

Act No. 10, 1910.

An Act to amend the law with respect to compensation to workmen for injuries suffered in the course of their employment; and for purposes consequent thereon or incidental thereto. [19th August, 1910.]

WORKMEN'S  
COMPENSATION.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Workmen's Compensation Act, 1910," and shall come into force on the first day of January, one thousand nine hundred and eleven.

2. (1) In this Act, if not inconsistent with the context,—
- "Building work" includes the erection or demolition of any building, or repairing of the same by means of scaffolding.
  - "Court" means a court or magistrate having jurisdiction to hear proceedings or applications for or in relation to any claim for compensation under this Act.
  - "Dependents" means such members of a workman's family, specified in the First Schedule hereto, as at the time of his death were wholly or in part dependent on his earnings, and then resident in New South Wales.
  - "Employer" means a person who habitually employs at least four persons in his trade or business, and includes persons, firms, companies, and corporations employing workmen, and the legal representatives of a deceased employer.
  - "Engineering work" includes any work of construction, alteration, or repair of a railway, tramway, harbour, dock, sewer, or waterwork.
  - "Factory" means factory as defined by the Factories and Shops Act of 1896 or any Act amending the same.
  - "Medical referee" means a legally qualified medical practitioner appointed by the Governor for the purposes of this Act.
  - "Mine" includes every shaft sunk or in the course of being sunk, and every adit, level, inclined plane in the course of being driven, and any shaft, adit, drive, level, or other excavation in and adjacent to and belonging to any such mine; but "mine" or "quarry" does not include a mine to which the Miners Accident Relief Act, 1900, or any Act amending the same, applies.

"Workman"

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“Workman” does not include any person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business, but save as aforesaid, means a railway or tramway servant and any other person of any age and of either sex who, under contract with an employer, whether made before or after the commencement of this Act, and whether oral or in writing, express or implied, is engaged, by way of manual labour, in any employment to which this Act applies.

(2) Any reference in this Act to a workman who has been injured shall, where he is dead, include a reference to his legal personal representatives, or to his dependents.

Application as to employment.

**3.** This Act shall apply to employment by the employer on, in, or about—

- (a) any railway, tramway, factory, workshop, mine, quarry, wharf, vessel, engineering, or building work, any building used for dumping or storing wool, carried on by or on behalf of the employer as part of his trade or business; or
- (b) any other employment carried on by or on behalf of an employer, as part of his trade or business which is declared by proclamation to be dangerous; provided that no such proclamation shall be made except pursuant to resolution of both Houses of Parliament.

Application.  
N.Z., 1900, No. 43,  
s. 3.

**4.** This Act shall apply to workmen in any employment by or under the Crown within New South Wales to which this Act would apply if the employer were a private person:

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

Liability of employers.  
*Ibid.* s. 6.

**5.** If in any employment to which this Act applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject to the provisions of this Act, be liable to pay compensation in accordance with the Second Schedule to this Act.

Employer not liable in certain cases.  
*Ibid.* s. 5.

**6.** The employer shall not be liable under this Act—

- (a) in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed; or
- (b) in respect of an injury which is directly attributable to the serious or wilful misconduct of the workman.

Procedure in the recovery of compensation.

**7.** (1) Where the claim is for more than thirty pounds, proceedings for the recovery of compensation under this Act shall be taken in the District Court of the district within which the injury occurred in respect of which compensation is sought.

Such

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Such proceedings shall, so far as possible, and subject to the provisions of this Act and the regulations to be made hereunder, be taken under the District Courts Act, 1901, and any Acts amending the same: Provided that any application made under the Second Schedule to this Act may be made to and heard and determined by a stipendiary or police magistrate.

(2) Where the claim is for not more than thirty pounds such proceedings shall be taken before a stipendiary or police magistrate under the Small Debts Recovery Act, 1899, and any Acts amending the same.

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

Rights of workmen.  
N.Z., 1900, No. 43,  
s. 5.

