

Workers' Compensation Act 1956

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An Act to consolidate and amend the law relating to compensation to workers for 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 Short Title, commencement, etc.

- (1) This Act may be cited as the Workers' Compensation Act 1956.
- (2) Except as provided in section forty-two, this Act shall come into force on the first day of April, nineteen hundred and fifty-seven.
- (3) Except as hereinafter expressly provided, nothing in this Act shall apply with respect to claims for compensation or other rights or liabilities in respect of accidents happening before the commencement of this Act.
- (4) This Act is divided into Parts, as follows:
 - Part I—Compensation. (Sections 3 to 38.)
 - Part II—Procedure. (Sections 39 to 80.)
 - Part III—Employers' Liability Insurance. (Sections 81 to 121.)
 - Part IV—Damages and Compensation. (Sections 122 to 130.)
 - Part V—Miscellaneous Provisions. (Sections 131 to 138.)

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
 - “Airman” means any worker employed as pilot, commander, navigator, or member of the crew of an aircraft;
 - “Artificial limb or aid” means an artificial limb, hand, foot, denture, or eye, any crutches or spectacles, or any other artificial aid;

“Child” includes a stepchild and an illegitimate child:

“Commonwealth” means the British Commonwealth of Nations; and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible:

“Compensation” means any money payable by an employer under this Act in respect of the injury of any worker, whether as compensation under section eleven, section fourteen, or section seventeen of this Act, or as allowances, expenses, costs, or otherwise; and also includes the reasonable expenses incurred by any employer in complying with section twenty-five or section twenty-six or subsection four of section twenty-nine of this Act:

“Compensation Court” means the Compensation Court constituted under this Act:

“Defendant”, in respect of an injured worker, means a person who is wholly or partially dependent upon the worker’s earnings or would have been so dependent but for the incapacity due to the injury; and “dependent” has a corresponding meaning:

“Employer” means a person employing any worker or workers; and includes the representative of a deceased employer; and also has the extended meaning assigned to it by subsections four, five, and six of this section:

“Factory” has the same meaning as in the Factories Act 1946:

“Lump sum” means a lump sum awarded under section thirteen of this Act:

“Minister” means the Minister of Labour:

“New Zealand aircraft” means any aircraft within the meaning of the Civil Aviation Act 1948 which is registered in New Zealand under that Act:

“New Zealand ship” means—

- (a) A New Zealand ship as defined in the Shipping and Seamen Act 1952:
- (b) Any ship which is owned by a body corporate established by the laws of New Zealand or having its principal office or place of business in New Zealand, or any ship which is in the possession of any such body corporate by virtue of a charter:
- (c) Any ship which is owned by any person or body corporate whose chief office or place of business in respect of the management of that ship is in New Zealand, or any ship which is in the possession of any such person or body corporate by virtue of a charter:
- (d) Any ship which is owned by the Crown in respect of the Government of New Zealand or which is in the possession of the Crown in that respect by virtue of a charter:

“Partial dependants”, in respect of a deceased worker, means such of the relatives of the worker as were domiciled or resident in New Zealand at the time of his death and were partially dependent upon his earnings at the time

of his death or would have been so dependent but for the incapacity due to the accident from which his death resulted:

“Person” includes a corporation sole; and also includes a body of persons, whether incorporated or not:

“Prescribed”, in relation to any amount or rate or maximum or minimum amount or rate, means such amount or rate as may for the time being be prescribed in that behalf by the Governor-General by Order in Council under section thirty-eight of this Act:

“Relative”, in respect of a worker, means his or her wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, child, grandson, granddaughter, brother, sister, half-brother, or half-sister; and, in respect of an illegitimate worker, includes his mother, and his brothers and sisters, whether legitimate or illegitimate, by the same father and mother:

“Representative” means an executor to whom probate has been granted, or an administrator, or the Public Trustee lawfully administering the estate of a deceased person:

“Seaman” means any worker employed as a master, officer, seaman, apprentice, or in any other capacity whatever on board a ship by the owner or charterer thereof:

“Share farmer” means a person who, in consideration of a share in the returns or profits, is engaged in any class of farming operations otherwise than under a contract of service:

“Ship” means every description of vessel (including barges, lighters, and like vessels) used in navigation, however propelled:

“Total dependants”, in respect of a deceased worker, means such of the relatives of the worker as were domiciled or resident in New Zealand at the time of his death and were wholly dependent upon his earnings at the time of his death or would have been so dependent but for the incapacity due to the accident from which his death resulted:

“Weekly allowance” means a weekly allowance under section twenty or section twenty-one of this Act:

“Weekly earnings” means weekly earnings calculated in accordance with sections fifteen and sixteen of this Act:

“Weekly payments of compensation” or “weekly payments” means weekly payments of compensation under section fourteen of this Act:

“Worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether remunerated by wages, salary, or otherwise; and includes a share farmer as herein defined; and also includes a person engaged in plying for hire with any vehicle the use of which is obtained from the owner thereof under any contract of bailment (other than a

hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise; and also has the extended meaning assigned to it by subsections four and six of this section; but does not include any person excluded by subsection seven of this section.

(2) For the purposes of this Act the wife of a deceased male worker and his children under the age of sixteen years shall be conclusively presumed to have been dependent on the earnings of that worker at the time of his death, and, if they are ordinarily resident in New Zealand, their dependency shall be deemed to be total unless it is proved in fact to be partial only:

Provided that nothing in this subsection shall apply to a wife who at the time of her husband's death has deserted him without just cause.

(3) If any child is born to a worker after his death, that child shall be deemed for the purposes of this Act to be a dependant of the worker in the same manner as if born in his father's lifetime.

(4) For the purposes of this Act a salesman, canvasser, collector, insurance agent, or other person paid wholly or partly by commission shall be deemed to be a worker employed by the person by whom the commission is payable (whether or not the relation between them is that of master and servant), unless the commission is received by him in respect of work incidental to a trade or business regularly carried on by him or by a firm of which he is a member.

(5) In relation to a share farmer, every person by agreement with whom the share farmer is entitled to receive a share of the returns or profits derived from the farming operations the subject-matter of the agreement shall, for the purposes of this Act, be deemed to be the employer; and, in relation to any person engaged in plying for hire with any vehicle (as mentioned in the definition of the term "worker"), the owner of the vehicle shall for the purposes of this Act be deemed to be the employer:

Provided that a person employed by a share farmer in connection with his farming operations, or a person employed in connection with any vehicle as hereinbefore mentioned by any person engaged in plying for hire with the vehicle, shall not, by reason of that employment, be deemed for the purposes of this Act to be so employed by the employer of the share farmer or by the employer of the person plying for hire, as the case may be.

(6) Notwithstanding anything in this Act or any other Act, when a contract to perform any work in a gold mine or a coal mine, or a contract to cut standing timber or scrub, or a contract to clear land of stumps or logs, or a contract for more than one of those matters, 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, those contractors shall for the purposes of this Act be deemed to be working under a contract of service with an employer, and the person with whom the contractor

has entered into the contract shall, for the purposes of this Act, be deemed to be that employer.

(7) A worker who is the husband or wife of his or her employer shall be deemed not to be a worker for the purposes of this Act except as provided in section ninety-eight of this Act.

Compare: 1922, No. 39, ss. 2, 4(2),(3), 11(4), 63; 1936, No. 45, s. 3; 1945, No. 19, s. 3; 1947, No. 58, ss. 43(2), 47(2), 49(1),(2),(3); 1950, No. 84, ss. 3(2), 9b; 1952, No. 17, s. 19(1); 1953, No. 22, s. 8(1)

Part I **Compensation**

Liability of Employer

3 Employer liable to pay compensation for accidents to worker

(1) Where in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

(2) This Act applies to the employment of any worker in any occupation, whether or not the employment is in or for the purposes of any trade or business carried on by the employer, and whether or not the employment is of a casual nature.

(3) Without limiting the foregoing provisions of this section, it is hereby declared that where an accident happens to a worker who is an apprentice while he is attending at a technical school or other place for training or instruction (whether during ordinary hours of employment or otherwise), the accident shall be deemed to arise out of and in the course of his employment if his attendance at that school or place is required by or under his contract of apprenticeship.

Compare: 1922, No. 39, s. 3(1),(2); 1949, No. 51, s. 61(1)

4 Accidents to workers acting in breach of Act, regulations, or orders

Without limiting the provisions of section three of this Act, it is hereby declared that where an accident happens to a worker while he is acting in contravention of any Act or of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or while he is acting without instructions from his employer, the accident shall be deemed to arise out of and in the course of his employment if the accident would have been deemed so to have arisen had the worker not been acting in contravention as aforesaid or without instructions from his employer, as the case may be.

Compare: 1922, No. 39, s. 3(5); 1940, No. 18, s. 61

5 Accidents to workers travelling to or from work

Without limiting the provisions of section three of this Act, it is hereby declared that where an accident happens to a worker while he is travelling

to or from his work by a means of transport, the accident shall be deemed to arise out of and in the course of his employment if—

- (a) The employer has provided the means of transport primarily for the purpose of carrying workers employed by him; or
- (b) The means of transport is not a public passenger transport service and the employer has expressly or impliedly authorised its use for the purpose; or
- (c) The employer has arranged with the worker, or with any union or association of which the worker is a member, for the transportation of the worker to or from work by that means of transport and has paid or become liable to pay the whole or any portion of the fare or cost of carriage of the worker by that means of transport.

Compare: 1947, No. 58, s. 45

6 Accidents to workers during meal or rest times

Without limiting the provisions of section three of this Act, it is hereby declared that where an accident happens to a worker during any temporary interruption of his work for a meal or for rest or refreshment, the accident shall be deemed to arise out of and in the course of his employment if the accident would have been deemed so to have arisen had it happened at the place of employment, and if—

- (a) The accident happens upon premises occupied by the employer; or
- (b) The accident happens upon premises to which the worker has by virtue of his employment the right of access during that temporary interruption of his work; or
- (c) The accident happens upon premises to which the worker is permitted to resort during that temporary interruption of his work by the express or implied authorisation of his employer.

7 Act to apply to accidents in New Zealand or on board New Zealand ships or aircraft or to New Zealand seamen or airmen

- (1) This Act applies to accidents happening in New Zealand, but, except as provided in this section, does not apply to accidents happening outside New Zealand.
- (2) This Act applies to an accident happening in or about a New Zealand ship to a worker who is not a seaman employed in the ship, notwithstanding that the ship may be outside New Zealand at the time of the accident, if the Act would have been deemed so to apply had the ship been in New Zealand at that time.
- (3) This Act applies to an accident happening in or about a New Zealand aircraft to a worker who is not an airman employed in the aircraft, notwithstanding that the aircraft may be outside New Zealand at the time of the accident, if the Act

would have been deemed so to apply had the aircraft been in New Zealand at that time.

- (4) This Act applies to an accident happening to a seaman employed in a New Zealand ship, and arising out of and in the course of his employment, whether the accident happens in New Zealand or elsewhere, or in the ship or elsewhere.
- (5) Any sum payable by way of compensation under this Act by the owner of a ship shall be paid in full, notwithstanding anything contained in section four hundred and sixty of the Shipping and Seamen Act 1952.
- (6) Subsections two and three of section one hundred and seven of the Shipping and Seamen Act 1952 (which relates to the recovery of wages of seamen and apprentices lost with their ship), shall apply with respect to proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and in such a case section fifty-three of this Act shall apply as if the time limited by subsection one of that section for the commencement of an action were within eighteen months after the date at which the ship is deemed to have been lost with all hands.
- (7) This Act applies to an accident happening to an airman employed in a New Zealand aircraft, and arising out of and in the course of his employment, whether the accident happens in New Zealand or elsewhere, or in the aircraft or elsewhere.

Compare: 1922, No. 39, s. 11; 1947, No. 58, s. 43(1)

8 Workers employed under illegal contracts

If in any proceedings for the recovery of compensation under this Act it appears to the Judge, Magistrate, or other person by whom the claim for compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal,—

- (a) He shall, where the illegality arose by reason of the injured worker being under a minimum age prescribed by or under any Act; and
- (b) He may in any other case, if, having regard to all the circumstances, he thinks it proper to do so,—

deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

Compare: 1945, No. 19, s. 5

9 Reciprocal application of Act outside New Zealand

Where the Governor-General is satisfied that by the laws of any other territory within the Commonwealth compensation for accidents is payable to the relatives of a deceased worker although they are resident in New Zealand, he may, by Order in Council, declare that relatives resident in that territory shall have

the same rights and remedies under this Act as if they were resident in New Zealand.

Compare: 1922, No. 39, s. 59

10 With certain specified exceptions, Act to bind the Crown

- (1) Except as otherwise provided in this section, this Act shall bind the Crown.
- (2) Except in such cases as may be prescribed by regulations made under this Act,—
 - (a) This Act shall not apply to accidents happening to persons in the naval or military or air service of the Crown and arising out of their employment in that service, or to accidents happening to persons in the service of the Crown otherwise than in respect of the Government of New Zealand and arising out of their employment in that service;
 - (b) Part III of this Act shall not bind the Crown as the employer of any workers, and shall not apply to claims in respect of accidents happening to workers in the service of the Crown.

Compare: 1922, No. 39, s. 12; 1950, No. 40, s. 159; 1950, No. 84, s. 7(3)

Compensation for Death

11 Compensation for death

- (1) Where the death of the worker results from the injury the amount of compensation payable shall be as follows:
 - (a) If the worker leaves any total dependants, the compensation (subject to paragraph (c) of this subsection) shall be a sum equal to the aggregate of weekly payments of compensation at the prescribed maximum amount for two hundred and seventy-four weeks;
 - (b) If the worker does not leave any total dependants but leaves any partial dependants, the compensation (subject to paragraph (c) of this subsection) shall be such sum as is reasonable and proportionate to the injury to those dependants, but not exceeding in any case the amount that would have been payable under paragraph (a) of this subsection if that paragraph had applied;
 - (c) In every case where the amount of any weekly payments of compensation paid to the worker in respect of the accident which caused his death (including any lump sum in so far as it is paid instead of any such weekly payments) exceeds the aggregate of weekly payments of compensation at the prescribed maximum amount for thirty-nine weeks the amount of compensation payable in respect of his death under paragraph (a) or paragraph (b) of this subsection shall be reduced by the amount of that excess, but except as aforesaid no part of any amount paid to the worker by way of compensation under this Act shall be deducted from the amount of compensation payable in respect of his death.

(2) This section shall apply in every case where the death of the worker occurs after the commencement of this Act as the result of an accident happening on or after the seventeenth day of September, nineteen hundred and fifty-three (whether before or after the commencement of this Act).

Compare: 1922, No. 39, s. 4(1)(a),(b),(d); 1953, No. 22, s.-3(1),(2)

Compensation for Incapacity

12 Compensation for incapacity

Where the worker's total or partial incapacity for work results from the injury, the compensation payable shall, in default of agreement, be in the discretion of the Court either a lump sum or a weekly payment during the period of his incapacity.

Compare: 1922, No. 39, s. 5(1)

13 Lump sum

(1) Where a lump sum is awarded by way of compensation instead of a weekly payment, it shall be a sum equal to the aggregate of the weekly payments of compensation and weekly allowances (if any) which in the opinion of the Court would probably become payable to the worker during the period of his incapacity if compensation by way of a weekly payment were then awarded instead of a lump sum.

(2) For the purpose of awarding a lump sum by way of compensation in respect of an accident happening before the commencement of this Act the weekly payments shall be calculated as if this Act had not been passed.

(3) When a lump sum has been awarded to a worker under this section references in this Act to the period or the amount of his weekly payments of compensation shall be construed as references to the period or the amount thereof as taken into account in calculating the amount of the lump sum.

Compare: 1922, No. 39, s. 5(3); 1947, No. 58, s. 39(1)

14 Weekly payments

(1) During any period of total incapacity the weekly payment of compensation shall be an amount equal to eighty per cent of the worker's weekly earnings, but not being less than the prescribed minimum amount, and not exceeding the prescribed maximum amount.

(2) Subsection one of this section shall apply with respect to compensation payable after the commencement of this Act for any period after the commencement of this Act in respect of accidents happening before or after the commencement of this Act.

(3) Subject to section seventeen of this Act, during any period of partial incapacity the weekly payment of compensation shall be an amount equal to eighty

per cent of the worker's loss of earnings, but not exceeding the prescribed maximum amount.

- (4) For the purposes of subsection three of this section the loss of earnings of any worker shall, except as provided in section sixteen of this Act, be deemed to be the amount by which the worker's weekly earnings exceed the weekly amount that he is earning after the accident in any employment or business, or is able to earn in some suitable employment provided or found for him after the accident by the employer by whom he was employed at the time of the accident.
- (5) Weekly payments of compensation shall in no case extend over a longer aggregate period than six years.
- (6) In fixing the amount of the weekly payment regard shall be had to any payment, allowance, or benefit (not being compensation as defined in subsection one of section two of this Act) which the worker may receive from the employer during the period of his incapacity.
- (7) The proportion of the weekly payment of compensation payable in respect of incapacity for part of a week shall be the proportion that the number of the worker's working hours or days of incapacity during that week (exclusive of overtime) bears to the worker's normal working hours or days for that week (exclusive of overtime).

