

LEGISLATIVE ASSEMBLY

WORKERS' COMPENSATION BILL 1913.

EXPLANATORY MEMORANDUM.

The purpose of this Bill is to provide compensation by employers to workers; or, in the case of death, the dependants of workers, for injuries suffered or for certain diseases contracted in the course of their employment, and its main provisions are as set out below:—

“*Employer*” includes any body of persons corporate or unincorporate, and also includes the Crown. (Clauses 2 and 4.)

“*Worker*” does not include any non-manual employé whose remuneration exceeds £250 a year; a casual worker employed otherwise than for the purpose of his employer's trade or business; a member of the police force appointed before 25th November, 1902; an out-worker; a member of the employer's family dwelling in his house. (Clause 2.)

“*Worker*” does include any person who has entered under a contract expressed or implied, oral or written, of service or apprenticeship, by way of manual, clerical labour or otherwise. (Clause 2.)

LIABILITY OF EMPLOYER.

The employer is not liable unless the injury disables the worker for at least one week from earning full wages at the work at which he was employed. (Clause 5 (2) (a).)

The employer is not liable under both this Act and independently of this Act. (Clauses 5 (2) (b) and 8.)

The employer is not liable if the injury is due to the “serious and wilful misconduct” of the worker. (Clause 5 (2) (c).)

If claim for compensation has been made by claimant in respect of injury under any law of the United Kingdom or other part of His Majesty's Dominions compensation under this Act will not be allowed to claimant nor shall any person having such a claim claim under this Act unless he declares in writing that he has not claimed and will not claim compensation under any other law. (Clause 5 (2) (d).)

SCALE AND CONDITIONS OF COMPENSATION.

The amount of compensation payable is, in case of death—

- I. If there are dependants wholly dependent, a sum equal to the deceased's earnings for three years preceding the injury or £200, whichever is larger, but not exceeding in any case £400. If not employed three years then 156 times the average actual weekly earnings is the basis of calculation.
- II. If there are dependants partially dependent a sum not exceeding above.
- III. If no dependants the medical and funeral expenses not exceeding £30. (First Schedule, paragraph 1.)

The amount of compensation payable is in case of total or partial incapacity for work, during such incapacity—

- I. A weekly payment not exceeding half average weekly earnings, such weekly payment not to exceed £1 per week, and the total liability of the employer not to exceed £400.
- II. If worker is under 21 at date of injury, and average weekly earnings are less than £1 per week, he is entitled to a weekly sum not exceeding 100 per cent. of such earnings, such weekly payment not to exceed 10s. per week. (First Schedule, paragraph 1.)

If worker is over 60, and has agreed in writing with employer as to maximum rate of compensation, the compensation shall not be less than such maximum, but the maximum shall not be less—

- I. Than £50 in the case of death and dependants left ;
- II. Than 5s. per week, in case of total or partial incapacity, during incapacity after first week, and a total liability of £50. (First Schedule, paragraph 1.)

A worker, if required by the employer, shall be subject to examination at first or periodically by a duly qualified medical practitioner (First Schedule, paragraphs 4, 13, and 14), according to Regulations made by Governor in Council, and if necessary a medical referee may be appointed. (Clause 18 and First Schedule.)

Questions arising as to liability to pay compensation, amount and duration of compensation, if not settled by agreement are to be determined as provided in Second Schedule. (Clause 5.)

Compensation or weekly payments may in certain cases be paid through a County Court. (First Schedule, paragraphs 5, 6, and 7.)

Compensation may be invested in State Savings Bank of Victoria. (First Schedule, paragraph 10.)

Weekly payments on application of employer may be redeemed by lump sum. (First Schedule, paragraph 16, and Second Schedule.)

If worker leaves Victoria his title to weekly payments ceases unless he is certified by a medical referee as permanently incapacitated. (First Schedule, paragraph 17.)

Weekly payments or lump sum payable to dependants are not assignable. (First Schedule, paragraph 18.)

Notice of injury must be given. (Clauses 7 (1) (a), (2), (3), (4), (5), and 13 (3).)

