

A Resume of the . . .

WORKERS' COMPENSATION ACT

by

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With the Compliments of the
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Victorian Workers' Compensation Act

The amendments of the Workers' Compensation Act, which operated from September 1, 1946, brought many changes in principles as well as increases in benefits. In a number of cases the full effect of these changes has not been realised and confusion has been caused thereby.

The pamphlet issued by the Melbourne Trades Hall Council gave an outline of the principal amendments. This elaboration and explanation of procedure in claims for compensation will be of further assistance to unions and workers.

1. As to Liability of Employer to Pay Compensation.

Three main changes have taken place in this section, which have extended considerably the scope of the Act.

Firstly, there is now provision for accidents which either arise out of the employment or occur during the course of the employment. Previously compensation was only payable for accidents arising out of and in the course of the employment.

Secondly, there has been a repeal of the paragraph which exempted the employer from liability for accidents which did not disable a worker for at least three days. All injuries by accident arising out of and in the course of the employment are now covered; and

Thirdly, the Act now covers the consequences of all accidents which arise out of the employment notwithstanding that the worker was acting contrary to regulations, or without instructions, if such act was done by the worker for the purposes of and in connection with the employer's trade or business. It must be kept in mind, however, that a worker may be deprived of compensation where the injury is attributable to his serious and wilful misconduct.

1 (a) A Worker may be Liable to Pay Compensation as an Employer in Certain Circumstances.

Workers are warned that they would be liable to pay compensation for injury arising out of or in the course of their employment of any person who is engaged by them to do odd jobs around their home such as painting, gardening or window cleaning.

Insurance of such persons is compulsory and household policies are issued at a small premium rate.

2. Accidents Arising out of or in the Course of Employment.

An injury by accident shall be deemed to arise out of or in the course of employment if on any working day the accident occurs while the worker is:—

(a) Present at his place of employment; or

(b) Temporarily absent therefrom during ordinary recess and does not voluntarily subject himself to any abnormal risk of injury; or

(c) Travelling without substantial interruption deviation or break of journey between place of residence and place of employment, or travelling between either place and a trade or technical school which he is required to attend.

2 (a) Place of Employment.

The term "place of employment" does not necessarily include any place on the area of the employer's premises, at time other than ordinary recesses, unless the presence of the employee at the place is in connection with the employment.

2 (b) Absent During Ordinary Recess.

The term "voluntarily subject himself to abnormal risk of injury" must be given a reasonable construction. A worker is not likely to have any great difficulty in estab-

lishing a claim for compensation where he is injured during ordinary recesses as a result of exposing himself to the ordinary everyday risk of accident by traffic or by games such as football.

2 (c) Injured on Journeys Between Place of Residence and Place of Employment.

A worker would have no right to claim compensation where an injury is suffered during any substantial interruption of or substantial deviation from the journey made for a reason unconnected with his employment or during any unreasonable break of journey.

This is not to be taken to mean that a worker must necessarily travel by the most direct route or is prevented from making any ordinary break of journey. Each case will have to be taken on its merits and decided on the question of whether the deviation or break is substantial or unreasonable or otherwise.

3. Industrial Diseases.

Important changes have taken place which have considerably enlarged the scope of the Act in the cases of industrial disease.

3 (a) Interpretation of Disease.

The term "disease" now includes "any physical or mental ailment disorder defect

or morbid condition whether of sudden or gradual development and also includes the aggravation acceleration or re-occurrence of any pre-existing disease as aforesaid."

3 (b) Specified Diseases.

A list of diseases, in the same terms as the fifth schedule of the old Act, has been proclaimed in the Government Gazette. If any worker within five years prior to the date of disablement was employed in any process or occupation specified in the proclamation (as in force at the date of disablement) and the disease is a disease specified in relation to that process or occupation, then the disease shall be deemed to be due to the nature of the employment unless the employer proves to the contrary.

A copy of proclaimed diseases is appended.