Compare: 1922, No. 39, s. 5(5),(6),(9); 1950, No. 84, s. 44; 1953, No. 22, ss. 4, 6

15 Weekly earnings as basis for calculating compensation

- (1) For the purposes of the assessment of compensation, the weekly earnings of any worker shall, except as otherwise provided in this Act, be deemed to be a full working week's earnings (exclusive of any payment for overtime) at the ordinary rate of pay for the work in which the worker 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.
- (2) If any question arises under this section as to what constitutes a full working week, it shall be determined as follows:
 - (a) If, in respect of the work at which the worker was employed at the time of the accident, the provisions of any award or industrial agreement or of any agreement under the Labour Disputes Investigation Act 1913 were then in force, the full working week shall be deemed to be the working week (exclusive of overtime) provided for by that award or agreement:
 - (b) If, in any case to which paragraph (a) of this subsection does not apply, there is, in respect of work of the kind in which the worker was employed at the time of the accident, an agreement between employers and workers, or a general recognition on the part of employers and workers, as to what constitutes a full working week, the full working week shall be deemed to be the working week so agreed upon or

recognised (exclusive of overtime), being not less in any case than the working week under paragraph (c) of this subsection:

- (c) In every other case, the full working week shall be deemed to be a week of forty hours (where employment is by the hour) or a week of five days (where employment is by the day).
- (3) In the case of a contractor to whom subsection six of section two of this Act applies, or of any person whose remuneration is fixed by reference to the amount of work done, his weekly earnings shall be deemed to be the largest of the amounts following:
 - (a) The amount of his weekly earnings ascertained in accordance with subsection one of this section;
 - (b) The amount that he would have received as a full week's earnings (exclusive of overtime) for the work in which he was employed at the time of the accident if he had been employed at the ruling rate of wages payable for the same class of work in the same district;
 - (c) The minimum rate of wages fixed under the Minimum Wage Act 1945 for adult male or female workers, as the case may require.
- (4) In the case of any person (not being a servant) to whom subsection three of this section does not apply, his weekly earnings shall be deemed to be the minimum rate of wages fixed under the Minimum Wage Act 1945 for adult male or female workers, as the case may require.
- (5) In calculating under subsection one or subsection three of this section the weekly earnings of any worker, no account shall be taken of any sums that are paid to the worker to cover any special expenses imposed on him by the nature of his employment.
- (6) Notwithstanding anything in the foregoing provisions of this section, if in the case of any worker (not being a person to whom subsection four of this section applies) his weekly earnings, ascertained in accordance with those provisions, would be less than his average weekly earnings, his weekly earnings, instead of being ascertained as aforesaid, shall be deemed and taken to be his average weekly earnings. In this subsection the expression "average weekly earnings" means the average weekly earnings earned by a worker while at work during the twelve months preceding the accident if he has been so long employed by the same employer, and, if not, then for any shorter period during which he has been employed by the same employer; but in calculating that average no account shall be taken of any periods during which the worker has been absent from work or of any sums that are paid to the worker to cover any special expenses imposed on him by the nature of the employment. Where a worker has entered into concurrent contracts of service with two or more employers under which he works at one time for one such employer and at another time for another such employer, his average weekly earnings shall be calculated as if

his earnings under all those contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(7) For the purposes of this Act—

- (a) A worker's weekly earnings shall be calculated as if they were payable during each week of the period of the weekly payments of compensation, having regard to any increases or decreases made from time to time in ordinary rates of pay, ruling rates of pay, or minimum rates of wages, as the case may require:
- (b) A worker's weekly earnings calculated in accordance with subsection six of this section shall be deemed to be increased or reduced from time to time by the amount by which the appropriate minimum wage under the Minimum Wage Act 1945 applicable at the time of the accident is for the time being increased or reduced, as the case may be.

(8) This section shall apply with respect to compensation payable after the commencement of this Act for any period after the commencement of this Act in respect of accidents happening before or after the commencement of this Act.

Compare: 1936, No. 45, s. 7; 1947, No. 58, s. 40; 1952, No. 17, s. 15; 1953, No. 22, s. 7

16 Compensation for permanent incapacity when worker under twenty-one

- (1) Notwithstanding anything to the contrary in sections fourteen and fifteen of this Act, when a worker is under the age of twenty-one years, or is an apprentice under the Apprentices Act 1948, or an apprentice or improver under an award or industrial agreement, or is employed under a contract of service under which he is expressly required to undergo any training, instruction, or examination for the purpose of becoming qualified for the occupation to which the contract of service relates, and his incapacity, whether total or partial, is permanent, his weekly earnings shall be deemed to be the weekly sum which, if he had not suffered the incapacity, he would probably have been able to earn after he had attained the age of twenty-one years, or had completed his apprenticeship, or had ceased to be an improver, or had become qualified as aforesaid, as the case may be, and his loss of earnings (if any) shall be deemed to be the amount by which that sum exceeds the weekly sum which he will probably be able to earn after attaining the age of twenty-one years, or on the completion of his apprenticeship, or on ceasing to be an improver, or on becoming qualified, as aforesaid.

- (2) Nothing in this section shall extend to the compensation payable for the temporary incapacity of a worker.

Compare: 1922, No. 39, s. 9; 1936, No. 45, s. 8; 1944, No. 25, s. 69

17 Compensation for injuries specified in First Schedule, and other permanent physical injuries

- (1) Notwithstanding the foregoing provisions of this Act as to the rate of compensation for incapacity under section fourteen of this Act, compensation for

any injury specified in the First Schedule to this Act shall be assessed at the appropriate percentage specified in that Schedule of the aggregate of weekly payments of compensation at the prescribed maximum amount for six years, subject, however, to the provisions of this section.

- (2) Where the worker suffers by the same accident more than one of the injuries specified in the said First Schedule, he shall not be entitled to receive more than one hundred per cent of the aggregate referred to in subsection one of this section.
- (3) Where the worker suffers the loss of or permanent physical injury to any part of the body, there shall be taken into account, in assessing the compensation payable in respect thereof under this section, any sum previously received by the worker by way of compensation in respect of the loss of or any injury to that part of the body or any portion thereof under this section or any corresponding former provision.
- (4) For the purposes of the said First Schedule the permanent loss of the sight of one eye by a worker who is already permanently without the sight of the other eye shall be deemed to be the permanent loss of both eyes:
Provided that there shall be taken into account, in assessing the compensation payable in respect thereof under this section, any sum previously received by the worker by way of compensation in respect of that other eye under this section or any corresponding former provision.
- (5) Nothing in this section shall limit the amount of compensation payable for any injury during any period of total incapacity due to illness resulting from that injury, but any such period for which compensation is paid shall be deducted from the period of six years referred to in subsection one of this section in assessing the compensation payable in respect of the same injury under this section.
- (6) Where as the result of the accident the worker suffers a permanent physical injury that is not specified in the First Schedule to this Act, and—
 - (a) A medical referee appointed under this Act, or a registered medical practitioner specially approved by the employer and the worker, certifies that in his opinion; or
 - (b) The Court considers that—
having regard to the percentages allotted to the injuries specified in the said First Schedule, the injury is equal to not less than such percentage of total incapacity as may be specified in the certificate or stated by the Court, being not less than five per cent, the foregoing provisions of this section shall apply as if the injury were specified in the said First Schedule and as if the percentage specified in the certificate or stated by the Court were allotted to the injury in that Schedule.

(7) Where the worker suffers an injury for which compensation would, but for this subsection, be payable under the foregoing provisions of this section, and it appears to the Court—

- That the amount of compensation that would be payable under this section would be substantially less than the amount of compensation that would be payable if this section did not apply; and
- That the amount of compensation payable under this section would be inadequate because of the circumstances of the worker, including (without limiting the generality of this provision) the nature of his injury in relation to the nature of his former usual employment,—

the Court may award compensation calculated as provided in the foregoing provisions of this Act, as if subsections one to six of this section did not apply.

Compare: 1922, No. 39, Second Schedule; 1943, No. 23, s. 5; 1947, No. 58, s. 41; 1949, No. 11, s. 5; 1951, No. 51, s. 2(4)

18 Compensation for hernia

(1) For the purposes of this Act a worker's incapacity resulting from hernia shall be deemed to be incapacity resulting from injury by accident arising out of and in the course of his employment, if the following conditions exist, namely:

- The hernia is—
 - Clinical hernia of disabling character appearing to have recently occurred for the first time; or
 - An aggravation or strangulation of a preexistent hernia resulting in immediate pain and disablement; and
- The onset of the hernia was immediately preceded by a strain or other accident arising out of and in the course of the employment; and
- The worker reported his condition to his employer immediately after the occurrence of the strain or other accident, or ceased work at the time of the strain or other accident, and reported his condition to his employer within seventy-two hours thereafter.

(2) Where the Compensation Court or a Magistrate's Court is satisfied that it is reasonable so to do, that Court may order that a worker's right to compensation under this section shall cease on a date to be specified in that behalf in the order, being not less than four weeks after the date of the order, unless the worker undergoes a surgical operation for a cure of the hernia.

(3) Where an order is made under subsection two of this section the following provisions shall apply:

- If the worker does not submit himself to the operation before the date so specified or before such later date as the Compensation Court or a Magistrate's Court may specify in that behalf in any subsequent order,

the weekly payments of compensation payable to the worker shall cease on that date or later date, as the case may be:

- (b) If the worker submits himself to the operation as aforesaid, the weekly payments of compensation payable to him shall continue for a period of twelve weeks from the date of the operation and shall then cease: Provided that if the worker is not wholly recovered at the end of that period the Compensation Court or a Magistrate's Court may extend his right to receive weekly payments of compensation for such further period or periods as the Court thinks fit.
- (4) The failure of a worker to make any report to his employer in pursuance of the foregoing provisions of this section shall not deprive the worker of any compensation to which he may be otherwise entitled in respect of hernia if the Compensation Court considers that the failure was excusable.

Compare: 1943, No. 23, s. 6

Industrial Diseases

19 Compensation for diseases arising out of employment

- (1) Where a worker's total or partial incapacity for work or a worker's death results from any disease, and the disease is due to the nature of any employment in which the worker was employed within the prescribed period before the date of the commencement of the incapacity (or the date of the death if there has been no previous period of incapacity), compensation shall be payable as if the disease were a personal injury by accident arising out of and in the course of that employment, and all the provisions of this Act shall apply accordingly, subject, however, to the provisions of this section.
- (2) For the purposes of this section, the term "prescribed period" means—
 - (a) In the case of any disease due to exposure to X-rays, ionising particles, radium or other radioactive substances, or other forms of radiant energy, a period of five years;
 - (b) In any other case, a period of two years.
- (3) No compensation shall be payable under this section in respect of the incapacity or death of a worker if that incapacity commences or that death happens, as the case may be, more than the prescribed period after the worker has ceased to be employed by the employer from whom the compensation is claimed in any employment to the nature of which the disease is due:

Provided that this subsection shall not apply to the death of a worker when his death has been preceded, whether immediately or not, by any period of incapacity in respect of which the employer is liable under this section.
- (4) For the purpose of calculating the weekly earnings of the worker in a claim for compensation under this section, the date of the commencement of the incapacity of the worker (or the date of his death if there has been no previous

period of incapacity) shall be treated as the date of the happening of the accident, if he is then employed by the employer from whom the compensation is claimed in any employment to the nature of which the disease is due; and if he is not then so employed, the last day on which he was so employed shall for this purpose be treated as the date of the happening of the accident.

- (5) For all the other purposes of this Act, the date of the commencement of the incapacity of the worker (or the date of his death if there has been no previous period of incapacity) shall be treated as the date of the happening of the accident.
- (6) The compensation shall be recoverable from the employer who last employed the worker within the prescribed period preceding the date of the commencement of the incapacity (or the date of the death if there has been no previous period of incapacity) in any employment to the nature of which the disease was due, and notice of the death or disablement shall be given to that employer and may be so given notwithstanding that the worker has voluntarily left his employment:

Provided that—

- (a) The worker or his dependants, if so required, shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in any employment to the nature of which the disease was due within the prescribed period preceding the date of the commencement of the incapacity (or the date of the death if there has been no previous period of incapacity) as he or they may possess, and if that information is not furnished or is not sufficient to enable that employer to take proceedings under paragraph (b) of this proviso that employer, upon proving that the disease was not contracted while the worker was in his employment, shall not be liable to pay compensation:
- (b) If that employer alleges that the disease was in fact contracted while the worker was in the employment of some other employer within the prescribed period before the date of the commencement of the incapacity (or the date of the death if there has been no previous period of incapacity), and not while in his employment, he may join that other employer as a party to the proceedings before the Court, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable:
- (c) If the disease is of such a nature as to be contracted by a gradual process any other employers who within the prescribed period before the date of the commencement of the incapacity (or the date of the death if there has been no previous period of incapacity) employed the worker in any employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be determined by the Court.

- (7) If any worker contracts any disease in respect of which he would be entitled to a miner's benefit under the Social Security Act 1938, he shall not be entitled to receive any compensation in respect of that disease for any period for which he receives the miner's benefit, or to receive a miner's benefit for any period for which he receives compensation, and no compensation shall be paid in a lump sum in respect of incapacity caused by any such disease as aforesaid.
- (8) In any case where the death of a worker results from any such disease as aforesaid, payments of miner's benefit received by the worker shall be deducted from any compensation payable in respect of his death in the same manner and to the same extent as if they were weekly payments of compensation.
- (9) Nothing in this section shall affect the right of any person to recover compensation in respect of a disease if the disease is a personal injury by accident within the meaning of this Act.

Compare: 1922, No. 39, s. 10; 1947, No. 58, s. 42

Allowances and Expenses

20 Dependants' allowances

- (1) Where the death of the worker results from the injury and the worker leaves any total dependant or total dependants under the age of sixteen years and ordinarily resident in New Zealand, there shall be payable in respect of that dependant or each of those dependants, in addition to the compensation otherwise payable under this Act, an allowance of the prescribed amount.
- (2) Where the death of the worker results from the injury and the worker leaves any partial dependant or partial dependants under the age of sixteen years and ordinarily resident in New Zealand, there shall be payable in respect of that dependant or each of those dependants, in addition to the compensation otherwise payable under this Act, an allowance of such sum as is reasonable and proportionate to the injury to the dependant, but not exceeding the prescribed amount.
- (3) Subsections one and two of this section shall apply in every case where the death of the worker occurs after the commencement of this Act as the result of an accident happening on or after the seventeenth day of September, nineteen hundred and fifty-three (whether before or after the commencement of this Act).
- (4) Where the worker's total incapacity results from the injury, there shall be payable, in addition to the compensation otherwise payable under this Act,—
 - (a) So long as the worker is a married man and his wife is ordinarily resident in New Zealand, a weekly allowance at the prescribed rate in respect of his wife;
 - (b) If the worker is an unmarried man, so long as he has any dependant or dependants under the age of sixteen years and ordinarily resident in New Zealand, and a dependent woman who is in the position of a parent to

that dependant or those dependants, a weekly allowance at the prescribed rate in respect of that woman:

(c) So long as the worker has any dependant or dependants under the age of sixteen years and ordinarily resident in New Zealand, a weekly allowance at the prescribed rate in respect of that dependant or each of those dependants:

Provided that no allowance under this subsection shall be paid to any worker after the expiration of the period of his weekly payments of compensation for total incapacity:

Provided also that the total amount of the allowances payable to any worker under this subsection for any week, together with the amount of his weekly payment of compensation for that week, shall not exceed ninety per cent of his weekly earnings.

(5) Subsection four of this section shall apply with respect to compensation payable after the commencement of this Act for any period after the commencement of this Act in respect of accidents happening before or after the commencement of this Act.

(6) For the purposes of subsection four of this section—

- (a) A male worker's children under the age of sixteen years shall be conclusively presumed to be his dependants;
- (b) Except as provided in paragraph (a) of this subsection, a person under the age of sixteen years shall not be deemed to be dependent on the earnings of any worker unless he is wholly or mainly dependent on those earnings;
- (c) A man shall be deemed to be unmarried if he is not for the time being married, whether or not he has previously been married;
- (d) A man who is living apart from his wife may in the discretion of the Court be regarded as an unmarried man.

(7) For the purposes of this section a person over the age of sixteen years and under the age of eighteen years shall be deemed to be under the age of sixteen years if he is engaged in a course of education or training on a full time basis without pay.

21 Personal attendance allowance

Where, as the result of the injury, the worker suffers an incapacity of such a nature that he must have the constant personal attendance of another person, the worker shall be entitled to receive from his employer, in addition to the compensation otherwise payable under this Act, a weekly allowance at the prescribed rate for the period during which that personal attendance is necessary,

but not including any period during which the worker is maintained in any hospital or other institution without charge to himself or to any other person:

Provided that no allowance under this section shall be paid to any worker for any week after the expiration of the period of his weekly payments of compensation.

Compare: 1950, No. 84, s. 45

22 Medical and funeral expenses

In addition to the compensation (if any) otherwise payable under this Act, there shall be payable—

- (a) Where the death of the worker results from the injury, a sum equal to the reasonable expenses of his medical or surgical attendance, including first aid, and of his funeral, but not exceeding the prescribed maximum amount in respect of any occasion or in respect of the total sum;
- (b) In any other case, but subject to section twenty-seven of this Act, a sum equal to the reasonable expenses incurred in respect of the medical or surgical attendance on the worker in respect of his injury, including first aid and physiotherapy, but not exceeding the prescribed maximum amount in respect of any occasion or in respect of the total sum.

