

New Zealand.

WORKERS' COMPENSATION FOR ACCIDENTS.

1908, No. 207.

AN ACT to consolidate certain Enactments of the General Assembly relating to Compensation to Workers for Accidental Injuries suffered in the Course of their Employment.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is "The Workers' Compensation for Accidents Act, 1908." Short Title.

(2.) This Act is a consolidation of the enactments mentioned in the First Schedule hereto, and with respect to those enactments the following provisions shall apply: Enactments consolidated.

(a.) All regulations, Orders in Council, orders, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall inure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated. Savings.

(b.) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. (1.) In this Act, if not inconsistent with the context,—

"Dependants" means such members of a worker's family, specified in the Second Schedule hereto, as at the time of his death were wholly or in part dependent on his earnings:

Interpretation.
1900, No. 43, sec. 2
1903, No. 88, sec. 4

“Employer” includes persons, firms, companies, and corporations employing workers, and the legal representatives of a deceased employer; and includes the agent, representative, or attorney of any or each of them:

“Industrial Arbitration Act” means “The Industrial Conciliation and Arbitration Act, 1908”:

“Worker” means any person of any age of either sex who, under contract with an employer, whether made before or after the coming into operation of this Act, and whether oral or in writing, expressed or implied, is engaged in any employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and whether the employment is on land, or on any ship, or other vessel (of whatsoever kind and howsoever propelled) in any navigable or other waters within New Zealand or the jurisdiction thereof.

(2.) Any reference in this Act to a worker who has been injured shall, where he is dead, include a reference to his legal personal representatives, or to his dependants, or other person to whom compensation is payable.

Application to
workers in employ-
ment of Crown.
1900, No. 43, sec. 3

3. This Act shall not apply to workers in the naval or military service of the Crown where definite provision is otherwise made, but otherwise shall apply to workers in any employment by or under the Crown within New Zealand to which this Act would apply if the employer were a private person:

Provided that all sums payable under this Act by or on behalf of the Crown shall be payable out of moneys to be appropriated by Parliament.

Employments to
which Act applies.
Ibid, sec. 4
1902, No. 61, sec. 5

4. (1.) This Act shall apply only to employment by the employer on or in or about—

(a.) Any industrial, commercial, or manufacturing work carried on by or on behalf of the employer as part of his trade or business: or

(b.) Any mining, quarrying, engineering, building, or other hazardous work carried on by or on behalf of the employer, whether as part of his trade or business or not: or

(c.) Any agricultural work; and where any agricultural worker is employed by the same employer partly or occasionally in other work, this Act shall apply also to the employment of the worker in such other work: or

(d.) Any work carried on by or on behalf of the Crown or any local authority as the employer, if the work would, in the case of a private employer, be an employment to which this Act applies.

(2.) For the purposes of this section “agricultural work” includes horticulture, forestry, the keeping or breeding of live-stock, and the use of land for any purpose of husbandry.

Cases in which
employer not liable.
1900, No. 43, sec. 5
1902, No. 61, sec. 4

5. The employer shall not be liable under this Act in respect of any injury which does not disable the worker for a period of at least one week from earning full wages at the work at which he was employed, nor in respect of an injury which is proved to be directly attributable to the serious and wilful misconduct of the worker.

6. If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the Third Schedule hereto.

Liability for injuries to workers.
1900, No. 43, sec. 6

7. In every case where the injury is caused by the negligence, default, or wilful act of the employer, or of some person for whose act or default the employer is responsible, the following provisions shall apply:—

Worker may claim compensation under this Act or take independent proceedings.
Ibid, sec. 7

(a.) Nothing in this Act shall affect any civil liability of the employer independently of this Act.

(b.) The worker may, at his option, either claim compensation under this Act, or take the same proceedings as are open to him independently of this Act:

Provided that the employer shall not be liable to pay compensation both independently of and also under this Act, and shall not be liable to pay compensation independently of this Act except in cases where the liability exists independently of this Act.

8. If in any proceedings under this Act any question arises as to the liability to pay compensation under this Act, or as to the amount or duration of compensation under this Act, or as to whether the employment is one to which this Act applies, the question, if not settled by agreement, shall, subject to the provisions of the Third Schedule hereto, be settled as an industrial dispute by the Court of Arbitration under the Industrial Arbitration Act:

Mode of settling questions arising under Act.
Ibid, sec. 8

Provided that the worker or any of his dependants may be party to such dispute, and any party may appear either personally or by a barrister or solicitor of the Supreme Court, or by an agent duly appointed in writing.

9. (1.) If, within the time hereinafter in this Act limited for taking proceedings under this Act, an action is brought to recover compensation independently of this Act for injury caused by any accident, 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 this Act, the action shall be dismissed:

Procedure when action wrongly brought independently of Act.
Ibid, sec. 9

Provided that the Court in which the action is tried shall, if the plaintiff so chooses, proceed to assess such compensation, and shall be at liberty to deduct therefrom all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of taking proceedings under this Act.