Warning.—To come within this section a certificate must be obtained from a medical practitioner which describes the disease in the exact terms as set out in the proclamation. For example, a certificate that a worker is disabled from earning full wages because of industrial dermatitis is not sufficient. The certificate must specify "Dermatitis Venenata" to be within the section.

parentis to the children under 16 years of age of the worker if the wife or relative is wholly or mainly dependent on the earnings of the worker at the time of the accident; and, where applicable, the sum of ten shillings in respect of each child under the age of 16 years, who is wholly or mainly dependent on the earnings of the worker at the time of the accident but not exceeding the amount of the average weekly earnings of the worker or six pounds whichever gives the lesser amount.

(b) Workers under 21 years of age—the sum of three pounds in respect of the worker himself and where applicable the aforesaid additional amounts in respect of wife or relative and children but not exceeding the amount of his average weekly earnings before the accident, or five pounds whichever gives the lesser amount.

Where a worker under 21 years of age at the time of the accident attains that age during his incapacity he shall receive the sum of four pounds for himself with additional sums for wife or relative and any children but not exceeding five pounds per week.

(ii) In Cases of Partial Incapacity—

The formula is worked out as follows:—

(1) Find the difference between the average weekly earnings of the worker before the accident, and the average weekly amount

which he is earning or able to earn in some suitable employment or business after the accident.

(2) Find the proportion which that difference bears to his average weekly earnings before the accident.

(3) Compensation is then payable on the same proportion of full compensation which is represented by loss of earnings.

For example:—

(a) A worker before the accident earned an average of £6 per week. As a result of the accident he is only able to earn £4 per week. This would be a loss of one third in earnings and he would therefore be entitled to receive an amount equal to one third of compensation for total incapacity.

(b) A worker who earned an average of £7 per week before the accident and suffers a loss of £1 per week would be entitled to receive an amount equal to one seventh of compensation for total incapacity.

5 (a) Limits of Compensation for Incapacity.

The total liability of the employer for weekly payments for total and partial incapacity in any one case does not exceed £1,250.

5 (d) Redemption of Liability for Future Weekly Payments.

The Board in its absolute discretion, upon application of either party, in any proceedings before the Board relating to the compensation, may award a lump sum, in redemption of the employer's liability for future weekly payments, of such amounts as appears to the Board to be just and reasonable having regard to the probable duration of the injury and to such other factors as the Board thinks relevant.

(Under the old Act redemption of future weekly payments could not be awarded unless the worker had been receiving weekly payments for a period of not less than six months.)

5 (e) Review of Weekly Payments.

Any weekly payment may be reviewed by the Board, at the request of either party, and on such review may be ended, diminished or increased subject to the Act. Where a review takes place more than three months after the accident the amount of weekly payment may be increased to such an amount as would have been awarded if the average weekly earnings of the worker before the accident had been the same as the average weekly earnings which he would probably have been earning at the date of review if he had remained uninjured.

6. Where Death Results from the Injury.

The amount of compensation is as follows:—

6. (a) Where Total Dependants—

In cases where worker leaves:—

(i) a widow or any children under 16 years of age at the time of the accident (whether such widow or children are dependent on the worker's earnings or not); or

(ii) any other dependants wholly dependent upon his earnings;

the amount of compensation is £1,000 together with an additional amount of £25 in respect of each child.

6. (b) Where Partial Dependants—

Where a worker leaves no total dependants but leaves any dependants partly dependent on his earnings the amount shall be such sum as the Board considers reasonable and appropriate to the partial dependants.

6. (c) Where No Dependants, But Worker contributed to Family Income—

Where a worker under 21 years of age at the time of the accident leaves no dependants but immediately before the accident was contributing to the maintenance of the home of the members of the family, then

such members are deemed to be partial dependants and provisions relating to partial dependency apply.

6. (d) Amounts Paid or Payable Before Death—

Amounts paid or payable as weekly payments for total or partial incapacity resulting from the injury are not to be deducted from the amounts prescribed where death results from the injury, but where an amount has been paid in redemption of future weekly payments or for an injury under the schedule relating to specified injuries, such amount may be deducted except for an amount which the Board considers referable to total or partial incapacity before the death.

6. (c) Where More Than One Dependant.