Compare: 1922, No. 39, ss. 4(1)(c), 5(10)

23 Provision of artificial limbs or aids

Where, as the result of the injury, the provision of any artificial limb or aid for the worker becomes necessary or desirable, the employer shall be liable to pay, in addition to the compensation otherwise payable under this Act, the reasonable cost of the artificial limb or aid and the reasonable cost of keeping it in repair for a period not exceeding three years:

Provided that the liability of the employer under this section in respect of the repair of the artificial limb or aid shall not exceed the prescribed maximum amount.

Compare: 1947, No. 58, s. 46

24 Damage to teeth or artificial limbs or aids or clothing

Where, as the result of an accident arising out of and in the course of his employment, a worker—

- (a) Suffers damage to his natural teeth; or
- (b) Suffers damage to any artificial limb or aid (not being spectacles) being used or worn by him at the time of the accident; or
- (c) Suffers an injury for which compensation is payable and damage to any clothing or spectacles being worn by him at the time of the accident,— the worker shall be entitled to receive from his employer, in addition to the compensation (if any) otherwise payable under this Act, the reasonable cost,

in the case of damage to natural teeth, of repairing the teeth or replacing them with an artificial denture or artificial dentures, or, in the case of damage to any artificial limb or aid, clothing, or spectacles, the reasonable cost of repairing or, if necessary, replacing it:

Provided that, if the injury or damage is not of such a nature as to cause the worker to cease working, notice of the damage shall be given to the employer forthwith after the happening of the accident:

Provided also that the liability of the employer under this section shall not exceed the prescribed maximum amount.

Compare: 1949, No. 51, s. 62

Medical Provisions

25 Conveyance of injured workers

- (1) Where any accident happens to a worker in any employment and any injury caused thereby to the worker necessitates his immediate removal to a hospital, or to a medical practitioner for medical attention and then to his residence or to a hospital, or to his residence (medical attendance away from his residence not being required), the employer shall forthwith at his own expense provide or arrange for the necessary conveyance therefor, and the employer shall also pay all reasonable expenses for meals and lodging incurred by or on behalf of the worker during the course of any such removal.
- (2) Where any worker to whom an accident happens has been removed as mentioned in this section, his removal shall be deemed to have been necessitated by an injury caused to the worker by the accident.
- (3) Any employer who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Compare: 1947, No. 58, s. 47(1),(3)

26 Transport expenses of injured workers requiring medical treatment

- (1) Where a worker is entitled to compensation under this Act in respect of any injury, and a registered medical practitioner certifies that he is attending the worker or has examined him, and that the worker should receive any medical or surgical treatment that is not available unless the worker travels to a town in which he does not reside or to a place not less than five miles from the place where he resides, there shall be payable by the employer, in addition to the compensation otherwise payable under this Act, the reasonable expenses incurred for the transport of the worker to and from the nearest place in which that treatment is available on each occasion on which it is necessary for him to

travel to receive that treatment, and for meals and lodging necessarily obtained by him away from his place of residence on any such occasion:

Provided that where the employer provides any such transport or meals or lodging for the worker no expenses shall be payable to the worker in respect thereof:

Provided also that, except where the Court otherwise orders, or a registered medical practitioner certifies that no available public passenger transport service is suitable, the transport expenses so payable shall be calculated at the lowest rate at which the worker can be transported to and from that place by any available public passenger transport service.

(2) The liability of the employer under this section shall not exceed the prescribed maximum amount.

Compare: 1943, No. 23, s. 8; 1947, No. 58, s. 48

27 Medical certificates to be delivered by injured worker

(1) Where any accident happens to any worker in any employment whereby he suffers incapacity, and the incapacity continues for more than seven days, he shall, as soon as practicable after the expiration of that seven days, deliver to the employer a medical certificate in the prescribed form from a registered medical practitioner.

(2) Thereafter while the incapacity continues and has not been certified by a registered medical practitioner to be permanent, the worker shall so deliver such a certificate at such times, being not more often than once a month, as may be required by the employer.

(3) If the worker fails to comply in any respect with this section no sum shall thereafter become payable under paragraph (b) of section twenty-two of this Act, unless the Compensation Court otherwise orders.

28 Injured worker to submit to medical examination if required

(1) Where a worker has given notice of an accident or claims compensation or is entitled to weekly payments under this Act, he shall if and as often as so required by the employer or by any person by whom the employer is entitled to be indemnified, whether by way of insurance or otherwise, in respect of any liability under this Act, or by any other person liable to pay compensation under this Act, submit himself, at the expense (if any) of the employer or of that other person (whether for medical expenses, transport, or loss of wages or earnings), for examination by any registered medical practitioner nominated and to be paid by the employer or by that other person.

(2) If the worker at any time without sufficient justification refuses or neglects to submit himself to any such examination or in any way obstructs or delays the same, his rights under this Act in respect of the accident to which the examination relates shall be suspended until the examination takes place, and shall

absolutely cease if he fails without sufficient justification to submit himself for examination within one month after being required so to do.

- (3) Where a right to compensation is so suspended, no compensation shall be payable in respect of the period of suspension.
- (4) This section shall apply whether the worker is, at the time when he is required to submit himself for examination, resident in New Zealand or elsewhere, but if he is resident elsewhere than in New Zealand he shall be required to submit himself for examination by a duly qualified medical practitioner of the place where he is resident.
- (5) This section shall be read subject to any restrictions and conditions which may be imposed by regulations made under this Act as to the frequency of medical examinations and the manner in which they are to be conducted.

Compare: 1922, No. 39, s. 57

29 Medical referees

- (1) The Governor-General may from time to time appoint such registered medical practitioners to be medical referees for the purposes of this Act as he thinks fit, and the remuneration of those medical referees shall, subject to regulations made under this Act, be paid out of money appropriated by Parliament for that purpose.
- (2) The Compensation Court may submit to a medical referee, or to some other registered medical practitioner nominated by it, for report, any matter which seems material to any question arising in relation to compensation under this Act, and may, if it thinks fit, act in accordance with that report in the same manner as if it were evidence duly given before the Court. Any registered medical practitioner to whom any matter is submitted for report as aforesaid shall in relation to that matter be deemed to be a medical referee appointed under this section.
- (3) The Compensation Court may, in the course of any action or proceeding under this Act, or where it considers it desirable to do so, order any person who claims or is entitled to compensation in respect of any injury or disease to submit to medical examination by any one or more medical referees or other registered medical practitioners nominated by the Court, and in respect of any such order subsections two and three of section twenty-eight of this Act shall be applicable.
- (4) Where any worker is required to travel to a town in which he does not reside or to a place not less than five miles from the place where he resides for the purpose of submitting to medical examination pursuant to an order under subsection three of this section, there shall be payable by his employer, in addition to the compensation (if any) otherwise payable under this Act, the reasonable expenses incurred for the transport of the worker to and from that town or place, and for meals and lodging necessarily obtained by him away

from his place of residence, together with the amount of any wages lost by him by reason of his submitting to the examination:

Provided that where the employer provides any such transport or meals or lodging for the worker no expenses shall be payable to the worker in respect thereof:

Provided also that, except where the Court otherwise orders, or a registered medical practitioner certifies that no available public passenger transport service is suitable, the transport expenses so payable shall be calculated at the lowest rate at which the worker can be transported to and from the town or place by any available public passenger transport service.

(5) Where a worker claims compensation under this Act and a dispute exists between the worker and his employer as to the existence, nature, or cause of the injury or disease from which the worker is alleged to suffer, or as to the fitness of the worker for any kind of employment, the worker and the employer may by writing under their hands submit any such question to a medical referee, or to some other registered medical practitioner agreed on by the parties, and the written certificate of the referee or practitioner delivered in duplicate to the employer and the worker shall be conclusive evidence of the facts so certified by him.

Compare: 1922, No. 39, s. 58; 1947, No. 58, s. 53; 1949, No. 11, s. 6

Ending of Weekly Payments

30 Restriction on ending of weekly payments of compensation

(1) Subject to subsection five of section fourteen, to paragraph (a) of subsection seven of section fifteen, and to section twenty-eight of this Act, the weekly payments of compensation payable to any worker under section fourteen of this Act shall not be ended or diminished except in the following cases:

- Where the weekly payment is in respect of total incapacity and the worker has actually returned to work; or
- By agreement with the worker; or
- With the leave of the Compensation Court or of a Magistrate's Court granted under this section; or
- By judgment or order of a Court of competent jurisdiction.

(2) Upon an application in that behalf made after a registered medical practitioner has certified, after examining the worker, that he is wholly or partially recovered, or that any incapacity from which he suffers is not due in whole or in part to the accident, the Compensation Court or a Magistrate's Court may, in its discretion, grant leave to end or diminish the weekly payments of compensation. The fact that any application for leave under this subsection is granted or refused, or that the worker has agreed to the ending or diminishing of the

weekly payments, shall not be taken into account by the Court in determining in any proceedings whether or not the worker is entitled to compensation.

- (3) The Court shall not grant leave under subsection two of this section to end or diminish the weekly payments of compensation payable to any worker upon the ground that the worker is partially recovered unless—
 - (a) He is working in some suitable employment or business; or
 - (b) Some suitable employment has been provided or found for him by his employer and is available for him.
- (4) Upon an application in that behalf the Compensation Court may, in its discretion, grant leave to end the weekly payments of compensation upon payment of such lump sum as the Court fixes in accordance with section thirteen of this Act after taking into account the weekly payments previously made. The fact that any application for leave under this subsection is granted or that a lump sum is paid accordingly shall not be deemed to constitute a recovery of judgment for compensation within the meaning of subsection four of section one hundred and twenty-four of this Act.
- (5) If any employer ends or diminishes, in contravention of this section, the weekly payments of compensation payable to any worker, the employer shall be liable to pay to the worker, in addition to the weekly payments or so much thereof as has not been paid, as the case may be, a further amount equal to the amount in respect of which default has been made. Any additional amount payable under this subsection may be recovered in the same manner as if it were compensation duly payable, but shall not be taken into account for the purposes of subsection five of section fourteen of this Act. The Court may, if it thinks fit, relieve any employer from liability for the whole or any part of any additional amount payable under this subsection.
- (6) For the purposes of subsection five of this section the amount in respect of which default has been made shall, subject to subsection five of section fourteen of this Act, be deemed to be not less than the full amount of the weekly payments for the period from the date on which they were actually ended or diminished until the date on which they are or have been legally ended or diminished in accordance with this section.
- (7) The ending of the weekly payments of compensation payable to any worker shall be deemed to be authorised by paragraph (a) of subsection one of this section in any case where—
 - (a) The weekly payment is in respect of total incapacity and the medical practitioner who has attended the worker has certified that he is fit to resume work, or that he will be fit to resume work on a specified date, and the date of the certificate or, as the case may be, the date so specified is not later than the date on which the weekly payments are ended; and
 - (b) The worker has failed to return to work.

(8) Where the weekly payments of compensation payable to any worker have been ended on any date, whether before or after the commencement of this Act, in any case to which subsection seven of this section applies, and the Compensation Court is satisfied, upon an application made in that behalf within six months after that date that the worker was not fit to resume work on the date on which the weekly payments were ended, the Court shall declare that the ending of the weekly payments was in contravention of this section, and may also declare that the weekly payments shall be deemed to have been lawfully ended for the purposes of this section on a date to be specified in that behalf, which date may be the date on which the declaration of the Court is made or any earlier or later date:

Provided that no additional amount shall be payable under subsection five of this section in respect of any such contravention except such amount (if any) as the Court in its discretion determines.

Compare: 1943, No. 23, s. 3(2); 1945, No. 19, s. 6; 1951, No. 4, s. 4

Miscellaneous Provisions as to Compensation

31 Money paid by employer to be deducted from compensation

Where under the provisions of any Act an employer has paid or is liable to pay any sum of money (other than damages) to or for the benefit of a worker or any dependant of a worker in respect of any accident happening to that worker, or where any sum of money has in respect of any such accident been paid or is payable to or for the benefit of the worker or any such dependant out of any fund to which the employer is by any Act bound to contribute, the amount of any money so paid or payable that is not compensation as defined in subsection one of section two of this Act shall, except as otherwise provided, be deducted from any compensation payable under this Act in respect of the same accident.

Compare: 1922, No. 39, s. 61

32 Compensation where wages are paid to injured worker

Notwithstanding anything contained in section thirty-one of this Act, where an employer, pursuant to any statutory obligation so to do, pays wages to any worker for any period within the period of his incapacity, whether in respect of the incapacity or otherwise, not being payment in respect of any holiday to which the worker would have been entitled if he had not been incapacitated, the following provisions shall apply:

- (a) No compensation shall be payable in respect of the period for which the wages are paid;
- (b) The period for which the wages are paid shall be deemed to be deducted from the period for which compensation would have been payable if the wages had not been paid;

(c) The amount paid as wages shall not be deducted from or set off against the amount payable as compensation.

Compare: 1943, No. 23, s. 4

33 No abatement of compensation on account of insurance money or friendly society payments

In assessing compensation, no account shall be taken of—

(a) Any money accruing to the claimant in respect of any life or accident insurance policy effected by himself or by any other person other than the employer;

(b) In the case of a claim by or on behalf of a partial dependant of a deceased worker, any gain, whether to the estate of the deceased worker or to that dependant, that is consequent on the death of the deceased worker;

(c) Any money payable by or to a friendly society or other organisation.

Compare: 1922, No. 39, s. 14; 1948, No. 77, s. 47

34 Injury due to misconduct

No compensation shall be payable in respect of any accident which is attributable to the serious and wilful misconduct of the worker injured, unless the injury results in death or serious or permanent disablement.

Compare: 1922, No. 39, s. 15

35 Unreasonable refusal to submit to medical or surgical treatment

No compensation shall be payable in respect of the death or incapacity of a worker if his death is caused, or if and so far as his incapacity is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment the risk of which is, in the opinion of the Court, inconsiderable in view of the seriousness of the injury or disease.

Compare: 1922, No. 39, s. 16

36 Agreement with employer in respect of prior disease or injury

(1) No compensation shall be payable in respect of the incapacity or death of a worker which is due to disease or personal injury if the worker has at any time in writing signed by him represented to the employer in respect of whose employment the claim to compensation is made that the worker was not suffering from or had not previously suffered from that disease or injury, and if the representation was false to the knowledge of the worker.

(2) Notwithstanding anything to the contrary in this Act, if any worker suffers from or has previously suffered from any disease or personal injury, it shall be lawful for him (whether he is or is not above the age of twenty-one years) to agree in writing with any employer or intended employer that no compensation shall be payable by that employer in respect of the incapacity or death of the

worker if his incapacity or death is due to that disease or injury or to any recurrence or repetition thereof.

- (3) No such agreement shall be binding until and unless it has been approved in writing by a Magistrate's Court. The Court shall, before granting its approval, take such steps as it considers reasonable to ascertain whether the worker suffers or has suffered from the said disease or injury, and whether the agreement is for the benefit of the worker. The approval of a Magistrate's Court shall, in the absence of fraud on the part of the employer or intended employer, be conclusive as to the validity of any such agreement.
- (4) Every such agreement shall remain in force and shall operate with respect to any employment or employments then or at any time afterwards existing between the parties until the agreement is cancelled by the employer by writing signed by him or by some person duly authorised on his behalf.

Compare: 1922, No. 39, s. 17

37 With certain exceptions, liability not affected by agreement

- (1) Except as otherwise expressly provided in this Act, no agreement between an employer and a worker shall be effective so as to exempt the employer in whole or in part from any liability to pay compensation in respect of any injury to be suffered by the worker.
- (2) Notwithstanding anything in this section, an agreement may be made between an employer and a worker, or between an employer and any representative or defendant of a deceased worker, or between any such defendants themselves, after the happening of an injury to the worker, for the settlement of any claim to compensation or of any question arising with respect to compensation:

Provided that an agreement between an employer and a worker, or between an employer and any representative or defendant of a deceased worker, shall not be binding on that worker, representative, or defendant unless before making the agreement he had competent and independent advice as to any legal and medical questions arising in connection with the claim for compensation, and understood the agreement; and, in any case where such an agreement is challenged, the burden shall lie on the employer of proving compliance with this subsection.
- (3) Subject to subsection two of this section, any such agreement as is mentioned therein shall be binding on the parties, and any such agreement entered into by the representative of a deceased worker shall be binding on the defendants of that worker.
- (4) Subject to subsection two of this section, any such agreement as is mentioned therein shall be binding on a person under the age of twenty-one years if it is in writing and approved by a Magistrate's Court; and, unless the Court otherwise orders, any money payable to any such person under the agreement may be paid to him, and his written receipt therefor shall be a sufficient discharge. In an order under this subsection the Court may order that the whole or any part

of the money payable to any person shall be held on trust for him under section sixty-six of this Act.

(5) Nothing in this section shall be so construed as to confer upon the representative of a deceased worker any power to determine the shares in which compensation is to be apportioned between the dependants of that worker.

Compare: 1922, No. 39, s. 18; 1947, No. 58, s. 35

38 Orders in Council prescribing amounts and rates

(1) The Governor-General may from time to time, by Order in Council, prescribe any amount or rate or any maximum or minimum amount or rate requiring to be prescribed for the purposes of this Part of this Act.

(2) In making any Order in Council relating to weekly payments of compensation, the Governor-General shall have regard to any increases or decreases made from time to time in any manner in ordinary rates of pay, ruling rates of wages, or minimum rates of wages, as the case may require.

(3) Every Order in Council under this section shall apply with respect to such payments of compensation and with respect to such accidents to which this Act applies, whether happening before or on or after the date of the commencement of the order, and whether happening before or after the commencement of this Act, as may be specified in that behalf in the order.

