dealt with summarily.

Summary  
proceedings.

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 SCHEDULES
 

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## THE FIRST SCHEDULE

## ACTS AND PORTIONS OF ACTS REPEALED

Workmen's Compensation Act, 1932  
 So much of the second schedule to the Statute Law Revision Act, 1935 as relates to the amendment of the Workmen's Compensation Act, 1932  
 Workmen's Compensation Act Amendment Act, 1938  
 Workmen's Compensation Act Amendment Act, 1940  
 Workmen's Compensation Act Amendment Act, 1941  
 Workmen's Compensation Act Amendment Act, 1943  
 Workmen's Compensation Act Amendment Act, 1944  
 Workmen's Compensation Act Amendment Act, 1947  
 Workmen's Compensation Act Amendment Act, 1950  
 Workmen's Compensation Act Amendment Act, 1951  
 Workmen's Compensation Act Amendment Act, 1953  
 Workmen's Compensation Act Amendment Act, 1954  
 Workmen's Compensation Act Amendment Act, 1955  
 Workmen's Compensation Act Amendment Act, 1956  
 Workmen's Compensation Act Amendment Act, 1958  
 Workmen's Compensation Act Amendment Act, 1960  
 Workmen's Compensation Act Amendment Act, 1961  
 Workmen's Compensation Act Amendment Act, 1963  
 Workmen's Compensation Act Amendment Act, 1965  
 Workmen's Compensation Act Amendment Act, 1966  
 Workmen's Compensation Act Amendment Act, 1969  
 Workmen's Compensation Act Amendment Act, (No. 2), 1969

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 THE SECOND SCHEDULE
 

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Description of Disease	Description of Process
Anthrax .....	Any work in connection with animals infected with anthrax Handling of animal carcasses or parts of such carcasses Handling of wool, hair, bristles, hides or skins Loading or unloading or transport of animals infected with anthrax, animal carcasses or parts of such carcasses, wool, hair, bristles, hides or skins
Asbestosis .....	Any process involving exposure to inhalation of asbestos fibres
Lead poisoning or its <i>sequelae</i> ....	Any process involving the use of lead or its preparation or compounds
Mercury poisoning or its <i>sequelae</i>	Any process involving the use of mercury or its preparations or compounds
Phosphorus poisoning or its <i>sequelae</i>	Any process involving the use of phosphorus or its preparations or compounds
Arsenic poisoning or its <i>sequelae</i> ....	Any process involving the use of arsenic or its preparations or compounds
Ankylostomiasis .....	Mining
Antimony poisoning or its <i>sequelae</i>	Any process involving the use of antimony or its preparations or compounds
Asthma or asthmatic attacks .....	Any process involving working in contact with or the inhalation of the dust of red pine, western red cedar or blackwood Any process involving working in contact with, or the inhalation of flour or flour dust

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THE SECOND SCHEDULE—*continued*

Description of Disease	Description of Process
Carbon monoxide poisoning or its <i>sequelae</i> .....	Any process involving working in contact with or the inhalation of carbon monoxide gas
Dermatitis .....	Any process involving exposure to or working in contact with the dust of blackwood
Nitrous fumes poisoning and its <i>sequelae</i> .....	Any process involving exposure to, or working in contact with sulphuric acid, flour or flour dust
Nitric acid or the inhalation of nitrous fumes	Any process involving working in contact with nitric acid or the inhalation of nitrous fumes
Copper poisoning or its <i>sequelae</i> . . . . .	Any process involving the use or handling of copper or its preparations or compounds.
Zinc poisoning or its <i>sequelae</i> . . . . .	Any process involving the use of zinc or its preparations or compounds
Chrome ulceration or its <i>sequelae</i> . . . . .	Any process involving the use of chromic acid or bichromate or ammonium potassium or sodium or their preparations
Septic poisoning or its <i>sequelae</i> . . . . .	Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of butcher or slaughterman
"Q" fever, an infectious disease in which the presence or the activity of the micro-organism <i>coxiella burneti</i> has been demonstrated by approved laboratory methods . . . . .	Any employment at, in or about, or in connection with any meat works or involving the handling of meat, hides, skins, or carcasses
Poisoning by Benzene or its Homologues, their Nitro- and Amido-Derivatives, and its <i>sequelae</i> . . . . .	Any process involving the production, liberation or utilization of benzene or its homologues, or their nitro- and amido-derivatives
Poisoning by the Halogen derivatives of Hydrocarbons of the Aliphatic series .....	Any process involving the production, liberation or utilization of halogen derivatives of hydrocarbons of the aliphatic series
Pathological Manifestations due to— (a) Radium and other radio-active substances; (b) X-rays .....	Any process involving exposure to the action of radium, radio-active substance or X-rays
Primary Epitheliomatous Cancer of the Skin .....	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances
Noise induced hearing loss .....	Any process involving exposure to noise

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

J. W. HARRISON, Governor.