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Workers' (Occupational Diseases) Relief Fund Act 1954

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Workers' (Occupational Diseases) Relief Fund Act 1954

An Act to consolidate and amend the law relating to the payment of compensation to employees in certain industries in respect of occupational diseases contracted by them in the course of their employment

[Royal Assent 23 November 1954]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I - Preliminary

1. Short title

This Act may be cited as the Workers' (Occupational Diseases) Relief Fund Act 1954 .

2. Repeal

The Acts that are specified in Schedule 1 are repealed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

basic rate means a sum equal to the basic salary for the purposes of Division 1 of Part VI of the Workers Rehabilitation and Compensation Act 1988 ;

Board means the Workers' (Occupational Diseases) Relief Fund Board, as continued under this Act immediately before the commencement date;

caring partner, in relation to a person, means the person who is in a caring relationship, within the meaning of the Relationships Act 2003 , with that person;

certifying medical officer means a person appointed as a certifying medical officer under section 14 ;

commencement date means the date of commencement of the Workers Compensation Legislation Amendment Act 1993 ;

court includes a tribunal or authority which is empowered by, or under, law to determine any matter judicially;

dependants means such members of the family of an employee as were dependent, wholly or partly, upon the earnings of the employee at the time of his or her death or would have been so dependent but for the incapacity of the employee due to disease, and includes a person whom the Secretary considers to be, or to have been, actually dependent upon the earnings of an employee;

disease means a disease specified in Schedule 2 ;

employee means a person to whom this Act applies as provided by section 4 ;

employer means a person with whom an employee has entered into a contract of employment or apprenticeship and includes the personal representative of a deceased employer;

functions includes duties;

legal proceedings includes an arbitration;

medical referee means a person appointed as a medical referee under section 14 ;

member of the family, in relation to an employee, means the spouse, caring partner, father, step-father, grandfather, mother, step-mother, grandmother, son, step-son, grandson, daughter, step-daughter, granddaughter, brother, half-brother, sister or half-sister of the employee;

mineral does not include coal or shale;

mining operations means –

(a) the disturbing, removing, carting, carrying, sifting, smelting, refining, crushing or otherwise dealing with or treating any rock, stone, quartz, clay, sand, soil, ore or mineral by any method for the purpose of obtaining metals or minerals or for prospecting for metals or minerals; and

(b) any process in connection with the dealing with, treating or handling of, any rock, stone, quartz, clay, sand, soil, ore or mineral for that purpose; and

(c) the dealing with, treating or handling, in connection with a process mentioned in

paragraph (a) or (b) , of any by-products or residues produced by, or arising from, that process; and

(d) the cutting, dressing, shaping or working on any stone, granite, marble or other similar substance; and

(e) the quarrying of blue metal or freestone; and

(f) the driving of a tunnel –

but does not include sluicing, dredging or any similar operations or mining for coal or shale, or the quarrying or crushing of any materials required for the construction or maintenance of roads;

obligations includes duties and liabilities;

property means any legal or equitable estate or interest, whether present or future and whether vested or contingent, or real or personal property of any description, and includes entitlements, powers and privileges;

regulations means regulations made and in force under this Act;

Secretary means the Secretary of the Department;

spouse, in relation to a person, includes the person who is in a significant relationship, within the meaning of the Relationships Act 2003 , with that person;

Workers' Fund means the Workers' (Occupational Diseases) Relief Fund as continued under this Act immediately before the commencement date.

(2) References in this Act to the average weekly earnings of an employee before his or her incapacity or death are to be construed as references to his or her average weekly earnings as determined in accordance with Schedule 4 .

4. Application of Act to certain mining employees

This Act applies only –

(a) to a person who immediately before the commencement date was an eligible employee within the meaning of this Act as then in force; and

(b) in respect of a disease for which compensation had at that time been paid or approved under this Act.

PART II - Administration

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14. Certifying medical officers and medical referees

(1) The Secretary may appoint as many medical practitioners as the Secretary thinks necessary to be certifying medical officers or medical referees for the purposes of this Act.

(2) A certifying medical officer or medical referee holding office under this Act immediately before the commencement date is taken to have been appointed under this section.

(3) The Secretary must pay to –

(a) a certifying medical officer; or

(b) a medical referee –

such fee as the Minister may approve in respect of each examination made, certificate given or work or service performed for the purposes of this Act.

(4) A payment under subsection (3) is to be paid from the Consolidated Fund without further appropriation than this section.