Compare: 1953, No. 22, s. 5

Part II

Procedure

Compensation Court

39 Compensation Court

(1) There is hereby established a Court of record, to be called the Compensation Court, which, in addition to the jurisdiction and powers specially conferred on it by this Act, shall have all the powers inherent in a Court of record.

(2) The Court established by this Act is hereby declared to be the same Court as the Compensation Court established by the Workers' Compensation Amendment Act 1952.

Compare: 1952, No. 17, s. 2

40 Constitution of Court

The Compensation Court shall consist of a Judge, who shall be appointed as the Judge of the Court by the Governor-General.

Compare: 1952, No. 17, s. 3

41 Appointment of Judge

- (1) No person other than a barrister or solicitor of not less than seven years' standing of the Supreme Court shall be appointed to be the Judge of the Compensation Court.
- (2) The appointment of the Judge shall continue in full force during good behaviour, notwithstanding the demise of Her Majesty.
- (3) It shall be lawful for Her Majesty, upon the address of the House of Representatives, to remove the Judge from his office and to revoke his appointment, and for the Governor-General to suspend the Judge upon a like address.
- (4) It shall be lawful for the Governor-General in Council, at any time while Parliament is not in session, to suspend the Judge from his office, and that suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.
- (5) The Judge shall retire from office on attaining the age of seventy-two years.
- (6) The Judge of the Court, as soon as may be after his acceptance of office, shall take and subscribe the Oath of Allegiance and the Judicial Oath in accordance with section seven of the Promissory Oaths Act 1908.
- (7) Nothing in the Public Service Act 1912 shall apply to the Judge of the Court.

Compare: 1952, No. 17, s. 4

42 Salary and allowances of Judge

- (1) There shall be paid to the Judge of the Compensation Court out of the Consolidated Fund, without further appropriation than this section, a salary at the rate of two thousand seven hundred and fifty pounds a year, together with such travelling allowances as may be fixed from time to time by the Governor-General.
- (2) The salary of the Judge shall not be diminished during the continuance of his appointment.
- (3) This section shall be deemed to have come into force on the first day of April, nineteen hundred and fifty-six.

Compare: 1952, No. 17, s. 5(1),(2); 1954, No. 90, s. 10; 1955, No. 107, s. 18(1)

43 Power to appoint a Judge temporarily

- (1) The Governor-General may from time to time, whenever in his opinion it is necessary or expedient to make a temporary appointment, appoint a qualified person to be a Judge of the Compensation Court to hold office for such period as may be limited in his commission.
- (2) The power conferred by this section may be exercised at any time, notwithstanding that there may be one or more persons holding the office of Judge of the Compensation Court, whether under a permanent or a temporary appointment.

(3) Every Judge appointed under this section shall be paid such salary, not exceeding the salary payable for the time being to the permanent Judge of the Court, as the Governor-General directs.

Compare: 1952, No. 17, s. 6

44 Registrars and officers of Court

(1) There may from time to time be appointed under the Public Service Act 1912 a Registrar of the Compensation Court for each industrial district under the Industrial Conciliation and Arbitration Act 1954, and such clerks and other officers of the Court as may be required. Any such office may be held either separately or in conjunction with any other position under the Public Service Act 1912.

(2) Unless any other person appointed under this section holds office as the Registrar for any industrial district, the person who for the time being holds office as the Clerk of Awards for that district shall, without further appointment, be deemed to have been appointed under this section to be also the Registrar of the Compensation Court for that district.

Compare: 1952, No. 17 s. 7

45 Seal

(1) The Compensation Court shall have in the custody of each Registrar a seal of the Court for the sealing of all orders and other documents requiring to be sealed.

(2) Judicial notice shall be taken of the seal of the Compensation Court by all Courts and for all purposes.

Compare: 1952, No. 17, s. 8

Recovery of Compensation

46 Proceedings to be in Compensation Court

(1) Subject to the provisions of sections forty-nine and fifty of this Act, all proceedings for the recovery of compensation, or for the determination of any question as to the distribution of compensation among dependants, or for obtaining any order which by this Act a Court is authorised to make with respect to compensation, shall be taken in the Compensation Court, and not elsewhere.

(2) Any agreement as to the payment of compensation or otherwise relating to compensation may be enforced in the Compensation Court.

(3) Any right of indemnity conferred by this Act shall be enforceable in the Supreme Court or some other Court of competent jurisdiction, and not (except with the consent of the parties) in the Compensation Court.

(4) No appeal shall lie to any other Court from any order made by the Compensation Court under this Act, nor shall any such order be removed by certiorari

or otherwise into any other Court to be there quashed or varied on any ground other than want of or excess of jurisdiction.

Compare: 1922, No. 39, ss. 19, 22(2); 1952, No. 17, s. 9(2)

47 Procedure to be determined by regulations

- (1) Subject to the provisions of this Act the procedure in any proceedings taken in the Compensation Court by virtue of this Act, and the mode of enforcement of any order made by that Court by virtue of this Act, shall be determined by regulations made under this Act.
- (2) Every action in the Compensation Court under this Act shall be commenced by writ of summons in the prescribed manner.

Compare: 1922, No. 39, s. 22(1),(3); 1952, No. 17, s. 9(2)

48 Proceedings in case of death of worker

- (1) In the case of an accident causing the death of a worker, proceedings for the recovery of compensation shall be taken by the representative of the deceased worker on behalf of the dependants.
- (2) If there is no such representative, or if no such proceedings are taken by him within three months after the death of the worker, the proceedings may be taken by the dependants of the worker, or by any one or more of them on behalf of all of them.

Compare: 1922, No. 39, s. 23

49 Recovery of compensation in a Magistrate's Court

- (1) Notwithstanding anything in section forty-six of this Act, in any case where the parties, by writing signed by them or their solicitors, so agree, or in any case where the amount claimed does not exceed fifty pounds, proceedings for the recovery of compensation in respect of any injury by accident which has not caused the death of a worker may be taken in a Magistrate's Court.
- (2) The order of the Magistrate's Court in any such case shall be final and conclusive, and shall be binding on the parties in the same manner as if it were the order of the Compensation Court.
- (3) An order made under this section shall, for the purposes of this Act, be deemed to be an order made by the Compensation Court, and all applications subsequent to the making of any such order and made in respect thereof shall be made to the Compensation Court.
- (4) Until altered by regulations made under this Act, the procedure in any proceedings before a Magistrate's Court under this section shall, with such modifications as the Magistrate's Court deems necessary, be determined by the regulations for the time being in force with respect to similar proceedings before the Compensation Court.

Compare: 1922, No. 39, s. 20; 1952, No. 17, s. 9(2)

50 Recovery of allowances and expenses

- (1) Any money payable under this Act by way of compensation, allowances, or expenses of any kind in respect of a deceased worker (not being compensation payable under section eleven or allowances payable under section twenty of this Act) may be recovered either by proceedings in the Compensation Court or by action in a Magistrate's Court in accordance with this Act at the suit of the representative or of any defendant of that worker, or at the suit of any person by whom the expenses or any of them have been incurred, or at the suit of any person entitled to receive any payment in respect of the matter for which the compensation, allowances, or expenses or any part thereof is payable.
- (2) Any money payable under this Act by way of compensation, allowances, or expenses of any kind in respect of an injured worker (not being a lump sum payable under section thirteen of this Act or weekly payments payable under section fourteen of this Act or compensation payable under section seventeen of this Act or allowances payable under section twenty or section twenty-one of this Act) may be recovered either by proceedings in the Compensation Court or by action in a Magistrate's Court in accordance with this Act at the suit of that worker, or at the suit of any person by whom the expenses or any of them have been incurred, or at the suit of any person entitled to receive any payment in respect of the matter for which the compensation, allowances, or expenses or any part thereof is payable.
- (3) All money so recovered shall, in default of agreement between the parties interested, be subject to the order of the Court, and shall be disposed of in such manner and in such shares as the Court orders for the benefit of all or any of the persons who are so entitled to sue for the same.

Compare: 1922, No. 39, s. 24

51 Joinder of plaintiffs or defendants

- (1) In any proceedings under this Act the Compensation Court may order any other parties to be joined as plaintiffs or defendants whose joinder is, in the opinion of the Court, necessary or advisable for doing complete justice in the matter of the proceedings.
- (2) The Compensation Court shall have full power to amend all defects and errors in its proceedings, or in the proceedings of parties before it, all such amendments to be upon such terms as to costs or other conditions as the Court considers just.

Compare: 1922, No. 39, s. 25; 1952, No. 17, s. 9(2)

52 Notice of accident to be given to employer

- (1) An action for the recovery of compensation shall not be maintainable by a worker unless notice of the accident has been given as soon as practicable after the happening thereof.

- (2) The want of or any defect or inaccuracy in any such notice shall not be a bar to the action if the Court is of opinion that the employer has not been prejudiced in his defence or otherwise by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, or by absence from New Zealand, or by any other reasonable cause.
- (3) Notice of an accident shall be in writing, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date and place at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of them.
- (4) The notice may be served by delivering it at or sending it by post in a registered letter addressed to the residence or any office or place of business of the person on whom it is to be served.
- (5) The notice if served by registered post shall be deemed to have been served at the time when it 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 posted.
- (6) In the case of an accident happening, whether in New Zealand or elsewhere, to a seaman in the course of his employment as such, the notice required by this section may be served on the master of the ship on which he is employed, unless he is himself the master thereof.
- (7) Nothing in this section shall apply to the recovery of compensation for the death of a worker.

Compare: 1922, No. 39, s. 26

53 Limitation of actions

- (1) Except as provided in this section, no action for the recovery of compensation shall be commenced except within twelve months after the date of the accident causing the injury, or, in case of death, except within twelve months after the date of the death.
- (2) If any payment of compensation or damages has been made by or on behalf of the employer in respect of the injury or death, an action for compensation may be commenced against the employer at any time within twelve months after the date of that payment, or after the date of the last of any such payments, if more than one.
- (3) If any admission of liability to pay damages or compensation in respect of the injury or death of a worker has been signed by the employer or by any person duly authorised on his behalf, an action for compensation may be commenced against that employer at any time within twelve months after the date of the signing of that admission, or after the date of the signing of the last of any such admissions, if more than one.

- (4) A failure to commence the action within the time hereby limited shall be no bar to the action if the Court is of opinion that the employer has not been prejudiced in his defence or otherwise by the failure, or that the failure was occasioned by mistake, or by absence from New Zealand, or by any other reasonable cause.
- (5) Nothing in any other Act shall be deemed to apply so as to limit or reduce the time for commencing an action for the recovery of compensation as prescribed by this section or to require any prior notice of the proceedings which is not required by this Act.

Compare: 1922, No. 39, s. 27; 1947, No. 58, s. 51

54 Declaration of liability of employer

- (1) In the case of any injury suffered by a worker which does not presently cause incapacity, but may cause it in the future, he may, within the time limited in this Act for commencing an action for compensation, bring an action against his employer, or against any other person who would be liable to pay compensation in respect of that future incapacity, for a declaration of liability under this Act; and the Court may in that action make a declaration of such liability, which shall have the effect of a judgment for compensation to be afterwards assessed, and within two years thereafter the worker may in that action apply to the Court to have compensation assessed in pursuance of the declaration on proof that incapacity has resulted from the injury, and the compensation so assessed shall be payable accordingly as under a judgment of the Court.
- (2) All the provisions of this Act with respect to an action for the recovery of compensation shall, so far as applicable, extend and apply to an action for a declaration of liability.
- (3) In any action for the recovery of compensation, if it is proved that an accident has happened for which the defendant would be liable to pay compensation if incapacity had resulted therefrom, but it is not proved that any incapacity has so resulted, the Court may, if it thinks fit, instead of dismissing the action, make a declaration of liability under this Act, and any such declaration shall have the same effect as a like declaration made under the foregoing provisions of this section.

Compare: 1922, No. 39, s. 28

Payment and Disposal of Compensation for Death

55 Compensation for death to be paid to and disbursed by Public Trustee

- (1) Where the amount of the compensation due in respect of the death of a worker has been arrived at, whether by the judgment of the Compensation Court or otherwise, the employer or other person liable to pay it shall, unless the Compensation Court otherwise orders, pay it to the Public Trustee; and the receipt of the Public Trustee, or of any one authorised by him in that behalf,

shall be a complete discharge to that employer or other person for the amount paid.

- (2) The Public Trustee shall thereupon hold the amount so paid to him for the person or persons entitled thereto, or pending an order of the Compensation Court disposing of or apportioning it.
- (3) If within one month after the receipt of the compensation the Public Trustee does not receive notice from any defendant interested therein that application is being made for such an order, it shall thereupon become the duty of the Public Trustee to apply for such an order.
- (4) A certificate under the hand and seal of the Public Trustee showing the receipt of the compensation shall, in any Court or proceedings whatsoever, be sufficient evidence of the facts therein stated without any further proof.

Compare: 1922, No. 39, s. 38; 1952, No. 17, ss. 9(2), 16(16)(c)

56 Compensation for death may be ordered to be paid into Compensation Court

In any action for the recovery of compensation payable to or on behalf of defendants in the case of the death of a worker the Court may order that the amount of that compensation shall be paid into the Compensation Court.

Compare: 1922, No. 39, s. 32; 1952, No. 17, s. 16(16)(b)

57 Costs and expenses

Where any compensation in respect of the death of a worker is recovered (either in an action or without any action being brought), the costs which are properly payable out of the compensation and are not otherwise recovered may be paid thereout, and the amount (if any) recovered in respect of expenses of any kind may be refunded to the person or persons who paid them or paid to the person or persons entitled to them, and the balance of the compensation may be allotted or disposed of by the Compensation Court as provided in sections fifty-eight to sixty-five of this Act.

58 Compensation for death may be allotted to a defendant or held as class fund

- (1) Where the Compensation Court makes an order under this section and is satisfied that there was only one defendant of the worker, the balance of the compensation shall be allotted to that defendant.
- (2) Where the Compensation Court makes an order under this section and is satisfied that there were two or more defendants, the Court may order—
 - (a) That the balance of the compensation or so much thereof as it may specify shall be allotted to any defendant exclusively, or shall be allotted in such proportions as the Court determines among the defendants or among such two or more of them to the exclusion of the other or others of them as the Court specifies:

- (b) That the balance of the compensation or so much thereof as it may specify shall be held on trust as a class fund for the benefit of the dependants or of such two or more of them to the exclusion of the other or others of them as the Court specifies.

Compare: 1952, No. 17, s. 16(1),(2)

59 Interpretation

For the purposes of sections sixty to sixty-five of this Act—

- (a) The expression “trustee” means the Public Trustee except where the Court appoints any other trustee, in which case it means the trustee so appointed:
- (b) Without prejudice to the generality of the expression “of unsound mind”, a person shall be conclusively presumed to be of unsound mind while he is detained or kept in custody (otherwise than as a voluntary boarder) under any provision of the Mental Health Act 1911.

Compare: 1952, No. 17, s. 16(13)

60 Disposition of compensation allotted to a dependant

- (1) Where any amount is allotted to a dependant under section fifty-eight of this Act, that amount shall be paid to him unless he is an infant or of unsound mind or except in so far as the Compensation Court orders that the whole or any part of that amount shall be held on trust under subsection two of this section.
- (2) Where any amount is allotted to any dependant who is an infant or of unsound mind or the Compensation Court orders that the whole or any part of the amount allotted to a dependant is to be held on trust for that dependant under this subsection, then, except so far as the Court directs any immediate payment therefrom, and subject to any directions or conditions given or imposed by the Court—
 - (a) The amount shall be invested and held by the trustee upon trust—
 - (i) To make such payments (if any) to the dependant out of the income and capital of the amount as the Court may specify; and
 - (ii) To apply the income and capital of the amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the worker) or the advancement or benefit of the dependant:
 - (b) The dependant shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts:
 - (c) The interest of the dependant in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or

pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(3) Upon any dependant ceasing to be an infant or of unsound mind while any amount is held on trust for his benefit under subsection two of this section, the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to the dependant except so far as the Compensation Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection:
Provided that where the trustee has notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(4) The Compensation Court may order that, if any dependant dies while any amount allotted to him is held on trust under subsection two of this section (whether or not he is an infant or of unsound mind), any balance of the amount and of the income therefrom remaining in the hands of the trustee at his death, or so much thereof as the Court may specify, shall form part of the dependant's estate, or shall be added to the amount allotted to any other dependant or to the amounts allotted to all or any of the other dependants in such proportions as the Court may specify or to any class fund set aside out of the compensation, and shall be subject to the trusts of the amount or amounts or fund to which it is added:

Provided that if and so far as that balance is not wholly disposed of under any order of the Court made during the lifetime of the dependant for whose benefit it has been held, or made on an application to the Court made not later than six months after that dependant's death, it shall form part of his estate.

Compare: 1952, No. 17, s. 16(3)–(6)

61 Class fund

Where any amount is ordered to be held on trust as a class fund for any dependants under subsection two of section fifty-eight of this Act, that amount shall be invested and the trustee may at his discretion, but subject to such directions and conditions as the Compensation Court may give or impose, apply the income and capital of that amount or so much thereof as the trustee from time to time thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the worker) or the advancement or benefit of those dependants or of any one or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the trustee from time to time thinks fit; and may so apply the income and capital of that amount notwithstanding that only one of those dependants remains alive.