In case of death where a worker leaves more than one dependant the Board having taken into account all the circumstances may apply the sum in a manner which in its opinion will be most beneficial to the dependants and provide for dependants collectively or exclude any dependant from participating in any benefit.

In practice the dependants are never paid any sums except where the Board is satisfied that it is for their benefit. The money is held in trust for the time being, and it earns full interest which is credited to the account.

Where there are both total and partial dependants the Board has power to allot the amounts partly to total and partly to partial dependants.

7. Schedule Relating to Specified Injuries.

Subject to the following provisions in this section, the amount of compensation payable for any injury mentioned in the first column shall be the amount set out opposite such injury in the second column:—

Injury	Amount of Compensation Payable
Total loss of the sight of both eyes	£1250
Total loss of the sight of an only eye	1250
Loss of both hands	1250
Loss of both feet	1250
Loss of a hand and a foot	1250
Total and incurable loss of mental powers involving inability to work	1250
Total and incurable paralysis of the limbs or of mental powers	1250
Total loss of the right arm or of the greater part of the right arm	1000
Total loss of the left arm or of the greater part of the left arm	937
Total loss of the right hand or of five fingers of the right hand or of the lower part of the right arm	875
Total loss of the left hand or of five fingers of the left hand or of the lower part of the left arm	812

Injury	Amount of Compensation Payable
Total loss of a leg	937
Total loss of a foot or of the lower part of the leg	750
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	937
Total loss of hearing	750
Complete deafness of one ear	250
Total loss of the sight of one eye	500
Loss of binocular vision	500
Total loss of the thumb of the right hand	375
Total loss of the thumb of the left hand . .	325
Total loss of the forefinger of the right hand	250
Total loss of the forefinger of the left hand	200
Total loss of the joint of the thumb	200
Total loss of the first joint of the forefinger of either hand	100
Total loss of the middle finger of the hand	150
Total loss of the little or ring finger of the hand	137
Total loss of the great toe of either foot . .	250
Total loss of a joint of the great toe of either foot	125
Total loss of any other toe or a joint of a finger	75
Total loss of a joint of any other toe	25

Partial loss of the sight of both eyes.—Such percentage of £1,250 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

Partial loss of the sight of one eye.—Such percentage of £500 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

For the purposes of this Schedule—

(a) the total loss of a limb hand foot finger thumb toe or joint or any part thereof shall be deemed to include the permanent total loss of the use of such limb hand foot finger thumb toe joint or part; and

(b) where a worker habitually uses his left hand and arm to perform work usually performed by a worker with his right hand and arm the compensation payable for the loss of such left arm or the greater part of the arm or of the total loss of the left hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the left hand shall be such amount as would have been payable for a similar loss in respect of his right arm or the part or parts thereof but the compensation for the loss of the right arm or the greater part of that arm or for the total loss of the right hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the right hand shall be such amount as would have been payable for a similar loss in respect of his left arm or the part or parts thereof if he did not habitually use his left hand and arm to perform work usually performed by a worker with his right hand and arm.

Where a worker suffers by the same accident more than one of the injuries mentioned in this schedule he shall not in any case be entitled to receive more than one thousand two hundred and fifty pounds.

7 (a) Injuries Consisting of Major or Substantial Parts of Injuries Under Schedule.

Where a worker suffers an injury which consists of a major part of an injury for which compensation is payable under the Schedule relating to specified injuries, or which consists of a lesser but substantial degree of any such injury, the Board has power to award as compensation an amount (having regard to the Schedule) which it considers proportionate to the injury suffered.

7 (b) Compensation for Joints or Fingers or Parts of Joints.

The Schedule prescribes amounts for total loss of a joint of a thumb or finger or for the total loss of a thumb or finger. It prescribes no amount for any other amount of loss to a thumb or finger. For the purpose of applying the principles of paragraph 7 (a) of this pamphlet the Board has ruled that it is just and proportionate to fix compensation by a formula based on the principle that the prescribed value of a joint is subtracted from the total prescribed value of the finger itself and the remainder is equally divided to provide a basis of assessment for each of the two other joints.