(2.) When assessing such compensation under this section the Court shall give a certificate as to the compensation it has awarded and as to the deduction for costs.

Certificate as to compensation awarded.
Ibid, sec. 10
1906, No. 58, sec. 10

(3.) The Registrar or Clerk of the adjudicating Court shall file with the Clerk of Awards an office copy of the certificate, and thereupon the certificate shall for all purposes be deemed to be an award of the Court of Arbitration, and that Court shall have jurisdiction accordingly.

10. (1.) Notwithstanding anything in this Act, all proceedings under this Act may, where the claim for compensation does not exceed two hundred pounds, be heard and determined by a Magistrate, whose decision shall, subject to the next succeeding subsection, be final.

Claims under £200.
1903, No. 88, sec. 3

(2.) Either party to the proceedings may,—

(a.) Where the claim does not exceed fifty pounds, with the leave of the Magistrate; or

(b.) Where the claim exceeds fifty pounds, without such leave,—
appeal from the decision of the Magistrate on any point of law.

(3.) Such appeal shall be made to the Court of Arbitration in the manner provided by "The Magistrates' Courts Act, 1908," in cases of appeal to the Supreme Court on point of law, and the provisions of that Act relating to such appeals shall, *mutatis mutandis*, apply to appeals under this section.

Proceedings for fines
not affected.
1900, No. 43, sec. 11

11. Nothing in this Act shall affect any proceeding for a fine under any Act, or the application of any such fine; but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Time within which
notice to be given
and claim made.
Ibid, sec. 12

12. (1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless—

(a.) Notice of the accident has been given as soon as practicable after the happening thereof, and before the worker has voluntarily left the employment in which he was injured; nor unless

(b.) The claim for compensation with respect to such accident has been made within three months after the occurrence of the accident, or, in case of death, within six months after the time of death.

(2.) For the purposes of paragraph (a) hereof the worker shall not be deemed to have voluntarily left the employment in any case where by reason of the accident he is unable to continue in the employment.

(3.) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by such want, defect, or inaccuracy, or that the same was occasioned by mistake or other reasonable cause.

Form and service of
notice.
Ibid, sec. 13

13. With respect to such notice the following provisions shall apply:—

(a.) The notice may be signed by the worker injured or by any of his dependants, or by any person on behalf of the worker or his dependants.

(b.) The notice shall give the name and address of the person injured, and shall state in ordinary language the cause and nature of the injury, and the date and locality at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon any one of them.

(c.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(d.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business.

(e.) The notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post;

and in proving the service it shall be sufficient to prove that the notice was properly addressed and registered.

- (f.) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.
- (g.) Where the employer is the Crown, or any departmental officer acting for the Crown, the notice shall be served on the Solicitor-General, at Wellington.

14. The claim for compensation shall be deemed to have been made within the prescribed time in any of the following cases:—

- (a.) If within the prescribed time the claimant has filed an application for arbitration; or
- (b.) If within the prescribed time the claimant has given the employer any written intimation of intention to make a claim, and after so doing, but not later than one month after the expiry of the prescribed time, has filed an application for arbitration; or
- (c.) If the claim has been made within such extension of the prescribed time as the Court in its discretion allows:

Provided that the period of extension shall in no case exceed one month, and that no extension shall be allowed unless the Court is satisfied that the employer will not be thereby prejudiced in his defence.

15. In any case where, on application in the prescribed manner to the Board of Conciliation under the Industrial Arbitration Act, the Board, after taking steps to ascertain the views of the employer and workers, certifies that any scheme of compensation, benefit, or insurance for the workers, whether or not such scheme includes other employers and their workers, is on the whole not less favourable to the general body of workers and their dependants than the provisions of this Act, the following provisions shall apply:—

- (a.) The employer may, until the certificate is revoked, contract with any of those workers that the provisions of the scheme shall be substituted for the provisions of this Act; and thereupon the employer shall, as respects the workers with whom he so contracts, be liable in accordance with the scheme in lieu of this Act; but, save as aforesaid, this Act shall apply, notwithstanding any contract to the contrary made after the coming into operation of "The Workers' Compensation for Accidents Act, 1900."
- (b.) The Board may give such certificate, to expire at the end of a limited period to be specified therein, being not more than five years.
- (c.) No scheme shall be so certified which contains an obligation upon the workers to join the scheme as a condition of their hiring.
- (d.) If during the currency of the certificate complaint is made to the Board by or on behalf of the employer or the workers, or a majority of them, that the provisions of the scheme are no longer on the whole so favourable to the

When claim for compensation made within prescribed time.
1904, No. 54, sec. 4

Contracting out under scheme for compensation approved by Board of Conciliation.
1900, No. 43, sec. 14

employers or to the general body of workers and their dependants as the provisions of this Act, or that the provisions of the scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Board shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

- (e.) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workers, or as may be determined by the Board in the event of a difference of opinion.
- (f.) Every decision of the Board under this section shall, in such manner and on such terms as are prescribed, be subject to review by the Court of Arbitration, whose decision shall be final.
- (g.) For the purposes of this section it shall be the duty of the employer and workers to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Board or the Court.