Compare: 1952, No. 17, s. 16(7)

62 Power of Court to authorise advances

(1) The Compensation Court may from time to time, at its discretion, authorise money to be advanced to any dependant (whether by way of loan or otherwise) as it thinks fit, and upon or subject to such conditions as it thinks fit, out of the compensation or out of any amounts allotted to other dependants or out of any amount held on trust as a class fund, for any purpose that the Court thinks proper in the interests of the dependants or any of them. Without limiting the generality of this subsection, it is hereby declared that any such advance may be made for the purpose of purchasing or otherwise acquiring a residential property for the use of the defendant either alone or in conjunction with any other dependants, or for the purpose of repaying any money secured by way of mortgage or otherwise on any residential property owned by the defendant and so used, or for the purpose of furnishing any such residential property. Where money is advanced by way of loan, the Court may give such directions as it thinks fit in respect of the security to be taken, and may either prescribe the conditions upon or subject to which the money is to be advanced or authorise the trustee to prescribe the conditions at his discretion. The conditions may include power to the trustee to remit interest and principal or any part thereof to the extent of the amount or value of any maintenance, education, advancement, or benefit which the dependant to whom the money is advanced may provide for any other dependants.

(2) The Compensation Court may exercise any power conferred on the Supreme Court under section sixty-four of the Trustee Act 1956 (which relates to dealings with trust property) either on the creation of any trust under section fifty-eight or section sixty of this Act or from time to time during the continuance of any such trust.

Compare: 1952, No. 17, s. 16(8), (9)

63 Variation of orders

The Compensation Court may at any time vary an order made by it in respect of compensation and in respect of the income therefrom so far as the compensation and income are for the time being in the hands of a trustee as aforesaid.

Compare: 1952, No. 17, s. 16(10)

64 Considerations to be taken into account in making or varying order

In making or varying an order under sections fifty-eight to sixty-three of this Act the Compensation Court shall have regard to all relevant considerations; and the Court may, whenever it considers that it is just and proper to do so, take into consideration all or any of the following matters:

- (a) Any gain to any dependant that is consequent on the death of the worker; and
- (b) Circumstances which have arisen after the date of the death of the worker; and

(c) The probable future needs of the dependants.

Compare: 1952, No. 17, s. 16(11)

65 Persons who may apply for order or variation of an order

An order or variation of an order under sections fifty-eight to sixty-three of this Act may be made by the Compensation Court of its own motion or on an application made by—

- (a) Any dependant of the deceased worker;
- (b) The husband or wife of any such dependant;
- (c) Any near relation by blood or marriage of any such dependant;
- (d) The Public Trustee;
- (e) The trustee who holds the amount to which the application relates; or
- (f) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

Compare: 1952, No. 17, s. 16(12)

Payment and Disposal of Lump Sum or Weekly Payments

66 Disposal of compensation in form of lump sum

(1) Subject to subsection four of section thirty-seven of this Act, where any compensation is payable under this Act in the form of a lump sum in respect of any worker the amount of the compensation shall be paid to him unless he is an infant or of unsound mind or except so far as the Compensation Court orders that the whole or any part of that amount shall be held on trust for the worker under this section:

Provided that where the employer or other person by whom the compensation is payable has notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(2) An order under this section may be made by the Compensation Court of its own motion or on an application made by—

- (a) The worker;
- (b) Any dependant of the worker;
- (c) The husband or wife of the worker;
- (d) Any near relation by blood or marriage of the worker;
- (e) The Public Trustee; or
- (f) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

(3) Where any amount of compensation is payable as aforesaid and the worker is an infant or of unsound mind or the Court orders that the whole or any

part of the amount is to be held on trust for the worker under this section, the provisions of sections fifty-nine to sixty-five of this Act, as far as they are applicable and with the necessary modifications, shall apply to that amount or that part thereof as if it were compensation allotted to the worker as a dependant of a deceased worker, and as if the references in those provisions to the death of the worker were references to the accident in respect of which the compensation is payable.

Compare: 1952, No. 17, s. 17

67 Payment of weekly payments to person under twenty-one

Unless and until the Compensation Court otherwise orders, any weekly payment of compensation and any weekly allowance to which a person under the age of twenty-one years is entitled may be paid to him, and his receipt therefor shall be a sufficient discharge.

Compare: 1922, No. 39, s. 36(2)

68 Court to direct mode of weekly payment

In any order for weekly payments of compensation or for weekly payments by way of allowance the Compensation Court may give such directions as it thinks fit as to the times, intervals, and manner at or in which those payments are to be made, and as to the payment in a lump sum or otherwise, as the Court thinks fit, of all arrears of weekly payments in respect of any period of incapacity before the date of the making of the order.

Compare: 1922, No. 39, s. 34

69 Order or agreement for weekly payment may be reviewed by Court

- (1) Any order or agreement for a weekly payment of compensation, or for a weekly payment by way of allowance or the payment of any such weekly payment without any order or agreement, may at any time and from time to time, in an action brought or application made for that purpose, be reviewed by the Compensation Court; and on any such review the payments may be ended, suspended, diminished, or increased, or may be revived after any period of suspension, or may be commuted for a lump sum, or the order or agreement or payment may be otherwise varied, but so that the compensation so awarded is in conformity with the provisions of this Act.
- (2) Every such action or application for a review may be brought or made by or against the worker entitled to the compensation, and against or by the employer or other person liable to pay that compensation, or to indemnify any other person against it, whether by way of insurance or otherwise.
- (3) On any such review the order ending, suspending, diminishing, increasing, or reviving the payments may be made retrospective to such extent and in such manner as the Court thinks fit.

Compare: 1922, No. 39, s. 29; 1952, No. 17, s. 9(2)

*Payment of Expenses***70 Payment of expenses to person entitled thereto**

Any compensation payable in respect of expenses of any kind may be paid to any person entitled to take proceedings for the recovery of that compensation, and his receipt therefor shall be a sufficient discharge.

Compare: 1922, No. 39, s. 37(2)

*Miscellaneous Procedural Provisions***71 Costs in discretion of Court**

Subject to any regulations made under this Act in that behalf, the costs of any action or other proceeding in the Compensation Court under this Act shall be in the discretion of the Court.

Compare: 1922, No. 39, s. 39

72 Solicitor's claim to costs

The solicitor of a person claiming compensation shall not be entitled to recover from him any costs in respect of any action or other judicial proceedings under this Act, or to claim a lien in respect of any such costs on any sum payable as compensation under any order or agreement, or to deduct any such costs from any sum so payable, except to the extent to which the costs have been allowed as between the solicitor and his client by the Compensation Court or by the Magistrate where the proceedings are taken in a Magistrate's Court, on the application either of the solicitor or of the client.

Compare: 1922, No. 39, s. 40

73 Court may direct payment of interest in case of undue delay

If in any action or proceeding for the recovery of compensation the Compensation Court is of opinion that there has been unreasonable delay in the payment of that compensation, the Court may, if in its discretion it thinks fit, increase the compensation payable under this Act by adding thereto interest calculated as from the commencement of the incapacity or from the death of the worker, as the case may be, up to the date of the assessment of compensation, at any rate not exceeding six per cent per annum on the total amount of compensation in the case of a lump sum, and on the aggregate amount of weekly payments up to the date of the said assessment in the case of weekly payments.

Compare: 1922, No. 39, s. 41

74 Action for compensation for accident outside New Zealand

When an action is commenced for the recovery of compensation in respect of an accident happening outside New Zealand the action shall, on the application of the defendant, be stayed until the plaintiff has given to the defendant a sufficient undertaking not to institute any proceedings for the recovery of compen-

sation or damages from the defendant in any other part of the Commonwealth in respect of the same accident.

Compare: 1922, No. 39, s. 42

75 Proceedings taken outside New Zealand available as defence

In any action for the recovery of compensation it shall be a good defence that proceedings for the recovery of compensation or damages in respect of the same accident have been instituted by or on behalf of the same person against the same defendant in any part of the Commonwealth other than New Zealand, or that any claim by or on behalf of the same person against the same defendant for compensation or damages in respect of the same accident under the laws of any part of the Commonwealth other than New Zealand has been settled by agreement or fully satisfied.

Compare: 1922, No. 39, s. 43

76 Security for costs where plaintiff resident outside New Zealand

In any action for compensation brought by any person resident outside New Zealand the Court may, if it thinks fit, order the plaintiff to give security for the costs of the action, and may stay the action until security is so given.

Compare: 1922, No. 39, s. 44

77 Deductions from compensation

Whenever, in accordance with this Act, any sum is to be or may be deducted from any weekly payment or other money receivable by way of compensation, the deduction shall, in default of agreement, be made in such manner and at such time or times and by such instalments (if any) as the Compensation Court thinks fit to direct.

Compare: 1922, No. 39, s. 45

78 Evidence

In any action or other proceedings under this Act the Court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

Compare: 1922, No. 39, s. 46

79 Order may be set aside or varied

(1) Where the Compensation Court is satisfied—

- (a) That any order made by it under this Act has been obtained by fraud or other improper means; or**

(b) That any person has been erroneously included or erroneously not included in any order as a dependant of a deceased worker—
the Court may set aside or vary the order, and may make such order (including an order as to any sum already paid under the order) as in the circumstances the Court thinks fit.

(2) An application under this section to set aside or vary an order shall not be made after the expiration of six months from the date of the order, except by leave of the Compensation Court.

Compare: 1922, No. 39, s. 30

80 Cause of action survives on death of party

(1) The right to recover compensation under this Act in respect of an accident to a worker shall survive notwithstanding the death either of the employer or other person liable to pay the compensation or of the worker, and all proceedings for the enforcement of that right may be begun or continued by or against the representative of the deceased person.

(2) The right of a dependant who survives a worker to receive compensation for the death of that worker shall survive the dependant, and may be enforced by or on behalf of the representative of the dependant in the manner in which it might have been enforced by or on behalf of the dependant had he been alive.

(3) All money so recovered by the representative of a deceased dependant shall form part of the estate of that dependant, but shall not be available as assets for the payment of his debts or liabilities.

Compare: 1922, No. 39, ss. 55, 56; 1950, No. 84, s. 46(2)

Part III EMPLOYERS' LIABILITY INSURANCE

81 Interpretation

(1) In this Part of this Act, unless the context otherwise requires,—
“Accident” or “personal injury by accident” includes any disease to which section nineteen of this Act applies:
“Authorised insurer” means an insurance company for the time being authorised to undertake insurance business under this Part of this Act; and includes the General Manager:
“Board” means the Workers’ Compensation Board established under this Part of this Act; and includes any person acting on behalf of and with the express or implied authority of the Board:
“Commonwealth shipping company” means a shipping company incorporated in New Zealand or in any other part of the Commonwealth:
“Employer” means an employer to whom this Part of this Act applies:

“Exempted employer” means an employer to whom a certificate of exemption under section eighty-four of this Act has been granted; and includes the trustees of the General Trust Fund established under the New Zealand Rules of Racing, the New Zealand National Airways Corporation, and the Linen Flax Corporation of New Zealand:

“General Manager” means the State Fire Insurance General Manager constituted under the State Fire Insurance Act 1908:

“Insurance company” means a person or body of persons, whether incorporated or not, carrying on in New Zealand the business of accident insurance:

“Insurer”, in relation to any employer, means the authorised insurer that is for the time being his insurer under this Part of this Act or, where the Board is his insurer, means the Board; and includes any person acting on behalf of and with the express or implied authority of his insurer:

“Statement of wages” means a statement in the form prescribed for the purposes of subsection two or subsection three of section eighty-five of this Act:

“Wages” includes all salaries, wages, emoluments, holiday pay, and benefits of whatsoever kind received by a worker from his employer:

“Worker” means a worker with respect to whom this Part of this Act applies:

“Workers’ Compensation Account” means the Workers’ Compensation Account kept under this Part of this Act.

- (2) Every person who in New Zealand acts as agent of or carries on business for or on behalf of any other person who is absent from New Zealand or has his principal place of business outside New Zealand shall for the purposes of this Part of this Act be deemed to be the employer of every worker employed in New Zealand by that other person.
- (3) For the purposes of this Part of this Act all money payable by an employer under this Act, whether by way of compensation or expenses or otherwise howsoever, shall be deemed to be compensation payable under this Act.

Compare: 1950, No. 84, s. 3

Compulsory Insurance

82 Employers required to insure

- (1) Subject to any complete or partial exemption granted under section eighty-three or section eighty-four of this Act, every person being the employer of any worker or workers shall, in accordance with this Part of this Act, insure against his liability to pay compensation under this Act or damages or contribution as hereinafter provided.
- (2) Every contract of insurance under this Part of this Act shall be made as hereinafter provided with an authorised insurer.

Compare: 1950, No. 84, s. 4

*Application of this Part***83 Employers and workers to whom this Part applies**

- (1) Except as hereinafter provided, this Part of this Act shall apply to every employer who employs any worker.
- (2) Except as hereinafter provided, this Part of this Act shall apply with respect to every worker within the meaning of this Act employed in New Zealand, and also with respect to the following workers within the meaning of this Act employed elsewhere than in New Zealand, namely:
 - (a) Every seaman employed in a New Zealand ship;
 - (b) Every airman employed in a New Zealand aircraft;
 - (c) Every other worker who is ordinarily employed in New Zealand and is for the time being in a New Zealand ship or in a New Zealand aircraft.
- (3) This Part of this Act shall not apply with respect to any worker within the meaning of this Act ordinarily employed outside New Zealand by an employer who carries on business chiefly outside New Zealand but temporarily employed by that employer in New Zealand for a period not exceeding six months at any one time.
- (4) If the Secretary of Labour, on the application of the trustees of the General Trust Fund established under the New Zealand Rules of Racing, is satisfied—
 - (a) That employers of any particular class of workers are entitled in respect of accidents occurring to any of those workers in the course of their employment to be indemnified out of the General Trust Fund to as great an extent as if the employers were insured under this Part of this Act in respect of those workers; and
 - (b) That the General Trust Fund has adequate financial resources to meet all probable claims in respect of every such indemnity,—the Secretary of Labour may grant a certificate exempting those workers from this Part of this Act, and this Part of this Act shall not, while the certificate is in force, apply with respect to those workers. Any such certificate may be granted unconditionally or upon or subject to such conditions (whether as to its duration or otherwise) as the Secretary of Labour thinks fit, and the Secretary may at any time revoke any such certificate or vary, revoke, or add to any such conditions as he thinks fit.
- (5) This Part of this Act shall not apply with respect to workers who are employed as teachers, probationary assistants, or training college students by any Education Board, Board of Governors, Board of Managers, or other authority having immediate control of any public school or secondary school within the meaning of the Education Act 1914, or of any technical school, technical high school, combined school, or teachers' training college established under that Act.

(6) This Part of this Act shall not apply with respect to workers who are employed by the New Zealand National Airways Corporation or by the Linen Flax Corporation of New Zealand.

Compare: 1950, No. 84, s. 5; 1951, No. 51, s. 7

84 Power to exempt employers

(1) In any case where the Secretary of Labour is satisfied that any employer has and at all material times will have adequate financial resources to meet the whole or any part of all probable claims for compensation or damages or contribution for the death of or personal injury to any workers employed by that employer caused by any accident happening to the workers in the course of their employment, the Secretary of Labour may grant a certificate exempting the employer wholly or, as the case may require, partly from the obligation to insure under this Part of this Act in respect of those workers or in respect of such of those workers or such classes thereof as may be specified in the certificate.

(2) In any case where the Secretary of Labour is satisfied that any employer, being a Commonwealth shipping company, is, as owner, charterer, or agent of any ship entered in a mutual protecting club established and controlled in the United Kingdom, entitled to be indemnified in respect of the whole or any part of all claims for compensation or damages or contribution for the death of or personal injury to any workers employed by or on behalf of the employer, the following provisions shall apply:

- (a) The Secretary of Labour may grant a certificate exempting the employer from the obligation to insure under this Part of this Act in respect of those workers to the extent to which the employer is indemnified as aforesaid:
- (b) Where the employer's indemnity extends only to a part of those claims, the Secretary of Labour, if he is satisfied that the employer has and at all material times will have adequate financial resources to meet the balance of those claims, may grant a certificate exempting the employer wholly from the obligation to insure under this Part of this Act in respect of those workers.

(3) In any case where the Secretary of Labour is satisfied—

- (a) That any workers whose domicile is outside New Zealand are entitled by the law of the country of their domicile, or by the law of the country in which their contracts of service were entered into, or by their contracts of service, both for themselves and their dependants, to compensation or damages for death or personal injury on terms not less favourable than those applicable in New Zealand; and
- (b) That their employer is indemnified to the full extent of his liability for compensation or damages for the death of or personal injury to those workers under a policy of insurance or other indemnity enforceable by

or on behalf of the workers or their dependants in the Courts of the country of the workers' domicile, or in the Courts of the country in which their contracts of service were entered into,—

the Secretary of Labour may grant a certificate exempting the employer from the obligation to insure under this Part of this Act in respect of those workers.

(4) Every certificate granted under this section shall come into force or be deemed to have come into force on the first day of April next after the date of the application for the certificate, or on such later date as may be specified in the certificate:

Provided that where the application is made during the month of April in any year the Secretary of Labour may direct that the certificate shall be deemed to have come into force on the first day of that month:

Provided also that where the certificate is granted under subsection three of this section the Secretary of Labour may direct that the certificate shall come into force or be deemed to have come into force on such date as may be specified in the certificate, whether before or after the date of the application or the date of the certificate.