- (a) Nothing in this Act shall affect any civil liability of the employer independently of this Act.
- (b) The workman may, at his option, either claim compensation under this Act, or take such proceedings as are open to him independently of this Act: Provided that the employer shall not be liable to pay compensation or damages, both independently of and also under this Act, and shall not be liable to pay compensation or damages independently of this Act except in case of such personal negligence or wilful act as aforesaid.

**9.** If, within the time hereinafter in this Act limited for taking proceedings under this Act, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the action shall be dismissed, and such dismissal shall operate as a bar to any other proceedings for compensation under the provisions of this Act:

Procedure when  
action wrongly  
brought.  
*Ibid.* s. 9.

Provided that the magistrate or the judge of the court in which the action is tried shall, if the plaintiff so chooses, proceed to assess such compensation, and shall, unless good cause to the contrary is shown, deduct therefrom all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of taking proceedings under this Act, and shall enter judgment accordingly.

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

Proceedings for fines  
not affected.  
*Ibid.* s. 11.

**11.** There shall be deducted from any compensation payable to a workman under this Act any payments made under the authority of any other Act in consequence of the disablement of the workman.

Deductions from  
compensation.

**12.**

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Notice of accident  
and of proceedings.

**12.** Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice in writing of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the proceedings for recovering compensation with respect to such accident have been commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death :

Provided that—

- (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings that the employer is not or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from New South Wales, or other reasonable cause; and
- (b) the failure to commence proceedings within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from New South Wales, or other reasonable cause.

Form and service of  
notice.  
N.Z., 1900, No. 43,  
s. 10.

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

- (a) The notice shall give the name and address of the person injured, and shall state in ordinary language the cause and nature of the injury where known, and the date and locality at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon any one of them.
- (b) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.
- (c) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business.
- (d) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.
- (e) Where the employer is the Crown, or any departmental officer acting for the Crown, the notice shall be served on the Crown Solicitor at his office in Sydney.

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**14.** If the Registrar of Friendly Societies, after taking steps Contracting out. to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the workmen and their dependents than the corresponding scales contained in this Act, the following provisions shall apply:—

- (1) The employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.
- (2) The registrar may give a certificate for a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate for the period mentioned in such renewal.
- (3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.
- (4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen or the employer that—
  - (a) the benefits conferred by any scheme are no longer on the whole so favourable to the employers or to the general body of workmen as the provisions of this Act; or
  - (b) the provisions of such scheme are being violated; or
  - (c) the scheme is not being fairly administered; or
  - (d) satisfactory reasons exist for revoking the certificate,

the registrar shall examine into the complaint, and if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries, and to furnish all accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7)

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(7) Every decision of the registrar under this section shall, in such manner and on such terms as are prescribed, be subject to review by a judge of the District Court, whose decision shall be final.

(8) The Registrar of Friendly Societies shall include in his annual report the particulars of his proceedings under this Act.

Sub-contracting.

**15.** (1) Where any person (in this section referred to as the principal), in the course of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work, any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and, where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity may, in default of agreement, be determined by a court of competent jurisdiction.

(3) The contractor shall be liable to indemnify the principal although he does not habitually employ four persons.

(4) This section shall not apply—

- (a) in any case where the accident occurred elsewhere than on or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management;
- (b) unless the work undertaken by the principal involves a payment to him of at least one hundred pounds for the due and complete performance thereof;
- (c) unless the work in which the workman is engaged at the time of the accident is an employment to which this Act applies.

Claims of workman  
in case of bankruptcy  
of employer.  
N.Z., 1900, No. 43,  
s. 17.

**16.** Where any employer becomes liable to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or, if the employer is a company, of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due.

The mode in which such charge may be enforced may be prescribed by regulation.

**17.**

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**17.** Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

Remedies against employer and stranger.

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

**18.** Any contract existing at the time of the commencement of this Act whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall not for the purposes of this Act be deemed to continue after the time at which the workman's contract of service would determine, if notice of the determination thereof were given at the commencement of this Act.