Liability in cases of
contracting or
subcontracting.
1900, No. 43, sec. 15

16. (1.) In any case where any person (hereinafter called "the principal") contracts with any other person (hereinafter called "the contractor") for the execution of any work by or under the contractor, and the contractor employs any worker thereon, the following provisions shall apply:—

- (a.) Both the principal and the contractor shall be deemed to be employers of the worker, and shall be jointly and severally liable to pay to the worker any compensation which the contractor if he were the sole employer would be liable to pay under this Act.
- (b.) The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section.
- (c.) The principal shall not be liable under this section except in cases where the work to be executed under the contract, and in which the worker is employed,—
 - (i.) Relates directly to the land, building, vessel, or other property of the principal; or
 - (ii.) Is directly a part of or a process in the trade or business of the principal;
 Provided that his liability shall be presumed until the contrary is shown.
- (d.) In the case of subcontracts the expression "principal" shall extend to and include not only the original principal, but also each contractor who constitutes himself a principal with respect to a subcontractor by contracting with him for the execution by him of the whole or any part of the work; and the expression "contractor" shall extend to and include not only the original contractor, but also each subcontractor:

Provided that each principal's right of indemnity shall be a right over against every contractor standing between

him and the contractor by whom the worker was employed at the time when the accident occurred.

(2.) Where any employer agrees with a contractor for the execution by or under that contractor of any agricultural work as defined in section four hereof, the foregoing provisions of this section shall apply in respect of any worker employed in such work.

Agricultural work.
1902, No. 61, sec.
5 (2)

17. Where a contract to perform any work in any gold-mine or coal-mine is let directly to one or more contractors who do not either sublet the contract or employ wages-men, or who, though employing wages-men, actually perform any part of the work themselves, such contractors shall for the purposes of this Act be deemed to be workers.

Piecework
contractors in mines.
1903, No. 88, sec. 2

18. 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 to pay damages in respect thereof independently of this Act, the worker may, at his option, proceed either against that person to recover damages independently of this Act, or against his employer for compensation under this Act, but not against both; and if compensation is paid under this Act, the employer paying the same shall be entitled to be indemnified by the said other person.

Recovery of damages
from stranger.
1900, No. 43, sec. 16

19. Where any employer becomes liable, either under this Act or independently of this Act, to pay compensation or damages in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a worker under such liability, then, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or, if the employer is a company, of the company being wound up, such worker shall, by force of this Act, have a first charge upon the sum aforesaid for the amount so due.

Claims of worker
for compensation or
damages in case of
bankruptcy of
employer.
Ibid, sec. 17

20. For the purpose of securing to the worker the full benefit of his claim for compensation under this Act, or for damages or compensation independently of this Act, the following provisions shall apply in every case where the accident in respect whereof the claim arises occurred in the course of his employment in or about a mine, factory, building, or vessel:—

Special provision for
securing compensa-
tion or damages to
worker in mine,
factory, building, or
vessel.
Ibid, sec. 18

(a.) At and from the time when the accident occurred, the amount of compensation or damages to which he may become entitled, whether under this Act or independently of this Act, shall, by force of this Act, and notwithstanding that such amount is unadjusted or unascertained, be deemed to be a charge in his favour on his employer's estate or interest in—

(i.) Such mine, factory, building, or vessel, and the plant, machinery, tackle, and appliances in or about the same; and also in

(ii.) The land whereon such mine, factory, or building is situate, or whereto it appertains.

(b.) As between themselves all such charges shall have priority according to the priority of the time when they accrue (being the time when the accident occurred); but such of them as accrue on the same day shall be deemed to accrue at the time when the earliest of them accrued, and shall rank equally one with another.

(c.) Subject to the provisions of the last preceding paragraph, every such charge shall have priority over all existing or subsequent charges or incumbrances howsoever created, other than charges or incumbrances lawfully existing at the time of the coming into operation of "The Workers' Compensation for Accidents Act, 1900."

(d.) The Governor may from time to time, by regulations under this Act, prescribe the mode in which such charges may be enforced.

Regulations.
1900, No. 43, sec. 20

21. The Governor may from time to time make such regulations as he deems necessary for the purpose of prescribing the mode in which claims and questions under this Act may be determined under the Industrial Arbitration Act, and also for any other purpose which he deems necessary in order to give full effect to the provisions and intention of this Act.

