
COMMONWEALTH WORKMEN'S COMPENSATION.

No. 29 of 1912.

An Act relating to Compensation to Workmen employed in the service of the Commonwealth for Injuries suffered in the course of their Employment.

[Assented to 24th December, 1912.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

- Short title. 1. This Act may be cited as the *Commonwealth Workmen's Compensation Act* 1912.
- Commencement. 2. This Act shall commence on a day to be fixed by proclamation.

3.—(1.) In this Act unless the contrary intention appears—

Definitions.

“Commonwealth” includes any Territory which is part of the Commonwealth and any authority under the Commonwealth :

Cf. 6 Edw. 7
c. 58 s. 13.

“County Court” means a County Court, District Court, or Local Court of any State, or Territory being part of the Commonwealth, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a Judge or a Police, Stipendiary, or Special Magistrate :

“Dependants” means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or who would, but for the incapacity due to the accident, have been so dependent ; and where the workman

(a) being the parent or grandparent of an illegitimate child, leaves the child so dependent upon his earnings, or

(b) being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, includes such an illegitimate child and parent or grandparent respectively :

“Judge of a County Court” includes the Judge of a County Court, District Court, or Local Court, and also any Police, Stipendiary or Special Magistrate presiding or having jurisdiction to preside over a County Court as defined by this Act :

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, mother-in-law :

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

“Workman” means any person who has entered into or works under a contract of service or apprenticeship with the Commonwealth, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing, but does not include—

(a) any person employed otherwise than by way of manual labour whose remuneration exceeds Five hundred pounds a year ; or

(b) an outworker ; or

(c) any member of the Naval or Military Forces of the Commonwealth while employed on active service.

Compensation
for personal
injuries to
workmen.
Cf. 6 Edw. 7 ch.
s. 1.

4.—(1.) If personal injury by accident arising out of and in the course of his employment is caused to a workman in the service of the Commonwealth, the Commonwealth shall, subject to this Act, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that—

- (a) the workman shall not be entitled to recover compensation from the Commonwealth or any person or to receive from the Commonwealth any gratuity or payment in respect of the accident both independently of and also under this Act; but subject to this paragraph this Act shall not affect any civil liability of the Commonwealth under any other law;
- (b) if it is proved that the injury to a workman is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed;
- (c) in the case of the death of a workman leaving no dependants no compensation shall be payable under this Act other than for medical attendance and funeral expenses;
- (d) if it appears that the claimant has a claim against the Commonwealth or any person for compensation or for any gratuity or payment for the injury under any other law in force in the Commonwealth or any other place, compensation under this Act shall only be allowed upon the claimant undertaking not to claim compensation for the injury under any such law;
- (e) where the workman continues in the service of the Commonwealth after the injury, any pay received by him from the Commonwealth shall be deducted from any compensation payable under this Act in respect of the same period.

(3.) If any question arises, in any proceedings under this Act, as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies) or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act, or by proceedings in a County Court.

(4.) Any undertaking given in pursuance of paragraph (d) of subsection (2.) of this section shall have effect as a contract between the claimant and the Commonwealth or person, as the case requires, from whom the compensation, gratuity, or payment is claimed.

Time for taking
proceedings.
Cf. 6 Edw. 7
ch. 53 s. 2.

5.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after it has

happened, and before the workman has voluntarily left the employment of the Commonwealth, and unless the claim for compensation has been made—

- (a) within six months from the occurrence of the accident, or,
- (b) in case of death—within six months after news of the death has been received by the claimant.

Provided always that—

- (a) the want of or any defect or inaccuracy in the notice shall not be a bar to the maintenance of proceedings if it is found, in the proceedings for settling the claim, that the Commonwealth is not or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in its defence by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, absence from Australia, or other reasonable cause ; and
- (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from Australia, or other reasonable cause.

(2.) Notice in respect of any injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the Commonwealth.

(3.) The notice may be served by sending it by post in a registered letter properly addressed to the permanent head or chief officer of the Department in which the workman is employed, or by delivering it at the head office of the Department, or to the officer in charge of the work on which the workman is employed, or in any other prescribed manner.

6.—(1.) Where the Commonwealth contracts with any 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 Commonwealth, the Commonwealth shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which it would have been liable to pay if that workman had been immediately employed by the Commonwealth :

Provided that the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor by whom he is immediately employed.

(2.) Where the contract entered into between the Commonwealth and the contractor so provides, the contractor shall be liable to pay compensation under this Act as if he were included in the expression "the Commonwealth" and a workman may recover compensation from him instead of from the Commonwealth.