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PART III - Provisions Relating to Mining Employees

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20. Examination by certifying medical officer or medical referee

(1) A certifying medical officer –

(a) shall examine an employee who presents himself for medical examination in accordance with any of the provisions of this Act in order to ascertain whether the employee is suffering from disease or not; and

(b) shall certify in writing to an inspector of mines appointed under the Mineral Resources Development Act 1995 the result of the examination.

(2) An inspector of mines shall, forthwith after receiving a certificate under this section, forward or deliver the certificate to the Secretary.

(3) Subject to the right of appeal conferred on employers and employees by section thirty-two, a certificate of a certifying medical officer under this section is conclusive to all matters contained therein in relation to the health of the employee to whom it relates.

(4) An employee and his employer may each inspect any medical certificate given in relation to the health of the employee under this section while the certificate is in the possession or custody of an inspector of mines or of the Secretary.

21. Compensation

Compensation is payable to and in respect of employees subject to and in accordance with the provisions of this Part.

22. Compensation in case of incapacity

(1) Where it is established to the satisfaction of the Secretary, on the certificate of a certifying medical officer or, on appeal from that certificate, on the certificate of a medical referee, that an employee is suffering from disease and is thereby incapacitated from continuing to work as an employee, that employee is entitled to compensation in accordance with this section.

(2) The compensation payable to an employee under this section shall be by way of weekly payments at the relevant compensation rate.

(3) Subject to subsection (3A) of this section, the relevant compensation rate in respect of a period of incapacity of an employee is –

(a) the average weekly earnings of the employee over the period of twelve months ending at the commencement of the period of incapacity; or

(b) the ordinary time rate of pay of the employee (as expressed by reference to a week) for the work in which he was engaged immediately before the period of incapacity –

whichever is the greater.

(3AA)

(3A) If, during a period of incapacity of an employee, the ordinary time rate of pay (as expressed by reference to a week) for any work on which he was engaged immediately before the commencement of that period increases or decreases, the relevant compensation rate shall correspondingly be increased or decreased by the like amount.

(4) Where an employee would, but for the provisions of this subsection, be entitled to compensation

under this section in respect of incapacity due to disease, and his employer provides him with other work that is not in the nature of mining operations and that the employee is capable of performing and the remuneration for the other work is not less than the remuneration that the employee was receiving at the time when the incapacity arose, the employee is not entitled to receive any compensation under this section while he is in receipt of that remuneration, and is not entitled to receive any compensation under this section if the other work is offered to him by his employer and he refuses to accept it.

(5) Where an employee is permanently incapacitated, either wholly or partially, from continuing to work as an employee and is entitled to compensation under this section he may, if he has attained the age of eighteen years, enter into an agreement in writing with the Board to receive a lump sum in satisfaction of the whole or a part of the weekly payments to which he would otherwise be so entitled; and upon payment of that lump sum his right to those weekly payments shall be deemed to have been satisfied to the extent specified in the agreement.

(6) An agreement made under subsection (5) of this section shall be filed with the Secretary.

(7) No payments shall be made by way of compensation under this section the aggregate of which, as determined in accordance with section twenty-five AA, exceeds two hundred and eighty-four times the amount of average basic rate for the period of those payments, as determined in accordance with that section.

(8) Any payments which the Secretary would have otherwise been required to make under this section to a person who is under the age of eighteen years may be made to the Public Trustee to be applied by him at his discretion for the benefit of that person.

(9) Claims by employees for compensation under this section shall be determined by the Secretary on application to it in the prescribed manner by or on behalf of the claimants.

(10) Notwithstanding the foregoing provisions of this section, where an employee has, whether before or after the commencement of this Act, entered into an agreement under subsection (5) of this section or under subsection (5) of section thirty-four of the repealed Act, and it is established to the satisfaction of the Secretary –

(a) on the certificate of a certifying medical officer, or, on appeal from that certificate, on the certificate of a medical referee, that the extent of the incapacity of the employee arising from the disease in respect of which he has been paid compensation has increased since the time when the employee entered into the agreement; and

(b) that, since entering into the agreement, the employee has not engaged in mining operations –
the employee shall be paid such further compensation as he might lawfully have been paid pursuant to this section if he had, at the time of entering into the agreement, been incapacitated to the extent specified in the medical certificate mentioned in paragraph (a) of this subsection, and any further compensation so payable may be paid either in a lump sum or by way of weekly payments.

23. Special provisions in respect of pneumokoniosis, silicosis and fibrosis

(1) Where it is established to the satisfaction of the Secretary, on the certificate of a certifying medical officer, or, on appeal from that certificate, on the certificate of a medical referee, that an employee is suffering from pneumokoniosis, silicosis, or fibrosis in the first, second, or third stage of the disease and that the disease is reasonably attributable to employment in mining operations, the Secretary may pay compensation to the employee in accordance with this section.