(5) Any certificate granted under this section may be granted unconditionally or upon or subject to such conditions (whether as to its duration or otherwise) as the Secretary of Labour thinks fit, and the Secretary may at any time revoke any such certificate or vary, revoke, or add to any such conditions as he thinks fit. Every such amendment or revocation shall take effect from such date as may be specified by the Secretary of Labour, being either before or after the date of the amendment or revocation, but not earlier than the first day of April then last past.

(6) Any employer who is aggrieved by any decision of the Secretary of Labour under this section or under section eighty-three of this Act may appeal from the decision to the Compensation Court. On any such appeal the Court may confirm the decision of the Secretary or direct him to reverse or modify the decision as the Court thinks fit.

(7) While any certificate of exemption granted under this section to any employer in respect of any workers is in force, the employer shall be exempted wholly or, as the case may be, partly from the obligation to insure and pay premiums under this Part of this Act in respect of those workers, and the extent of any contract of insurance to which he may be or be deemed to be a party under this Part of this Act, and the provisions of this Part of this Act in relation to any such contract, shall be deemed to be limited accordingly.

Compare: 1950, No. 84, s. 6; 1952, No. 17, s. 18

*Contract of Insurance***85 Statements of wages to be delivered by employer to authorised insurer**

(1) This section shall apply to every employer who employs any worker or workers in respect of whom the employer is not wholly exempted from the obligation to insure under this Part of this Act.

(2) Every person who on any date becomes an employer to whom this section applies shall not later than seven days after that date deliver to an authorised insurer a statement in the prescribed form showing—

- (a) An estimate of the wages which he expects to pay to all such workers during the period commencing on that date and ending with the thirty-first day of March next thereafter;
- (b) Such other information as may be prescribed by regulations or as the insurer may require from him:

Provided that where by the terms of the engagement of the worker he will cease to be such an employer at or before the expiration of seven days from the date of his becoming such an employer, he shall deliver the statement as aforesaid not later than one day after that date.

(3) Where any person is on the first day of April in any year an employer to whom this section applies, he shall within one month after that date deliver to an authorised insurer a statement in the prescribed form showing—

- (a) The amount of wages paid during the year ending with the thirty-first day of March then last past to all such workers employed by him;
- (b) An estimate of the wages which he expects to pay to all such workers during the year commencing on the said first day of April;
- (c) Such other information as may be prescribed by regulations or as the insurer may require from him.

(4) Where a person who is not an employer to whom this section applies on the first day of April in any year intends to become such an employer before the first day of April in the next succeeding year, he may deliver to an authorised insurer a statement of wages in the form prescribed for the purposes of subsection two of this section, and on the delivery of the statement he shall be deemed to become an employer to whom this section applies.

(5) Where an employer carries on business in more than one place or carries on more than one class of business—

- (a) The employer may deliver a separate statement of wages in respect of each place or class to the same authorised insurer or to separate authorised insurers;
- (b) The employer shall not deliver to any authorised insurer one statement of wages in respect of two or more places or classes if the insurer requires from him a separate statement in respect of each place or class.

- (6) Every employer who between the first day of April in any year and the first day of April in the next succeeding year ceases to be an employer to whom this section applies shall within fourteen days after the date on which he ceased to be such an employer deliver to his insurer a statement in the prescribed form showing the amount of wages paid by him to all such workers during the period from the last day of March preceding that date up to that date.
- (7) Where two or more persons are for the purposes of this Act the employers of the same worker or workers, it shall be a sufficient compliance with the provisions of this section if one of them makes a statement on behalf of himself and the other or others or if they make a joint statement.
- (8) Every authorised insurer that refuses or fails to accept delivery of any statement in accordance with this section commits an offence against this Part of this Act.
- (9) Notwithstanding anything in the foregoing provisions of this section, any authorised insurer may in his discretion agree with any employer to accept from that employer statements in respect of wages for periods other than those prescribed in the foregoing provisions of this section.

Compare: 1950, No. 84, s. 8; 1951, No. 51, s. 8(1); 1953, No. 22, s. 9

86 Contract of insurance to be complete on delivery of wage statement

- (1) On the delivery to an authorised insurer of a statement of wages made by an employer the insurer shall, subject to the provisions of this Part of this Act, be deemed to have contracted by a contract of insurance to indemnify the employer in respect of all sums which the employer becomes liable to pay under or by virtue of this Act, the Coal Mines Act 1925, the Mining Act 1926, Part I, Part V, or Part VI of the Law Reform Act 1936, or the Deaths by Accidents Compensation Act 1952, or at common law as or for compensation or damages or contribution for the death of or personal injury to any worker caused by accident happening, at any time during the period of the insurance, to that worker in the course of his employment by the employer:

Provided that the indemnity shall not extend to any case where the liability of the employer is not enforceable by action in any Court in New Zealand.
- (2) Where an employer delivers separate statements of wages to two or more authorised insurers under subsection five of section eighty-five of this Act each of the insurers shall be deemed to have indemnified the employer under this section in respect of all workers not specifically included in a statement delivered to another insurer.
- (3) Subject to the provisions of this Part of this Act, the insurer of any employer under this section shall be entitled to the benefit of all indemnities and other rights given to the employer by any enactment mentioned in this section, or otherwise, and to use the name of the employer in any action or proceeding in relation to the liability against which he is insured or in relation to any such indemnities or other rights.

(4) In consideration of the insurance hereinbefore provided for any employer, the employer shall pay premiums as hereinafter provided and shall otherwise comply with the provisions of this Part of this Act and of any regulations made for the purposes thereof.

Compare: 1950, No. 84, s. 9; 1951, No. 51, s. 8(2)

87 Mutual insurance associations and companies

(1) This section applies to every authorised insurer that is—

- (a) An association incorporated under the Mutual Insurance Act 1955; or
- (b) A company incorporated under the Companies Act 1955 for the purpose of mutual insurance of its members.

(2) No employer shall deliver a statement of wages to an authorised insurer to which this section applies unless the employer is a member of the authorised insurer or is eligible according to its rules or memorandum or articles of association to become a member of the authorised insurer or to be insured by it. No statement of wages delivered in contravention of this subsection shall be accepted by the authorised insurer or have any effect.

(3) Where any authorised insurer to which this section applies is restricted by any Act or by its rules or memorandum or articles of association to insuring in respect of particular workers or workers of a particular class or classes, no statement of wages delivered to that authorised insurer shall apply or be deemed to apply to any other workers, and no insurance by that authorised insurer under section eighty-six of this Act shall extend to any other workers.

(4) Where an authorised insurer to which this section applies purports to insure any workers in respect of any period by accepting a statement of wages, and the insurance is invalidated by subsection two or subsection three of this section—

- (a) The authorised insurer commits an offence against this Part of this Act:
- (b) The authorised insurer shall be liable to repay to the Board on demand all amounts paid by the Board under section ninety-nine of this Act in respect of any accident occurring to any such worker during that period:
- (c) The employer shall not be liable to pay any premium to the authorised insurer in respect of the purported insurance, and may recover from the authorised insurer any premium so paid by him.

Compare: 1950, No. 84, s. 9a; 1951, No. 51, s. 9

88 Insurance to continue from year to year, unless transferred or otherwise terminated

(1) The period of any insurance under section eighty-six of this Act shall be the period covered by the estimate of wages contained in the statement of wages delivered by the employer to the insurer:

Provided that every such period of insurance shall be deemed to be extended until the thirty-first day of March next after the end of the period, and thereafter from year to year:

Provided also that every such period or extended period of insurance shall end with whichever of the following dates first occurs, namely:

- (a) The date on which a new period of insurance commences by virtue of the delivery of a further statement of wages by the employer to the insurer;
- (b) The date on which a transfer of the insurance to another authorised insurer takes effect in accordance with this section;
- (c) The thirty-first day of March next after the date on which the employer, having ceased to be an employer to whom section eighty-five of this Act applies, has delivered to his insurer a statement as required by subsection six of section eighty-five or by section eighty-nine of this Act, or has ceased to be such an employer for a period of twelve months;
- (d) The thirty-first day of March next after the insurer has ceased to be an authorised insurer;
- (e) The date on which the Board terminates the period of insurance under subsection four of this section.

(2) Any such transfer may be made by the employer—

- (a) Delivering to the new insurer a statement of wages containing an estimate of wages for the period commencing at the time when the transfer is to take effect, and such other information as may be prescribed by regulations or as the new insurer may require; and

- (b) Notifying the old insurer thereof.

(3) Unless otherwise agreed by the employer and the old insurer and the new insurer, every such transfer shall take effect on the first day of April next after the transfer is made as aforesaid.

(4) Where a period of not less than one year has elapsed since the end of the period covered by the estimate of wages contained in the last statement of wages delivered by an employer to an insurer, the insurer may apply to the Board for the termination of the period of the insurance; and on receipt of any such application the Board may in its discretion refuse or defer the application or terminate the period of the insurance accordingly.

Compare: 1950, No. 84, s. 10; 1953, No. 22, s. 10

89 Wage statement to be delivered by employer to insurer at end of period of insurance

Where an employer ceases on the thirty-first day of March in any year to be insured under this Part of this Act by an authorised insurer, the employer shall within the month following that date deliver to that authorised insurer a statement in the prescribed form showing the amount of wages paid by him during the year ending with that date to all workers in respect of whom he was so insured.

Compare: 1950, No. 84, s. 11

*Premiums***90 Maximum rates of premiums**

- (1) The Governor-General may from time to time, by Order in Council, after considering the recommendations of the Board, make regulations fixing, or providing for the fixing of, maximum rates of premiums to be paid by employers for the purposes of this Part of this Act.
- (2) Without limiting the general power hereinbefore contained, it is hereby declared that regulations may be made under this section prescribing rebates to be made in respect of maximum rates of premiums and in respect of actual premiums.

Compare: 1950, No. 84, s. 12

91 Assessment of premiums payable by employers

- (1) Each authorised insurer shall as soon as practicable after receiving any statement of wages assess the amount payable by way of premium by the employer for the indemnity to which he is entitled under this Part of this Act for the period covered by the estimate of wages contained in the statement.
- (2) Every such assessment shall be made in the form and manner prescribed by regulations made for the purposes of this Part of this Act, and shall be made so as not to exceed the maximum rates of premiums for the time being prescribed by regulations made for the purposes of this Part of this Act.
- (3) An authorised insurer may from time to time and at any time make a new assessment in substitution for an earlier assessment and containing such alterations and additions as he thinks necessary in order to ensure the correctness thereof, notwithstanding that the premiums already assessed may have been paid.

Compare: 1950, No. 84, s. 13

92 Adjustment of premiums when wages paid are ascertained

- (1) When the wages paid by an employer during any period have been ascertained, the assessment of the premium payable by him in respect of that period shall be

adjusted, and an adjusted assessment shall be made accordingly, if the wages paid differ from the wages on which the premium was assessed.

- (2) Where any person fails to make a statement as required by section eighty-five or section eighty-nine of this Act showing the amount of wages paid by him during any period, his insurer may make an estimate of the amount that he considers likely to have been paid and make an adjusted assessment of the premium payable by that person in respect of that period accordingly.
- (3) Where an adjusted assessment is made under this section, the insurer shall credit the employer with the amount of the premium already paid by the employer in respect of the period concerned, and, if the premium assessed on the adjustment is less than the amount of the premium already paid by the employer in respect of that period, the insurer shall refund the amount of the difference to the employer or credit him therewith in respect of any premium payable in respect of any subsequent period.

Compare: 1950, No. 84, s. 14

93 Premiums to be paid by employers

- (1) The amount of any premium to be paid by any employer as assessed by his insurer under this Part of this Act shall be paid by the employer to the insurer within one month after the date of the assessment.
- (2) If the amount of any premium is not paid by an employer at the time when it becomes payable the employer shall be liable to pay to the insurer forthwith, in addition to the premium, an amount equal to five per cent of the premium as a penalty for his default:

Provided that the insurer may if he thinks fit reduce or remit in whole or in part any penalty so incurred, and may if he thinks fit refund in whole or in part any penalty so paid.

- (3) On payment of the amount of the premium assessed by an insurer, the insurer shall issue a certificate of insurance setting out the period in respect of which the premium has been paid.
- (4) No employer shall directly or indirectly take or receive any money from any worker in his employment, whether by way of deduction from wages or otherwise, in respect of any premiums paid or payable by the employer under this Part of this Act.

Compare: 1950, No. 84, s. 15

94 Employment becoming more hazardous

If the happening of any event or the existence of any circumstances renders the employment of any workers more hazardous than it was theretofore, the employer shall forthwith give notice thereof to his insurer, and the insurer may, in his discretion, amend the assessment of the premium payable by the employer for the purposes of this Part of this Act in respect of those workers,

but so as not to exceed in any case the maximum rate for the time being prescribed.

Compare: 1950, No. 84, s. 16

95 Extra charge on premium

Where in the opinion of the Board the business of an employer is designed, equipped, organised, or conducted in such a manner that the number or cost of accidents to workers in consequence thereof is likely to be considerably more than is usual in other businesses of that class, the Board may impose an extra charge to be made in assessing the premium payable by that employer for any period:

Provided that the total premium payable by the employer shall not exceed by more than a hundred per cent the premium computed at the maximum rate for the time being prescribed under section ninety of this Act.

Compare: 1950, No. 84, s. 16a; 1952, No. 17, s. 20

Notification of Accidents

96 Notification of accidents, and of claims

- (1) Whenever any accident happens which causes personal injury to or the death of any worker, the employer shall as soon as practicable give notice thereof to his insurer stating—
 - (a) The time, cause, and nature of the accident;
 - (b) The name of the worker affected thereby, particulars of the injury, and the probable duration of any disablement resulting therefrom;
 - (c) Whether the accident arose in the course of the worker's employment; and
 - (d) Such other particulars as may be prescribed by regulations.
- (2) Whenever any accident happens which causes personal injury to or the death of any worker within the meaning of this Act, the employer, whether or not he is insured under this Part of this Act and whether or not he is an exempted employer, shall as soon as practicable give written notice to an Inspector of Factories appointed under the Factories Act 1946 specifying the nature of the accident, the name and residence of the worker affected thereby, his age, the place (if any) to which he has been removed, and such other particulars as may be prescribed by regulations:

Provided that it shall be sufficient compliance with this subsection if the accident is notified or reported to the Inspector or any other authority pursuant to any enactment other than this Act.
- (3) If any employer receives notice of a claim, or of the intention of any person to make a claim, in respect of injury to or the death of a worker, the employer

shall within three days thereafter give to his insurer particulars of the notice or, if it is in writing, the notice or a copy of it.

(4) The employer shall from time to time give such further information concerning any such accident or claim as aforesaid and the worker injured or killed thereby as the insurer may reasonably require to enable him to determine whether compensation, damages, or contribution should be paid under this Act or under any of the other enactments referred to in section eighty-six of this Act or at common law and, if so, how much should be paid.

Compare: 1950, No. 84, s. 17

Settlement of Claims

97 Settlement of claims and conduct of proceedings by insurer

(1) The insurer of any employer may undertake the settlement of any claim arising from injury to or the death of a worker, and may take over and have the conduct and control on behalf of the employer of any proceedings taken to enforce any such claim, or for the settlement of any question arising with reference thereto, and may defend or conduct any such proceedings in the name of the employer and on his behalf, and shall indemnify the employer against all costs and expenses of and incidental to any such proceedings.

(2) The employer shall sign all such warrants and authorities as the insurer may require for the purpose of enabling the insurer to have the conduct and control of any such proceedings as aforesaid.

(3) The employer shall render all reasonable assistance to the insurer to enable the insurer to conduct any such proceedings and defend any claims which the insurer decides to defend.

(4) No employer shall, without the consent in writing of his insurer, make any payment, settlement, or arrangement in respect of any claim arising from injury to or the death of a worker, and no employer shall, without the like consent, make any admission of liability in respect of any such claim or allow any action to be undefended or judgment to go by default, by confession, or by consent.

(5) If any employer fails without reasonable cause to comply with the provisions of this section he shall be liable to pay to his insurer any amounts which have been paid, or may become payable, by the insurer in respect of the claim and proceedings concerned, and the insurer for the purpose of obtaining payment of those amounts shall be entitled to enforce the charge created by section one hundred and thirty of this Act in relation to the compensation as if the claim by the insurer were a claim by the worker against the employer.

Compare: 1950, No. 84, s. 18

*Persons Who are Not Workers***98 Insurance in respect of persons who are not workers**

(1) Any person (whether or not he is an employer to whom section eighty-five of this Act applies) who delivers to an authorised insurer a statement of wages in accordance with that section may in the prescribed manner state—

- That he will in the period covered by the estimate of wages be employing his wife or (in the case of a woman) her husband named therein at the rate of remuneration therein specified; or
- That he will in the period covered by the estimate of wages be employing some person named or described therein who is not a worker with respect to whom this Part of this Act applies, or concerning whom there may be a doubt as to whether or not he is such a worker, at the rate of remuneration therein specified; or
- That he will in the period covered by the estimate of wages be receiving the benefit of the services of some person named or described therein who will be performing the services free of charge or at less than the normal rate of remuneration and for whom a normal rate of remuneration is specified in the estimate,—

and, in any such case, he may request that the provisions of this section shall apply with respect to the person so named or described.