(3.) Where the Commonwealth is liable, and is by virtue of any word or agreement bound, to pay compensation under this section, it shall be entitled to be indemnified by the contractor,

Sub-
contracting.
Cf. 6 Edw. 7
ch. 58 s. 4.

if he is also liable to pay compensation, and all questions as to the right to, and amount of, any such indemnity shall in default of agreement be settled by arbitration or by action in any County Court.

Remedies both against the Commonwealth and a stranger.
Cf. 6 Edw. 7 ch. 53 s. 6.

7. 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 Commonwealth to pay damages in respect thereof—

- (a) the workman may take proceedings both against that person to recover damages and against the Commonwealth for such compensation, but shall not be entitled to recover both damages and compensation ; and
- (b) if the workman has recovered compensation under this Act, the Commonwealth and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action or, by consent of the parties, by arbitration under this Act.

Medical referees.
Ib. s. 10 (1).

8.—(1.) The Governor-General may appoint any duly qualified medical practitioners to be medical referees for the purposes of this Act.

(2.) Medical referees shall be paid such fees as are provided by the regulations.

(3.) The fees of medical referees shall be paid out of moneys provided by Parliament for the purpose.

(4.) A medical referee who has been employed as a medical practitioner in connexion with any case by or on behalf of the Commonwealth or a workman, or by any insurers interested, shall not act as a medical referee in that case.

Remuneration of arbitrator appointed by Court.
Ib. s. 10 (2).

9. Where an arbitrator is appointed by a County Court under this Act, the remuneration of the arbitrator shall be paid out of the moneys provided by Parliament for the purpose.

Returns as to compensation.
Ib. s. 12.

10. The permanent head or chief officer of each department shall, as prescribed, furnish correct returns specifying—

- (a) the number of injuries in respect of which compensation has been paid under this Act during the previous year,
- (b) the amount of compensation paid during that year, and
- (c) such other particulars as are prescribed.

Regulations.

11. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and in particular for modifying, altering or repealing any of the provisions of the Second Schedule to this Act or adding any additional provisions to that Schedule.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

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

(a) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings a sum equal to his earnings in the employment of the Commonwealth during the three years next preceding the injury, or the sum of Two hundred pounds, whichever of those sums is the larger, but not exceeding in any case Five hundred pounds:

Provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the Commonwealth has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment by the Commonwealth;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration or proceedings under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding Thirty pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of the workman's average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the Commonwealth, such weekly payment not to exceed Forty shillings.

Provided that as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Twenty shillings, one hundred per centum shall be substituted for fifty per centum of his average weekly earnings, but the weekly payment shall in no case exceed Ten shillings.

(2.) For the purposes of the provisions of this Schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of the Commonwealth, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the Commonwealth, or, if there is no person so employed, by a person in the same grade employed in the same class of employment;

(b) where the workman had entered into concurrent contracts of service with the Commonwealth and another employer under which he worked at one time for the Commonwealth and at another time for such other employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the Commonwealth;

(c) where the Commonwealth 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.

(3.) 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 Commonwealth during the period of his incapacity, and 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 accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

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

(5.) The payment in the case of death shall, unless otherwise provided in this Schedule or by the regulations, be paid to a prescribed authority, and the sum so paid shall be dealt with as prescribed for the benefit of the persons entitled thereto.

Provided that, 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.

(6.) Where a weekly payment is payable under this Act to a person under any legal disability, the weekly payment shall be paid during the disability to a prescribed authority, and dealt with as prescribed for the benefit of the person entitled thereto.

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

(8.) Where there are both total and partial dependants, nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(9.) Where, on application being made to a prescribed authority that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of any of the 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 dependant is to be dealt with, ought to be varied, the prescribed authority may make an application to a County Court for the variation of the order or the award, and the County Court may make such order thereon as it thinks just.

(10.) Any workman receiving weekly payments under this Act shall, if so required, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the Commonwealth. If the workman refuses to submit himself to such examination, or in any way obstructs the examination, his right to the weekly payments shall be suspended until the examination has taken place.

(11.) A workman shall not be required to submit himself for examination by a medical practitioner under the provisions of this Schedule otherwise than in accordance with the regulations, or at more frequent intervals than is prescribed by those regulations.

(12.) 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 Commonwealth or workman, as the case may be, has within six days after 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 Commonwealth and the workman as to the workman's condition or fitness for employment, the prescribed authority, on application being made to him by both parties, may refer the matter to a medical referee.