The following tables gives a guide to the basis used in assessment:—

RIGHT HAND

	Thumb	Fore-finger	Middle finger	Ring or little finger
$\frac{1}{2}$ joint	£100	£50	£37.5	£37.5
1 joint	200	100	75	75
$1\frac{1}{2}$ joints ..	287.5	137.5	93.75	90.5
2 joints	—	175	112.5	106
$2\frac{1}{2}$ joints ..	—	212.5	131.25	121.5
Total loss ..	375	250	150	137

LEFT HAND

	Thumb	Fore-finger	Middle finger	Ring or little finger
$\frac{1}{2}$ joint	£100	£50	£37.5	£37.5
1 joint	200	100	75	75
$1\frac{1}{2}$ joints ..	262.5	125	93.75	90.5
2 joints	—	150	112.5	106
$2\frac{1}{2}$ joints ..	—	175	131.25	121.5
Total loss ..	325	200	150	137

7 (c) Compensation Under Schedule Relating to Specified Injuries to be in addition to Weekly Payments.

The amount of compensation for injuries set out in the Schedule relating to specified injuries is payable in addition to any weekly payments payable in respect of incapacity.

**7 (d) Schedule Relating to Specified Injuries
—Disregard in Special Cases.**

Where it appears to the Board that the amount of compensation under the Schedule relating to specified injuries would be substantially less than the amount which would be payable under the general provisions of the Act if compensation were assessable thereunder, and that, because of the special circumstances of the worker (including the nature of his injury in relation to the nature of his former employment) the amount of compensation under the Schedule would be inadequate, then the Board has power to award compensation under the general provisions for incapacity.

This section applies to such cases as those where a worker loses his former means of livelihood as a result of being permanently incapacitated by the accident.

8. Hospital and Medical Services, Etc.

Medical, hospital, nursing, ambulance and burial services are provided under the Act for all injuries by accident or diseases arising out of or in the course of the employment including cases where the worker is not incapacitated for any period.

The employer is liable to pay as compensation, amounts up to a limit of £75 (or, where the Board considers it expedient that a larger sum should be payable, the limit may be increased to £100) for reasonable costs of services incurred by reason of the injury.

Medical services include attention examination or treatment by medical practitioners, registered dentist, registered optician, registered masseur or chiroprapist and also the provision of crutches, artificial members, eyes or teeth or of spectacle glasses. Also medical and surgical aids to rehabilitation or of curative appliances.

**8 (a) Where Worker Entitled to any Service,
etc., Free or at Reduced Rates.**

Where the worker or his dependants are, by reason of any prior agreement or arrangement or by contributions to any scheme, entitled to any of the medical services under this Act, or to the workers' burial free of charge, or at reduced rates, the payment by the employer of the reasonable loss of that service is not to be thereby reduced, but, after payment to those entitled to payment therefor, the balance of the reasonable cost provided under this section shall be paid to the worker or his dependants.

8 (b) Compensation for Medical, etc. Services to be in addition to other Compensation.

Compensation under this Section shall be payable in addition to any compensation payable under any other section of the Act.

9. Right of Worker to Claim Compensation Independent of this Act.

When an injury is caused by the personal negligence of the employer or some person for whose act the employer is responsible, or in the case of an accident where there may be a claim for damages under Common Law against a person, other than the employer, for an injury which could be otherwise covered by the Workers' Compensation Act, a worker should seek advice before accepting compensation under this Act.

Such cases may frequently arise now that workers are entitled to receive compensation for injuries which occur during ordinary recesses or between place of residence and place of employment.

Under the Workers' Compensation Act the amount of compensation is limited whereas in Common Law there is no limit except what is considered reasonable in proportion to the damage suffered, but in proceedings the responsibility is on the claimant to prove negligence on the part of the person against whom the claim is being made and therefore proper advice is necessary.

Notice of the accident should be given to the employer as soon as possible so as to protect the rights of the worker or his dependants to compensation under this Act, but a claim for such compensation should not be made until the claimant is satisfied that it would be beneficial so to claim.