Existing contracts.

**19.** Every employer, in any employment to which the Minister may direct that this section shall apply, shall, on or before such day in every year as the Minister may direct, send to the Minister a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation together with such other particulars as may be prescribed, and, in default of complying with this section, shall be liable to a penalty not exceeding five pounds.

Return as to compensation.  
6 Edw. VII, c. 58,  
s. 12.

**20.** The Governor may make regulations for carrying out the provisions of this Act.

Regulations.

Such regulations shall be published in the Gazette, and shall take effect from the date of such publication.

Such regulations shall be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and, if not, then within fourteen days after the commencement of the next session. But if either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to take effect.

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Schedules.

## SCHEDULES.

## FIRST SCHEDULE.

## MEMBERS OF WORKMAN'S FAMILY.

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

## SECOND SCHEDULE.

## SCALE AND CONDITIONS OF COMPENSATION.

*Scale.*

Amount of compensation where death results from injury.  
Cf. Q., 5 Edw. VII,  
No. 26, Schedule,  
par. 1.

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

(1) Where death results from the injury—

- (a) If the workman leaves any dependents wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two hundred pounds, whichever of those sums is the larger, but not exceeding in any case four hundred pounds:

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

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

- (c) If the workman leaves no dependents, a sum equal to the reasonable expenses of his medical attendance and burial, not exceeding twelve pounds:

Provided the same are not payable or provided for under the rules of any friendly society to which such workman may belong.

(2) Where total or partial incapacity for work results from the injury,—

- (d) A weekly payment during the incapacity after the second week not exceeding fifty per centum of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, such average weekly earnings shall be held to be a sum equivalent to the estimated weekly wages at the time of the injury of a person in the same grade employed in the like employment, and in the district or post in which the workman was employed at the time of the injury:

Provided that such weekly payment shall not exceed one pound, and the total liability of the employer in respect thereof shall not exceed two hundred pounds:

Provided

Where total or partial incapacity results from injury.  
*Ibid.*

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Provided also that —

- (a) In the case of a workman whom his employer has reasonable cause to believe to be over sixty years of age, and who has entered into an agreement in writing with his employer as to the maximum amount of compensation to be payable to him under this Act in respect of accidents happening after the date of the agreement, the compensation shall not exceed that maximum, but the maximum shall not be less—
- Workmen over sixty years of age.  
Cf. Q., 5 Edward VII, No. 26, Schedule, par. 1.
- (i) where death results from the injury, and the workman leaves any dependents, than fifty pounds ;
- (ii) where total or partial incapacity for work results from the injury, than a weekly payment during the incapacity after the second week of five shillings, and a total liability of fifty pounds ;
- (b) in the case of a workman who has, in accordance with the regulations, obtained from a medical referee a certificate to the effect that his age or any physical or mental infirmity or incapacity from which he is suffering is such as to render him specially liable to accident, or to render the result of an accident to him specially serious, and who has entered into an agreement in writing with his employer as to the maximum amount of compensation to be payable to him under this Act in respect of accidents happening after the date of the agreement, the compensation shall not exceed that maximum, but the maximum shall not be less—
- Infirm workmen.  
*Ibid.*
- (i) where death results from the injury, and the workman leaves any dependents, than twenty five pounds, or a sum equivalent to thirty-nine times his average weekly earnings, whichever is the larger ;
- (ii) where total or partial incapacity for work results from the injury, then a weekly payment during the incapacity, after the second week, of five shillings or one quarter of his average weekly earnings, whichever is the larger, and a total liability of fifty pounds ;
- (c) As respects the weekly payment during total incapacity to a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per centum shall be substituted for fifty per centum of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.
- Workman under twenty-one years of age.  
*Ibid.*
2. In calculating "average weekly earnings" for the purposes of this Schedule,— Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.
- Mode of calculating "average weekly earnings."  
*Ibid.*, par. 2.
3. In fixing the amount of the weekly payment, regard shall be had to any payment, not being wages, which the workman may receive from the employer in respect of his injury during the period of his incapacity ; and, in the cases of partial incapacity, the weekly payment shall in no case exceed one-half of the difference between the amount of the average weekly earnings of the workman before the accident, and the average weekly amount which he is earning, or is able to earn, in some suitable employment or business after the accident.
- Mode of fixing amount of weekly payment.  
*Ibid.*, par. 3.
4. The payment shall, in case of the workman's death, be made to his legal personal representative, or, if he has no legal personal representative, then to or for the benefit of his dependents ; or, if he leaves no dependents, then to the person to whom the expenses are due ; and if made to the legal personal representative, shall be paid by him to or for the benefit of the dependents or other person entitled thereto under this Act.
- Ibid.*, par. 5.
5. Any question as to who is a dependent, or as to the amount payable to each dependent, shall, in default of agreement, be settled by the Court.
- Ibid.*, par. 6.
6. The sum allotted as compensation to a dependent may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed ; or, in default of agreement, as determined by the Court.
- Ibid.*, par. 7.