(13.) The medical referee to whom the matter is referred shall examine the workman, and shall, in accordance with the 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.

(14.) Where no agreement can be come to between the Commonwealth and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this Schedule relating to reference to and examination and certificate by a medical referee shall, subject to the regulations, apply as if the question were a question as to the condition of the workman.

(15.) If a workman refuses to submit himself for examination by a medical referee, as provided in this Schedule, or in any way obstructs the examination, 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 the examination has taken place.

(16.) Any weekly payment may be reviewed in the prescribed manner at the request either of the Commonwealth or of the workman and on such review may be ended, diminished, or increased, subject to the maximum above provided :

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding One pound.

(17.) Where any weekly payment has been continued for not less than six months, the liability therefor may, at the option of the Commonwealth, but subject to the regulations, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case is settled by arbitration under this Act, or by a County Court, and such lump sum may be ordered by the arbitrator or Judge of the County Court to be paid to a prescribed authority to be invested or otherwise applied for the benefit of the person entitled thereto :

Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18.) If a workman receiving a weekly payment ceases to reside in Australia, he shall cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. 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 are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19.) 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 it.

(20.) Where under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

SECOND SCHEDULE

PROCEEDINGS FOR COMPENSATION.

(1.) For the purpose of settling any matter which under this Act may be settled by arbitration, the matter may be settled by a single arbitrator agreed on by the parties, or, in the absence of agreement, appointed by a County Court.

(2.) The provisions of any Act or State Act relating to arbitration shall not apply to any arbitration under this Act ; but an arbitrator may, if he thinks fit, submit any question of law for the decision of a County Court, and the decision of the County Court on any question of law, either on such submission, or in any case where a County Court settles the matter under this Act, or where it gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by the regulations either party appeals to the High Court or to the Supreme Court of the State in which the County Court is situated.

(3.) Any arbitrator shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings before him were an action in the County Court.

(4.) In any arbitration under this Act, any party to the proceedings may appear personally or by any other person appointed to represent him.

(5.) The costs of and incidental to the arbitration and proceedings connected therewith shall, subject to the regulations, be in the discretion of the arbitrator. The costs shall not exceed the limit prescribed by the regulations.

(6.) In the case of the death or refusal or inability to act of an arbitrator, the County Court may, on the application of any party, appoint a new arbitrator.

(7.) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by the regulations, by the arbitrator, or by any party interested, to the prescribed authority, who shall, subject to the regulations, on being satisfied as to its genuineness, record the memorandum, and thereupon the memorandum shall for all purposes be enforceable as if it were a judgment of a County Court:

Provided that—

(a) no such memorandum shall be recorded before seven days after the despatch by the prescribed authority of notice to the parties interested;

(b) where a workman seeks to record a memorandum of agreement between the Commonwealth and himself for the payment of compensation under this Act, and the Commonwealth, in accordance with the regulations, objects to the recording of the memorandum, and proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, the memorandum shall only be recorded, if at all, on such terms as the prescribed authority, under the circumstances, thinks just;

(c) a County Court may at any time make such order in relation to the recording of the memorandum, including the removal of such record, as it thinks just;

(d) where it appears to a prescribed authority, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be recorded by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement, and refer the matter to a County Court, which may, in accordance with the regulations, make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just;

(e) a County Court may, within six months after the recording of a memorandum of an agreement as to the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability or to dependants, order that the record be removed on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just.

(8.) An agreement as to the redemption of a weekly payment by a lump sum, if not recorded in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt the Commonwealth from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so recorded, shall not, nor shall the payment of the sum payable under the agreement, exempt the Commonwealth from liability to pay compensation, unless, in either case, it is proved that the failure to register was not due to any neglect or default on the part of the Commonwealth.

(9.) Where any matter under this Act is to be done in a County Court, it may be done in any County Court, but if the Judge of the County Court in which the proceedings are taken, is satisfied that the matter can be more conveniently dealt with in some other County Court, he may order the transfer of the proceedings to that Court, and upon such transfer that Court shall have the like jurisdiction in relation to the proceedings as if they had been commenced in that Court.

(10.) Any sum awarded as compensation shall, unless paid to a prescribed authority, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act

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shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation.

(11.) Any arbitrator or County Court may, subject to the regulations, submit to a medical referee for report any matter which seems material to any question arising in the proceedings.

(12.) A Judge of a County Court may, in relation to any proceedings in the Court, exercise all the jurisdiction and powers of a County Court under this Schedule.