(2) If the insurer is of opinion that the provisions of this section should be applied in respect of the person so named or described, he may assess a premium to be paid by the person making the statement and request for the period covered by the estimate, and on payment of the premium the following provisions shall apply:

- The person named or described in the statement and request as aforesaid (hereinafter in this section referred to as the worker) shall during the period for which the premium has been assessed and paid be deemed to be a worker within the meaning of this Act with respect to whom this Part of this Act applies employed by the person who made the statement and request as aforesaid (hereinafter in this section referred to as the employer) at the rate of remuneration specified in the estimate:
- Subject to the provisions of this Part of this Act (including this section) and any regulations made for the purposes thereof, the insurer shall be deemed to have contracted by a contract of insurance to indemnify the employer in respect of all sums which the employer becomes liable to pay under or by virtue of this Act (as modified by this section) in respect of the death of or personal injury to the worker caused by accident happening, during the period for which the premium has been assessed and paid, to the worker and arising out of and in the course of his employment by the employer:

(c) Subject to the provisions of this Part of this Act (including this section) and any regulations made for the purposes thereof, the insurer shall, if the worker is not the wife or husband of the employer, be deemed to have contracted by a contract of insurance to indemnify the employer in respect of all sums which the employer becomes liable to pay under or by virtue of the Coal Mines Act 1925, the Mining Act 1926, Part I, Part V, or Part VI of the Law Reform Act 1936, or the Deaths by Accidents Compensation Act 1952, or at common law as or for damages or contribution for the death of or personal injury to the worker caused by accident happening, during the period for which the premium has been assessed and paid, to the worker in the course of his employment by the employer:

Provided that the indemnity under this paragraph shall not extend to any case where the liability of the employer is not enforceable by action in any Court in New Zealand:

(d) The provisions of this Part of this Act (other than subsection one of section eighty-six and section eighty-eight) shall, as far as they are applicable and with the necessary modifications, apply as if the employer and the worker were an employer and a worker respectively within the meaning of those provisions.

Compare: 1950, No. 84, s. 19; 1952, No. 17, s. 19(2)

Indemnity of Uninsured Employers

99 Uninsured employers deemed to be insured by Workers' Compensation Board

(1) Where any employer to whom section eighty-five of this Act applies is not insured against his liability in accordance with this Part of this Act, the following provisions of this section shall apply.

(2) The employer shall be deemed to be insured by the Workers' Compensation Board as if the Board were an authorised insurer and as if the employer had delivered to the Board a statement of wages:

Provided that no premiums shall be payable by the employer to the Board.

(3) In addition to any other liability, every employer who makes default in delivering a statement of wages in accordance with this Part of this Act shall be liable to repay to the Board all amounts paid by the Board as the insurer of the employer and any costs and expenses incurred in connection therewith:

Provided that the Board may remit the whole or any part of those amounts, costs, and expenses if the Board thinks fit after considering all the circumstances of the case.

(4) Where any such employer delivers a statement of wages to an authorised insurer, the authorised insurer shall become the insurer of the employer in accordance with this Part of this Act as from the commencement of the period

covered by the estimate of wages contained in the statement, and the Board shall as from the commencement of that period cease to be the insurer of the employer:

Provided that the authorised insurer shall not become, and the Board shall continue to be, the insurer of the employer in respect of any accident that occurred before the delivery of the statement.

Compare: 1950, No. 84, s. 20

100 State Fire and Accident Insurance Office to settle claims on behalf of Board

- (1) The State Fire Insurance General Manager shall settle all claims for which the Board is liable as the insurer of any employer, and accordingly in every such case the General Manager shall, for the purposes of this subsection, be deemed to be the insurer of the employer under this Part of this Act.
- (2) The Board shall pay to the General Manager all money paid by him in settling any claim in accordance with this section and all costs and expenses incurred in connection therewith.

Compare: 1950, No. 84, s. 21

Authorised Insurers

101 Insurance companies that are authorised insurers

- (1) Every insurance company willing to undertake insurance business under this Part of this Act may at any time give to the Secretary of Labour notice in writing of that fact, together with an acknowledgment in writing from the Public Trustee that the company has made the deposit required to be made by it in respect of that class of business under the Insurance Companies' Deposits Act 1953.
- (2) Every such notice shall take effect on the first day of April following the date of its delivery to the Secretary of Labour.
- (3) Every insurance company that has given a notice as aforesaid shall be deemed to be an authorised insurer under this Part of this Act from the time when the notice takes effect until—
 - (a) A notice of revocation of the notice has taken effect; or
 - (b) The insurance company has been prohibited under section one hundred and two of this Act or under the Insurance Companies' Deposits Act 1953 from carrying on insurance business under this Part of this Act.
- (4) A notice given by an insurance company as aforesaid may be at any time revoked by a notice in writing given by the company to the Secretary of Labour. Every notice of revocation shall take effect on the eighth day after the date of its delivery to the Secretary of Labour, or on such later date as may be specified in that behalf in the notice of revocation.

(5) On the date on which an insurance company ceases to be an authorised insurer, it shall be relieved from its obligations under this Part of this Act:

Provided that nothing in this subsection shall affect any contract of insurance entered into by the company before that date, or deemed in accordance with this Part of this Act to have been so entered into.

(6) The Secretary of Labour shall from time to time as occasion requires notify in the *Gazette* the name of every insurance company that, in addition to the General Manager, is an authorised insurer under this Part of this Act, and shall also notify the name of every company that has ceased to be an authorised insurer, and the date on which it ceased to be such.

Compare: 1950, No. 84, s. 22

102 Compensation Court may prohibit insurance company from carrying on business

(1) If it is at any time alleged in an application by the Secretary of Labour to the Compensation Court that any authorised insurer is unable to meet his liabilities, or has failed to comply with any material provision of this Part of this Act, or is persistently acting in breach of any provision of this Part of this Act, the Compensation Court may give notice to the insurer calling upon him to show cause why he should not be prohibited from carrying on insurance business under this Part of this Act.

(2) If the Compensation Court is satisfied that it is necessary to do so, after hearing the evidence and representations of the applicant and the evidence and representations (if any) of the insurer, the Court may make an order prohibiting the insurer from carrying on insurance business under this Part of this Act.

Compare: 1950, No. 84, s. 23

103 Penalty for unauthorised insurers

(1) Every person who, not being an authorised insurer, undertakes insurance business under this Part of this Act commits an offence, and shall be liable on summary conviction to a fine not exceeding five hundred pounds.

(2) Nothing in this section shall affect the validity of any contract of insurance entered into by any such person; and the delivery of a statement of wages to any such person shall have the same effect as if he were an authorised insurer.

Workers' Compensation Board

104 Establishment of Workers' Compensation Board

(1) There is hereby established for the purposes of this Part of this Act a Board, to be known as the Workers' Compensation Board.

(2) The Board shall consist of six members to be appointed by the Governor-General on the recommendation of the Minister, of whom—

- (a) Two members shall be appointed as representing the Government, one of whom shall be the General Manager;
- (b) Two members shall be appointed on the nomination of the Council of Fire and Accident Underwriters' Associations of New Zealand;
- (c) One member shall be appointed as representing employers;
- (d) One member shall be appointed as representing workers.

(3) Every member of the Board other than the General Manager shall be appointed for a term of three years, and may from time to time be reappointed or may be at any time removed from office by the Governor-General for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

(4) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all other acts and things that bodies corporate may lawfully do and suffer.

(5) No person shall be deemed to be employed in the service of the Crown for the purposes of the Public Service Act 1912 by reason of his being a member of the Board.

(6) The Board shall pay to its members remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Compare: 1950, No. 84, s. 24; 1951, No. 79, s. 10(1)

105 Chairman of Board

- (1) One member of the Board shall be appointed by the Governor-General on the recommendation of the Minister as the Chairman of the Board.
- (2) The Chairman shall preside at all meetings of the Board at which he is present.
- (3) If at any meeting of the Board the Chairman is not present, the members present shall appoint one of their number to be the Chairman at that meeting.
- (4) At any meeting of the Board the Chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

Compare: 1950, No. 84, s. 25

106 Meetings of Board

- (1) Meetings of the Board shall be held at such times and places as the Board or the Chairman may from time to time appoint.
- (2) At any meeting of the Board four members shall form a quorum.

(3) Subject to the provisions of this Part of this Act and of any regulations made for the purposes thereof, the Board may regulate its procedure in such manner as it thinks fit.

Compare: 1950, No. 84, s. 26

107 Representation of absent members

(1) In the absence from any meeting of the Board of any member of the Board who is employed in the Government service any person so employed and having authority to act in his place during his absence may attend the meeting in his stead.

(2) Except as provided in the foregoing provisions of this section, the Minister may from time to time appoint any person to act for any member of the Board at any meeting in the event of his absence therefrom.

(3) While any person is attending any meeting of the Board pursuant to this section he shall be deemed for all purposes to be a member of the Board, and the fact that any person so attends shall be sufficient evidence of his authority to do so.

Compare: 1950, No. 84, s. 27

108 Functions of Board

(1) The Board shall have such functions and powers in relation to the execution and administration of this Part of this Act as are conferred upon it by this Part of this Act or by any regulations made for the purposes thereof, and shall have all such other powers, not inconsistent with this Part of this Act, as are reasonably necessary for the effective performance of its functions.

(2) Without limiting the generality of the foregoing provisions, it is hereby declared that the functions of the Board shall include:

- (a) Making recommendations to the Minister as to the maximum rates of premiums to be paid by employers for the purposes of this Part of this Act and as to scales and classifications in relation thereto; and for that purpose collecting, compiling, and considering all relevant statistics and information;
- (b) Making recommendations to the Minister as to the rates of commission to be paid to agents by authorised insurers in relation to their business under this Part of this Act;
- (c) Administering the Workers' Compensation Account and executing the provisions of this Part of this Act relating to the Account;
- (d) Conducting research into the causes, incidence, and methods of prevention of accidents, injuries, and diseases in respect of which compensation may become payable under this Act; and making arrangements with any person having appropriate facilities for the conduct of any such research; and co-operating with any Government Departments and other

bodies and persons for those purposes, whether by making contributions towards their expenses or otherwise:

- (e) Generally preventing accidents to workers by such means as the Board thinks fit, and co-operating with any Government Departments and other bodies and persons for that purpose, whether by making contributions towards their expenses or otherwise;
- (f) Making arrangements with any person having the appropriate facilities for workers suffering physical injury and requiring remedial treatment to take advantage of vocational training courses, health recovery courses, and facilities in connection with employment or work under special conditions; and establishing and conducting any such courses and providing any such facilities; and co-operating with any Government Departments and other bodies or persons for those purposes, whether by making contributions towards their expenses or otherwise;
- (g) Generally securing the care, supervision, and assistance of injured workers, and co-operating with any Government Departments and other bodies or persons for that purpose, whether by making contributions towards their expenses or otherwise.

- (3) The Board may, out of its funds, purchase, take on lease or hire, or otherwise acquire such land, buildings, plant, machinery, and equipment as in the opinion of the Board are necessary for the performance of its functions.
- (4) The Board may, if it thinks fit, sell, transfer, lease, hire, or otherwise dispose of any of its real or personal property.

Compare: 1950, No. 84, s. 28

109 Officers of Board

- (1) The Board may from time to time appoint such officers and servants as it deems necessary for the efficient carrying out of its functions.
- (2) The Board may make payments to or subsidise the National Provident Fund or any fund or scheme established with the approval of the Governor-General in Council for the purpose of providing superannuation or retiring allowances for its officers and servants.

Compare: 1950, No. 84, s. 29

110 Contracts of Board

- (1) Any contract which if made between private persons must be by deed shall, when made by the Board, be in writing under the common seal of the Board.
- (2) Any contract which if made between private persons must be in writing signed by the persons to be charged therewith may, when made by the Board, be in writing signed by any person acting on behalf of and under the express or implied authority of the Board.

- (3) Any contract which if made between private persons may be made orally may, when made by the Board, be made orally by any person acting on behalf of and under the express or implied authority of the Board.
- (4) The common seal of the Board shall not be affixed to any document except pursuant to a resolution of the Board, and the execution of any document so sealed shall be attested by two members of the Board.

Compare: 1950, No. 84, s. 30

111 Borrowing powers

With the precedent consent of the Minister of Finance, the Board may from time to time borrow money (whether by way of overdraft or otherwise) and mortgage or charge any of its property or rights.

Compare: 1950, No. 84, s. 31

112 Exemption from taxation

The Board shall be exempt from land tax and income tax, and from the social security charge.

Compare: 1950, No. 84, s. 32

Levies Payable by Authorised Insurers and Exempted Employers

113 Levies to cover liabilities and expenses of Board

- (1) For the purpose of providing for the liabilities and expenses of the Board under this Part of this Act, the Board may from time to time, by resolution, impose on authorised insurers and exempted employers, or on any class or classes thereof, levies of such amounts or at such rates as the Board thinks fit.
- (2) The amount of any such levy imposed on any person shall be payable in such manner as may be determined by the Board, and shall be recoverable as a debt due to the Board.

Compare: 1950, No. 84, s. 33

Workers' Compensation Account

114 Workers' Compensation Account

- (1) For the purposes of this Part of this Act there shall be established at such bank as the Board directs an account to be known as the Workers' Compensation Account.
- (2) There shall from time to time be paid into the Account all money payable to or belonging to the Board.
- (3) There shall from time to time be paid out of the Account all money payable by the Board, and all costs, charges, and expenses whatsoever incurred by the Board in the performance of its functions and the exercise of its powers and authorities.

- (4) The Account shall be operated on by cheque signed by or on behalf of the Board. For the purposes of this subsection the Board may from time to time authorise any member, officer, or agent of the Board to sign cheques on behalf of the Board.
- (5) Any money of the Board which is available for investment may be invested in any manner in which trustees are for the time being authorised to invest trust money.

Compare: 1950, No. 84, s. 34

115 Board may establish special funds and reserves

The Board may from time to time establish such special funds or reserves as it deems necessary or expedient for any purpose contemplated by this Part of this Act.

Compare: 1950, No. 84, s. 34a; 1954, No. 26, s. 2

116 Audit of accounts

The accounts of the Board shall be audited by the Audit Office, which for that purpose shall have all such powers as it has under the Public Revenues Act 1953 in respect of public money and public stores and the audit of local authorities' accounts.

Compare: 1950, No. 84, s. 35; 1953, No. 73

General

117 Employers to keep records

Every employer shall in respect of all his workers keep records of wages paid and time worked, and of such other particulars as may be prescribed by regulations.

Compare: 1950, No. 84, s. 36

118 Production of books and documents

Every person shall from time to time, as required by his insurer or by the Board, furnish in writing any information or produce any books or documents relating to any wages paid, or any statement of wages, or any assessment, or any claims made by workers or their dependants (whether paid or outstanding), which may be in the knowledge, possession, or control of that person.

Compare: 1950, No. 84, s. 37

119 Offences

- (1) Every person commits an offence against this Part of this Act who—
 - (a) Refuses or fails to deliver or furnish or give any statement, return, notice, or information as and when required by this Part of this Act or any regulations made for the purposes thereof, or as and when reasonably required by his insurer or by the Board; or

- (b) Fails to keep records as required by this Part of this Act or any regulations made for the purposes thereof; or
- (c) Wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead his insurer or the Board, in relation to any matter or thing affecting his own or any other person's liability to pay premiums under this Part of this Act, or in relation to any matter or thing affecting any claim which is being made or which has been made, whether by himself or by any other person, against an employer and in respect of which the employer is insured under this Part of this Act; or
- (d) Refuses or fails without lawful justification to attend and give evidence as and when required by his insurer or by the Board or to answer truly and fully any question put to him or to produce any book or document required of him; or
- (e) Resists or obstructs any person acting in the discharge of his duties or in the exercise or attempted exercise of his powers under this Part of this Act; or
- (f) Commits any offence against any regulations made for the purposes of this Part of this Act; or
- (g) Aids, abets, or incites any other person to commit any offence against this Part of this Act or against any regulations made for the purposes thereof.

- (2) Every person who commits an offence against this Part of this Act shall be liable on summary conviction to a fine not exceeding one hundred pounds.
- (3) Notwithstanding anything to the contrary in the Justices of the Peace Act 1927, or in any other Act, any information in respect of any offence against this Part of this Act may be laid at any time within five years after the offence was committed.

Compare: 1950, No. 84, s. 38

120 Penalties for evasion

- (1) If any person evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed upon him by this Part of this Act or any regulations made for the purposes of this Part of this Act with intent to evade, the liability for any sum properly payable by him as premium or otherwise to his insurer (which sum is in this section referred to as the deficient premium), he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and he shall also be chargeable with an additional sum (in this section referred to as the penal charge) not exceeding treble the amount of the deficient premium.
- (2) The penal charge shall for all purposes be deemed to be of the same nature as the deficient premium and shall be recoverable accordingly, and shall be

assessed by the employer's insurer in the same manner, as far as may be, as the deficient premium but separately therefrom:

Provided that, where the Board was the insurer of the employer during the whole or any part of the period in respect of which the deficient premium was payable, the penal charge shall be assessed by and payable to the Board.

- (3) The assessment of any penal charge may from time to time be amended and a new assessment in place thereof made by the insurer or by the Board, as the case may be.
- (4) An assessment of the penal charge may be made and the charge so assessed shall be recoverable at any time, whether before or after the deficient premium has been assessed or has been paid.
- (5) No assessment of the penal charge shall be made or increased at any time after five years from the end of the period in respect of which the deficient premium was payable.