A worker cannot recover both damages for negligence under Common Law and compensation under this Act, but where an amount of damages awarded is less than the amount which would be awarded under this Act, then he would be entitled to receive the balance by way of compensation.

Where death of the worker results from the injury and a dependant recovers damages under Common Law, such proceedings do not debar other dependants of the worker from receiving compensation under this Act; for example:—

A widow could recover damages and the children of the deceased worker could still receive the full amount of compensation under this Act.

10. Procedure for Making Claims.

Proceedings for recovery of compensation are not maintainable unless notice of the accident is given as soon as practicable after the happening and before the worker has left the employment and unless the claim is made within six months from the occurrence of the accident.

Failure to make a claim is not a bar where there is a reasonable cause for not making a claim within the period.

10 (a) Employer to Give Notice of Claims to Registrar.

The employer must give notice in writing of all claims for compensation (other than claims for weekly payments by adults or for medical services or burial) to the Registrar of the Board within fourteen clear days of receiving the claim and he must supply all particulars relating to the claim.

All such matters are then put in the summary list and, where the employer admits liability, the Board proceeds to make an award in cases of weekly payments for workers under 21 years of age or summons the parties and makes an award in other cases.

10 (b) Where Employer does not admit Liability for Claim for Weekly Payments of Compensation by Adults.

Where the employer refuses to admit liability in cases of claims for weekly payments by adults, or claims for medical services, it is necessary for the worker to proceed by making application to the Board on the prescribed form.

10. (c) Where Employer does not admit liability for other claims.

When notice of claim is received by the Registrar with advice that the employer refuses to admit liability, the parties are summoned to appear before the Board and direction are given as to what issues are to be tried and the case is subsequently proceeded with in accordance with the Act.

11. Conciliation Officer.

The Registrar of the Board is appointed as a Conciliation Officer and he has power to attempt to bring about an amicable settlement of questions in doubt or dispute between claimants and employers.

The Conciliation Officer may by consent of the parties make a recommendation to the Board for an award by consent.

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Description of Process of Occupation

Any manufacturing or other process involving working in contact with or the inhalation of carbon bisulphide gas

Carbon bisulphide poisoning

Any manufacturing or other process involving working in contact with or the inhalation of carbon monoxide gas.

Carbon monoxide poisoning

Any manufacturing or other process involving the use of chromic acid or bichromate of ammonium potassium or sodium or their preparations

Chrome ulceration or its sequelae

Any occupation involving the use of a nitro or amido derivative of benzol or its preparations or compounds

Poisoning by benzol or its nitro and amido derivatives (dinitro - benzol benzol aniline and similar substances)

Any work involving the handling of meat or the manufacture of meat products or animal by-products in connection with the trade of a butcher or slaughterman

Septic poisoning or its sequelae

Any occupation involving the use of vegetable or mineral matter

Dermatitis venenata

List of Proclaimed Diseases (see paragraph 3 (b))

APPENDIX

Description of Disease

Description of Process or Occupation

Arsenic poisoning or its sequelae

Any manufacturing or other process involving the use of arsenic or its preparations or compounds.

Phosphorous poisoning or its sequelae

Any manufacturing or other process involving the use of phosphorous or its preparations or compounds

Lead poisoning or its sequelae

Any manufacturing or other process involving the use of lead or its preparations or compounds

Mercury poisoning or its sequelae

Any manufacturing or other process involving the use of mercury or its preparations or compounds

Copper poisoning or its sequelae

Any manufacturing or other process involving the use of preparations of copper or its preparations or compounds

Zinc poisoning or its sequelae

Any manufacturing or other process involving the use of handling of zinc or its preparations or compounds

Anthrax

Wool combing; wool sorting; handling of hides, skins, wools, hair bristles or carcasses

Description of Disease	Description of Process or Occupation
Tenosynovitis (inflammation of the tendon sheaths of the hand, wrist, forearm or elbow)	Any process or occupation connected with the preparation preserving canning or bottling of jams, sauces, fruits, pickles or other similar foods for human consumption
Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee)	Mining
Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow)	Mining



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