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Remarriage or  
misconduct of  
widow.

Cf. Q., 5 Edwd. VII,  
No. 26, Schedule.  
par. 8.

7. Where it appears to the Court, on any information which it considers sufficient, that a widow to whom any sum is payable under this Act, whether by way of an annuity or as instalments, or otherwise, ought, on account of her remarriage, or on account of drunkenness, neglect of children, or other sufficient misconduct on her part, to be deprived of the whole or any part of any such sums, or that the terms on which, or the manner in which, any such sums are payable to the widow ought to be varied, the Court may order such deprivation or variation, and may, on application being made in accordance with the regulations, make such further order for the payment of the sums of which the widow has been deprived to or for the benefit of other dependents or of the employer, as in the circumstances of the case may be thought just.

Medical examination  
of workman after  
notice of accident.

*Ibid.*, par. 4.

8. Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for an examination by a duly qualified medical practitioner provided and paid by the employer; and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation shall be suspended until such examination takes place.

Medical examination  
of workman receiving  
weekly payments.

*Ibid.*, par. 9.

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

Regulations as to  
medical  
examination.

*Ibid.*, par. 10.

10. A workman shall not be required to submit himself for examination by a medical practitioner under paragraph eight or paragraph nine of this Schedule, otherwise than in accordance with the regulations; and where he has so submitted himself for examination, he shall not, without the leave of the Court, be again required to so submit himself until after the expiration of one month after the previous examination.

Where a workman has so submitted himself for examination by a medical practitioner, and the employer has, within six days after such examination, furnished the workman with a copy of the report of that practitioner as to his condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the Court—

- (a) in the case of a submission for examination under paragraph eight of this Schedule, on application being made to the Court by the employer, and on payment by him of such fee as may be fixed, not exceeding the limit prescribed by regulations, may; and
- (b) in the case of a submission for examination under paragraph nine of this Schedule, on application being made to the Court by either party, and by payment by such party of such fee as may be fixed, not exceeding the limit prescribed by the regulations, shall refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with the regulations, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit; and that certificate shall be conclusive evidence as to the matter so certified.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, or in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Review of weekly  
payment.

*Ibid.*, par. 11.

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

Payment of lump  
sum.

*Ibid.*, par. 12.

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

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*Railway Service Superannuation.*

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13. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same. Compensation not assignable.  
Cf. Q., 5 Edward VII,  
No. 20, Schedule, par. 14.

14. When payment of any moneys under this Act is made to any person under twenty-one years of age, whether such person claims as a workman, dependent, or legal personal representative, the receipt of such person therefor shall be a good and valid discharge in law, and such person (notwithstanding minority) may, with the approval of the Court, elect to claim compensation under this Act, and may agree upon the amount of compensation payable. Payments to minors.  
*Ibid.*, par. 15.

15. When under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

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