Compare: 1950, No. 84, s. 39

121 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Part of this Act and for the due administration thereof.
- (2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:
 - (a) Prescribing forms for the purposes of this Part of this Act, the particulars to be inserted therein, and the method of completing and delivering the same;
 - (b) Prescribing modes of giving notices of assessments and other notices, and of delivering or serving other documents for the purposes of this Part of this Act;
 - (c) Fixing, or providing for the fixing of, rates of commission to be paid to agents by authorised insurers in relation to their business under this Part of this Act;
 - (d) Providing for the payment, collection, and enforcement of levies imposed under this Part of this Act;
 - (e) Providing for the records to be kept and the returns to be made by employers and authorised insurers and prescribing particulars to be inserted therein.

Compare: 1950, No. 84, s. 40

Part IV

Damages and Compensation

122 Agreement for compensation or damages binding

Except as provided in section one hundred and twenty-three of this Act, when any claim against an employer for compensation under this Act, or for damages independently of this Act, has been settled by agreement, no person bound by that agreement shall be entitled to recover from the employer in respect of the same accident any sum, whether by way of damages or of compensation, other than the amount so agreed upon.

Compare: 1922, No. 39, s. 51

123 Claim in case of death not barred by any judgment or settlement obtained by worker

- (1) No claim to compensation in respect of the death of a worker shall be barred by any judgment obtained by the worker himself in his lifetime in respect of the injury which caused his death, whether that judgment was obtained under this Act or independently of this Act, or by any settlement or accord and satisfaction made by the worker in his lifetime in respect of his claim to damages or compensation for that injury.
- (2) In every case where the amount of any weekly payments of compensation paid to the worker in respect of the accident which caused his death (including any lump sum in so far as it is paid instead of any such weekly payments), together with the amount of all other money (not being compensation as defined in subsection one of section two of this Act) paid or payable by way of damages or compensation under any such judgment, settlement, or accord and satisfaction, or otherwise received by the worker from his employer in respect of his injury, exceeds the aggregate of weekly payments of compensation at the prescribed maximum amount for thirty-nine weeks, the amount of compensation payable in respect of his death under paragraph (a) or paragraph (b) of subsection one of section eleven of this Act shall be reduced by the amount of that excess.

Compare: 1922, No. 39, s. 54; 1953, No. 22, s. 3(3)

124 Act not to affect independent liability

- (1) Except as otherwise expressly provided by this Act, nothing in this Act shall affect any civil liability of an employer or any other person which exists independently of this Act.
- (2) Any sum received by a worker, or by or on behalf of any defendant of a worker, from any person by way of damages in respect of an accident shall be deducted from the sum recoverable by that worker, or by or on behalf of his defendants, by way of compensation in respect of the same accident.
- (3) Any sum received by a worker, or by or on behalf of any defendant of a worker, by way of compensation in respect of any accident shall be deducted

from the sum recoverable by that worker, or by or on behalf of his dependants, from any person by way of damages in respect of the same accident.

- (4) When judgment has been recovered by or on behalf of any person for compensation that person shall not be entitled thereafter to recover damages from any person in respect of the same accident unless the Court is satisfied that all reasonable steps have been taken to obtain satisfaction of the judgment for compensation, and that the judgment has not been satisfied.
- (5) When judgment has been recovered against any person for damages independently of this Act in respect of an accident, no person by or on whose behalf that judgment has been recovered shall be entitled thereafter to recover compensation from any person in respect of the same accident unless the Court is satisfied that all reasonable steps have been taken to obtain satisfaction of the judgment for damages, and that the judgment has not been satisfied.

Compare: 1922, No. 39, s. 49

125 Indemnity of employer in certain cases

Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation is paid or payable, whether directly or by way of an indemnity, shall be entitled to be indemnified by the person so liable to pay damages to the extent of his liability to pay the same.

Compare: 1922, No. 39, s. 50

126 Procedure where action brought independently of this Act

- (1) If within the time limited by this Act for commencing an action for the recovery of compensation an action is brought in the Supreme Court to recover damages independently of this Act in respect of an accident, and it is determined in the action that the accident is one for which the defendant is not liable independently of this Act, the action shall be dismissed; but the Court shall, on the application of the plaintiff made at the time of the dismissal or as soon thereafter as practicable, proceed to determine whether the defendant is liable to pay compensation under this Act, and, if he is found to be so liable, the Court shall thereupon assess the compensation as if in an action for the recovery thereof, but shall deduct from the amount of compensation the costs which in the opinion of the Court have been caused by the plaintiff suing for damages instead of for compensation.
- (2) For the purposes of any such determination of the defendant's liability under this Act, and the assessment of compensation, the Supreme Court may hear such further evidence (if any) as it thinks fit, as if the hearing of the application were the trial of an action in that Court, or may act upon the evidence already given in the trial of the action.

- (3) The Supreme Court shall thereupon give under the seal of the Court a certificate of the amount of compensation so assessed, subject to such deduction as aforesaid, and shall cause the certificate to be delivered to the Compensation Court to be filed in that Court.
- (4) In any such certificate the Supreme Court may make any order as to the payment, distribution, receipt, application, investment, or other disposition of the compensation so assessed which might be made by the Compensation Court in an action for the recovery of that compensation.
- (5) The certificate when so filed in the Compensation Court shall be deemed to be and shall have the effect of a judgment of that Court in an action for compensation, and the Compensation Court shall in respect of that certificate and judgment have the same powers as are under this Act conferred upon that Court in respect of judgments given thereby.
- (6) No appeal or application for a new trial shall lie or be made in respect of any such assessment of compensation by the Supreme Court, or in respect of any order so made by that Court as to the compensation so assessed.
- (7) If any appeal or application for a new trial is brought or made by the plaintiff in respect of the dismissal of the action in which any such assessment of compensation is made, and the appeal is allowed or the application is granted, the assessment of compensation shall thereupon cease to have any force or effect, as if it had not been made.
- (8) During the pendency of any such appeal or application for a new trial the Supreme Court may, if it thinks fit, make an order staying all proceedings on the said assessment and certificate.
- (9) If in any such action as is mentioned in subsection one of this section judgment for damages is given for the plaintiff, and the judgment is reversed on appeal, the Court of Appeal may, if it thinks fit, remit the case to the Supreme Court to determine the liability of the defendant to pay compensation under this Act, and the Supreme Court shall thereupon have the same powers in that behalf as are hereinbefore in this section set forth.
- (10) Except as in this section provided, when an action has been brought in any Court against an employer to recover damages for an accident independently of this Act, and it has been decided in that action that the employer is not so liable, he shall not be liable to pay in respect of the same accident compensation under this Act either to the plaintiff in that action or to any other person on whose behalf the said action was brought.

Compare: 1922, No. 39, s. 52; 1952, No. 17, s. 9(2)

127 Magistrate's Court may award compensation in certain cases

Where in an action in a Magistrate's Court or in a Warden's Court for the recovery of damages independently of this Act in respect of an injury to a worker by accident arising out of his employment the worker fails to establish

his claim, the Court shall have the same jurisdiction as the Supreme Court to award compensation under this Act, and the provisions of section one hundred and twenty-six of this Act shall, with the necessary modifications, extend and apply accordingly.

Compare: 1922, No. 39, s. 21; 1940, No. 18, s. 62

128 Provision where insurer contests claim

Where an insurance company or other person indemnifies an employer against his liability for accidents to workers under this Act, or at common law or otherwise, and has used or uses the employer's name or has acted on his behalf in any action or proceedings in the Compensation Court or any other Court, that insurance company or other person shall be bound by the decision of the Court in the same manner and to the same extent as the employer, and shall indemnify him accordingly:

Provided that the liability of the insurance company or other person shall be limited by the terms and conditions of the indemnity.

Compare: 1922, No. 39, s. 68; 1952, No. 17, s. 9(2)

129 Causes of action for damages to survive under Part I of Law Reform Act 1936

Part I of the Law Reform Act 1936 shall apply to causes of action for damages in respect of accidents happening to workers.

Compare: 1950, No. 84, s. 46(1)

130 Compensation and damages for injury in mine, etc., to be an equitable charge on employer's interest

- (1) When injury is caused to a worker by accident arising out of and in the course of his employment in or about any mine, building, factory, or ship, the amount of compensation or damages for which the employer is liable in respect of that injury, whether under this Act or independently of this Act shall be an equitable charge upon the employer's estate or interest in that mine, building, factory, or ship, and in the plant, machinery, and appliances in or about the same, and in the land on which the mine, building, or factory is situated.
- (2) This charge shall take effect from the date of the accident causing the injury, notwithstanding that the amount of the employer's liability may not yet have been determined.
- (3) As between themselves all such charges shall have priority according to the dates of the accidents out of which they arise, and in the case of accidents happening on the same day to two or more workers the charges arising therefrom shall rank equally with each other, and shall be deemed to arise at the time when the first of those accidents happens.
- (4) Subject to the provisions of subsection three of this section, every such charge shall, except as hereinafter provided, have priority over all existing or subse-

quent mortgages, charges, or encumbrances, howsoever created. Notwithstanding anything to the contrary in any other Act, if any land subject to a charge created by this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that other Act the charge created thereby would be deferred to the charge created by this section.

(5) For the purpose of enforcing any such charge after the amount of the employer's liability has been determined in due course of law, whether by action, agreement, or otherwise, the Supreme Court may make such order as it thinks fit, either for the sale of the estate or interest which is subject to the charge, or for the appointment of a receiver, or otherwise; and any order for sale shall be carried into effect by the Sheriff in the same manner as in the case of a writ of sale, with any modifications that may be necessary or may be provided by rules of Court in that behalf.

Compare: 1922, No. 39, s. 47

Part V

Miscellaneous Provisions

131 Compensation not assignable

No money paid or payable by way of compensation under this Act, and no money so paid and remaining in the hands of the Public Trustee or any other trustee under any order of the Compensation Court, shall be capable of being assigned, charged, taken in execution, or attached, nor shall any claim be set off against it, nor shall it be assets in the bankruptcy of the person entitled thereto.

Compare: 1922, No. 39, s. 60

132 Compensation claims provable in bankruptcy or liquidation

(1) When there is any actual or contingent claim for compensation under this Act against any person, and that person is adjudicated bankrupt, or files a petition to be so adjudicated, or (being a corporation) commences to be wound up, as the case may be, after the happening of the accident out of which the claim arises, the claim shall be provable in the bankruptcy or winding up.

(2) No such bankruptcy or winding up shall preclude or affect the commencement or continuance of any action or proceeding in the Compensation Court or elsewhere for the determination of the validity or amount of any such claim, or for the determination of any other question relating thereto.

(3) If weekly payments are payable by way of compensation under any agreement or any order of the Court, the claim to be proved shall be for such lump sum instead thereof as is agreed upon between the Official Assignee or the liquidator and the person entitled to recover the compensation, or as is assessed

either by the Compensation Court or by any Court having jurisdiction in the bankruptcy or winding up.

Compare: 1922, No. 39, s. 53; 1952, No. 17, s. 9(2)

133 Workers' representative entitled to view scene of accident

- (1) After the happening of any accident, and before the determination of any proceedings to recover compensation in respect thereof, the secretary or any other official of any union of workers of which the injured or deceased worker was a member at the time of the accident and the solicitor for the worker or, in the case of the death of the worker, the solicitor for the representative, or, as the case may be, the dependants, of the worker shall be entitled at any reasonable time to view or photograph, either separately or together or in the company of experts, and in the absence of the solicitor for the employer, the scene of the accident and any plant or equipment connected with the accident.
- (2) Any employer or other person who refuses to allow any secretary or other official or solicitor as aforesaid to view or photograph the scene of an accident and any plant or equipment in accordance with the provisions of this section, or who obstructs any secretary or other official or solicitor while he is attempting so to do, commits an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds.

Compare: 1947, No. 58, s. 50

134 Superannuation Act not affected

Nothing in this Act shall affect the provisions of the Superannuation Act 1956.

Compare: 1922, No. 39, s. 62

135 Offences

- (1) Every person commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding twelve months who, for the purpose of obtaining any payment or benefit or avoiding any obligation for himself or for any other person under this Act, makes any false statement to or otherwise misleads or attempts to mislead any other person, whether or not that other person is concerned in the administration of this Act.
- (2) Notwithstanding anything to the contrary in the Justices of the Peace Act 1927, or in any other Act, any information in respect of any offence against this section may be laid at any time within five years after the offence was committed.

136 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as he thinks necessary or desirable in order to give full effect to the provisions of this Act.

(2) Without limiting the general power to make regulations hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) Prescribing the procedure in any proceedings under this Act;
- (b) Prescribing the Court fees (if any) payable in any such proceedings;
- (c) Prescribing the duties of the Public Trustee in respect of money to be invested or administered by him under this Act;
- (d) Authorising the Compensation Court to make an order to the effect that any money awarded as compensation under this Act may be transferred to a competent authority in any other territory within the Commonwealth to be received and administered by that authority in such manner as it thinks fit for the benefit of dependants resident or becoming resident in that territory;
- (e) Providing for the transfer to any such authority of any such money as aforesaid;
- (f) Providing for the receipt and administration in New Zealand by the Compensation Court or by any other competent authority of any compensation transmitted to New Zealand from any other territory within the Commonwealth for the benefit of dependants resident or becoming resident in New Zealand;
- (g) Providing that any provisions of this Act shall apply, with such modifications (if any) as may be specified in the regulations, to any class of accidents to which they do not already apply;
- (h) Providing that Part III of this Act, with such modifications (if any) as may be specified in the regulations, shall bind the Crown in respect of such classes of persons employed in the service of the Crown as may be so specified.

Compare: 1922, No. 39, s. 65; 1936, No. 45, s. 11; 1947, No. 58, s. 42(5); 1950, No. 84, s. 7(1),(2); 1952, No. 17, s. 9(2)

137 Act to be administered by Labour Department

- (1) This Act shall be administered by the Department of Labour.
- (2) The First Schedule to the Labour Department Act 1954 is hereby accordingly amended by omitting the reference to the Workers' Compensation Act 1922, and substituting a reference to this Act.

138 Repeals and savings

- (1) The enactments specified in the Second Schedule to this Act are hereby repealed.
- (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed

or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document was made or the thing was done.

- (3) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of subsection two of section twelve of the Workers' Compensation Amendment Act 1949 shall not affect the amendment made by that subsection.
- (4) Notwithstanding the repeal by this Act of section thirteen of the Workers' Compensation Amendment Act 1952, the provisions of that section shall continue to apply as if it had not been repealed in respect of the Judge of the Compensation Court named therein.

SCHEDULES

FIRST SCHEDULE
Compensation for Specified Injuries

Section 17

Nature of Injury	Ratio of Compensation to Maximum Compensation for Total Incapacity
	Per Cent
Loss of both eyes	
Loss of both hands	
Loss of both feet	
Loss of a hand and a foot	100
Total and incurable loss of mental powers involving inability to work	
Total and incurable paralysis of the limbs or of mental powers	
Total loss of an arm or of the greater part of an arm	80
Total loss of a hand, or of five fingers of a hand, or of the lower part of an arm	70
Total loss of a leg	75
Total loss of a foot, or of the lower part of a leg	60
Total loss of the sight of one eye, together with serious diminution of the sight of the other eye	75
Total deafness	50
Total loss of the sight of one eye	50
Total loss of the lens of an eye	30
Total loss of a thumb	30
Total loss of a forefinger	20
Total loss of a joint of a thumb	15
Total loss of a little finger	12
Total loss of a middle finger or of a ring finger	8
Total loss of a big toe	10
Total loss of a toe other than a big toe, or of a joint of a finger	5
Total deafness of one ear	10
Total loss of two joints of a finger—	
If a forefinger	12½
If a little finger	8½
If a middle finger or a ring finger	6½

For the purposes of this Schedule the expression "loss of" includes "permanent loss of the use of".

SECOND SCHEDULE

Enactments Repealed

Section 138

1922, No. 39—

The Workers' Compensation Act 1922. (1931 Reprint, Vol. V, p. 597.)

1936, No. 45—

The Workers' Compensation Amendment Act 1936.

1940, No. 18—

The Statutes Amendment Act 1940: Sections 61 and 62.

1943, No. 9—

The Finance Act (No. 2) 1943: Section 24.

1943, No. 23—

The Workers' Compensation Amendment Act 1943.

1944, No. 25—

The Statutes Amendment Act 1944: Sections 68 and 69.

1945, No. 19—

The Workers' Compensation Amendment Act 1945.

1947, No. 58—

The Workers' Compensation Amendment Act 1947.

1948, No. 77—

The Statutes Amendment Act 1948: Section 47.

1949, No. 11—

The Workers' Compensation Amendment Act 1949.

1949, No. 39—

The Finance Act 1949: Sections 10 and 11.

1949, No. 51—

The Statutes Amendment Act 1949: Sections 61 and 62.

1950, No. 40—

The Royal New Zealand Air Force Act 1950: Section 159.

1950, No. 84—

The Workers' Compensation Amendment Act 1950.

1951, No. 4—

The Workers' Compensation Amendment Act 1951.

1951, No. 51—

The Workers' Compensation Amendment Act (No. 2) 1951.

1951, No. 79—

The Fees and Travelling Allowances Act 1951: So much of the Second Schedule as relates to the Workers' Compensation Amendment Act 1950.

1952, No. 17—

The Workers' Compensation Amendment Act 1952.

1952, No. 81—

The Finance Act (No. 2) 1952: Subsection (1) of section 6.

1953, No. 22—

The Workers' Compensation Amendment Act 1953.

1954, No. 26—

The Workers' Compensation Amendment Act 1954.

1954, No. 90—

The Finance Act 1954: Section 10.

1955, No. 107—

The Superannuation Amendment Act 1955: So much of the Schedule as relates to the Workers' Compensation Amendment Act 1952.