Claim must be made within four months of injury or death therefrom, unless reasonable cause exists for failure to make claims within such time. (Clause 7, (1) provisos (a) and (b), and see clause 13 as regards seamen.)

COMPENSATION SCHEMES.

If a Judge of County Courts appointed by Governor in Council, after ascertaining views of employer, workers, and Government Statist, certifies—

(a) An employer's scheme of compensation not less favorable than provided by Bill ; and

(b) Scheme where it provides for contributions of workers benefits the workers at least equivalent to the contributions in addition to extent not less than provided by Bill ;

(c) Majority of workers concerned approve ;

the employer is then liable according to the scheme and not according to the Act during period covered by Judge's certificate. (Clause 9.)

A Judge may certify a scheme for period of not less than five years provided—

(a) Joining scheme is not a condition of employment ;

(b) Any worker may withdraw from scheme. (Clause 9.)

Judge may revoke certificate of scheme on good cause being shown. Proceedings must be taken according to rules of court. (Clause 9 (4), (5), (7).)

Compensation schemes for State employes may be framed by the Treasurer of Victoria for submission to County Court Judge. (Clause 9 (8).)

SUB-CONTRACTING.

Principal is liable in case of sub-contracts, but entitled to be indemnified. In agricultural work the contractor who uses mechanical power liable. (Clause 10.)

Compensation may be recovered from the sub-contractor instead of the principal. (Clause 10 (3).)

INSOLVENCY.

In cases of insolvency insurers are liable to extent of insurance as if they were employers, balance to be a liability on insolvent estate, and if no insurance contract any liability for compensation shall be a preferential debt not exceeding £200 in each case or lump sum in case of weekly payments. (Clause 11 and First Schedule.)

LIABILITY OF PERSON OTHER THAN EMPLOYER.

If injury caused by person who is not an employer, worker may sue both for damages from stranger and compensation from employer, but shall not be entitled to recover both damages and compensation. (Clause 12.)

SEAMEN.

Compensation is provided for seamen provided accident happens within this State or within the jurisdiction of this State. (Clause 13.)

INDUSTRIAL DISEASES.

Industrial diseases include anthrax, lead poisoning, mercury poisoning, phosphorous poisoning, and arsenic poisoning, and may be subjects of compensation as if they were injuries received, if certified by certifying medical practitioner as result of employment during preceding twelve months, and Parliament may by resolution of both Houses add to diseases in Third Schedule. (Clauses 14, 20, 21, and First and Third Schedules.)

If worker falsely states in writing that he has not previously suffered from the disease he is not entitled to compensation. (Clause 15.)

Last employer during twelve months is liable, provided he is furnished with names of previous employers, and cannot prove that disease was contracted wholly or partially in the service of another employer. (Clause 16.)

If disease is result of injury, but is not in Third Schedule, compensation rights hold good. (Clause 23.)

RETURNS.

Employers in industries to which clause 24 applies must furnish returns specifying—

- (a) Number of injuries where compensation was payable during previous year;
- (b) Amount of such compensation;
- (c) Other particulars as Minister directs. (Clause 24.)

STATE ACCIDENT INSURANCE.

State Accident Insurance office to be constituted. (Clause 28) Appointment of Insurance Commissioner and Deputy-Insurance Commissioner, &c. (Clause 28 (2)-(4).) State Accident Insurance Fund; accident policies guaranteed by State. (Clauses 29-30.) Insurance not obligatory. (Clause 33.)

Apportionment of Accident Insurance Premiums.—When the contract is with Insurance Commissioner the premium is payable as follows:—One-sixth by Government, five-sixths by employer, with the right to deduct from wages of the worker a sum not exceeding two-sixths of the premium; when the contract is with Insurer other than Insurance Commissioner the employer can deduct from the wages of the worker a sum not exceeding two-sixths of the premium; in either case deduction of worker's contribution to be made weekly. (Clause 34.)

Governor in Council may frame Regulations. (Clause 35.)