Accident-insurance policy.
Ibid, sec. 21

22. Every policy of accident insurance issued on or after the seventh day of June, one thousand nine hundred and one (being the date of the coming into operation of "The Workers' Compensation for Accidents Act, 1900"), shall contain only such provisions as may be approved by the Governor in Council.

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS CONSOLIDATED.

- 1900, No. 43.—"The Workers' Compensation for Accidents Act, 1900."
- 1902, No. 61.—"The Workers' Compensation for Accidents Act Amendment Act, 1902."
- 1903, No. 88.—"The Workers' Compensation for Accidents Amendment Act, 1903."
- 1904, No. 54.—"The Workers' Compensation for Accidents Acts Amendment Act, 1904."
- 1905, No. 50.—"The Workers' Compensation for Accidents Act, 1905."
- 1906, No. 58.—"The Statute Law Amendment Act, 1906": Section 10.

SECOND SCHEDULE.

MEMBERS OF WORKER'S FAMILY.

Section 2.
Ibid, First Schedule.
1903, No. 88, sec. 6

Husband	Daughter	Step-son	Grandfather
Wife	Illegitimate son	Step-daughter	Grandmother
Brother	Illegitimate daughter	Father	Step-father
Sister	Grandson	Mother	Step-mother.
Son	Granddaughter		

THIRD SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

Section 6, 8.
1900, No. 43,
Second Schedule.
1904, No. 54, secs.
2, 3
1905, No. 50, secs.
2, 3

1. THE amount of compensation under this Act shall be computed and assessed as follows, that is to say:—

(a.) Where death results from the injury,—

(i.) If the worker leaves any dependants wholly dependent upon his earnings at the time of his death, the compensation shall be a sum equal

to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two hundred pounds, whichever of those sums is the larger, but not exceeding in any case four hundred pounds :

Provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the worker's employment has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment :

(ii.) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, the compensation shall be such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or as, in default of agreement, may be determined on under this Act to be reasonable and proportionate to the loss or damage suffered by the said dependants :

(iii.) If the worker leaves no dependants, the compensation shall be a sum equal to the reasonable expenses of his medical attendance and burial, not exceeding thirty pounds.

(b.) Where the worker's total or partial incapacity for work results from the injury,—

(iv.) The compensation shall be a weekly payment not exceeding fifty per centum of the average of his weekly earnings while at work during the previous twelve months. Such payment shall be made during the incapacity of the worker, but shall not exceed two pounds per week; and the total liability of the employer in respect of such compensation shall not exceed three hundred pounds :

Provided that no payment shall be made for the first week in any case where the worker's incapacity does not continue for a longer period than two weeks :

Provided also that the weekly payment shall not be less than one pound per week in every case where the worker's ordinary rate of pay for the work at which he was employed at the time of the accident was not less than thirty shillings per week.

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

(c.) With respect to casual workers employed as stevedores, lumpers, or wharf labourers, the following special provision shall apply :—

In every case where the compensation (whether in the case of death or of incapacity) is based on the worker's average weekly earnings, they shall be deemed to be not less than a full working-week's earnings at the ordinary (but not overtime) rate of pay for the work at which he was employed at the time of the accident, notwithstanding that he may not have actually worked or the employment may not have actually continued for the full week, and the compensation shall be computed and assessed accordingly; provided that in no case shall the weekly payment be less than one pound.

Conditions.

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

3. Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled as an industrial dispute under the Industrial Arbitration Act.

4. The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or, in default of agreement, as determined by the Court of Arbitration.

5. Where a worker has given notice of an accident, or is entitled to weekly payments under this Act, he shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer or such person :

Provided that if the worker objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner as to his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed by the Governor for the purposes of this Act, and the certificate of that medical practitioner as to the condition of the worker at the time of the examination shall be given to the employer and worker, and shall be conclusive evidence of that condition.

6. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his rights under this Act in respect of the accident to which such examination relates shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself for examination within one month after being required so to do.

7. Any weekly payment may be reviewed at the request either of the employer or of the worker, and, on such review, may be ended, diminished, or increased, subject to the maximum above provided.

8. Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum to be agreed on by the parties, or, in default of agreement, to be determined by the Court of Arbitration, and such lump sum may be ordered to be invested or otherwise applied as above mentioned.

9. Notwithstanding anything hereinbefore contained, the compensation payable in any case of total or permanent partial incapacity may, in lieu of weekly payments, be such lump sum as is agreed on at any time by the parties, or as the Court of Arbitration, on the application of either party, determines :

Provided that the Court before arriving at any determination shall take into consideration the ability or otherwise of the party concerned to make payment in such lump sum.

10. Such lump sum may be invested or otherwise applied for the benefit of the worker as agreed, or, in default of agreement, as determined by the Court of Arbitration.

11. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same.