(2) The total compensation payable under this section in the case of a person suffering from any of the diseases referred to in subsection (1) of this section in the first or second stage of the disease shall not exceed such amount as the Secretary may determine, being –

(a) in the case of a person suffering from any of those diseases in the first stage, an amount not less than ten per centum and not greater than twenty per centum; or

(b) in the case of a person suffering from any of those diseases in the second stage, an amount not less than twenty-five per centum and not greater than fifty per centum –

of the total compensation that could have been paid to him under this Act if by reason of suffering from that disease he was incapacitated from continuing to work as an employee.

(3) The total compensation payable under this section to a person suffering from any of the diseases referred to in subsection (1) of this section in the third stage shall not exceed the total amount of compensation that could have been paid to him under this Act if, by reason of suffering from that disease, he had been incapacitated from continuing to work as an employee.

(3A) For the purposes of this section, an employee shall be deemed to be suffering from pneumokoniosis, silicosis, or fibrosis –

(a) in the first stage, when he has early radiological changes suggestive of the disease (being changes that were not present when any radiological examination was made of him on his presenting himself for medical examination under section eighteen); and

(b) in the second stage, when –

(i) he has definite physical signs of the disease or radiological changes indicative of the disease have occurred to greater degree than those referred to in paragraph (a) of this subsection; and

(ii) his capacity for work is impaired to some extent by the disease; and

(c) in the third stage, when (whether or not accompanied by infection or tuberculosis) severe symptoms of the disease are present and major radiological changes indicative of the disease have occurred.

(4) The provisions of this Act relating to compensation in the case of an employee who is incapacitated, so far as they are applicable, apply in the case of an employee who is receiving compensation under this section.

(5) An employee who is receiving or has received compensation under this section shall not perform any work in connection with mining operations or be employed therein, except as may be approved by the Secretary on the recommendation of a certifying medical officer.

(6) An employee who performs any work, and an employer who knowingly employs an employee, in contravention of subsection (5) of this section is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units, together with a daily fine not exceeding 1 penalty unit.

(7) In addition to any penalty prescribed by subsection (6) of this section, an employee who is guilty of an offence against this section forfeits any claim to compensation under this Act.

24. Compensation in the case of death

(1) Where it is established to the satisfaction of the Secretary, on the certificate of a certifying medical practitioner, or, on appeal from that certificate, on the certificate of a medical referee, that the death of an employee has been caused by disease, and the death has occurred –

(a) while he was employed as an employee; or

(b) while he was in receipt of a weekly payment under this Act in respect of incapacity due to disease –

the dependants of the employee are entitled to compensation in accordance with this section.

(2) The compensation payable in respect of the death of any person is a sum of an amount calculated by multiplying the basic rate at the date of his death by the appropriate multiplier and deducting from the product the aggregate of the amounts (as determined in accordance with section twenty-five AA) of the sums paid to him by way of compensation under this Act before his death.

(3) The appropriate multiplier for the purposes of subsection (2) of this section is two hundred and sixty-three, increased, in the case of a person who leaves one or more dependent children, each of whom, at the date of the death of that person, either is under the age of sixteen years or is under the age

of twenty-one years and receiving full-time education at a university, college, school, or similar institution, by –

- (a) if there are not more than three such children, seven in respect of each of those children; or
- (b) if there are more than three such children, twenty-one.

(4) Claims for compensation under this section shall be determined by the Secretary on application to it in the prescribed manner by or on behalf of a person claiming to be interested therein as a dependant, and upon a claim therefor being made the Secretary may determine –

- (a) who are the dependants to whom compensation is payable; and
- (b) the allocation of compensation to or among those dependants.

(5) Where a person does not leave any dependants who are wholly dependent on his earnings or who would have been so dependent but for his incapacity due to disease, the Secretary may reduce the compensation that would otherwise be payable under this section on his death by such amount as it considers reasonable.

(6) All moneys payable by way of compensation under this section shall be paid to the Public Trustee on behalf of the persons entitled thereto.

(7) The Public Trustee shall pay, invest, apply, or otherwise deal with the moneys paid to it under this section, and the income arising from the investment thereof, if any, to or for the benefit of the persons entitled thereto, in such manner as The Public Trustee considers appropriate.

25. Payments to dependants of deceased employee

(1) Notwithstanding the provisions of section twenty-four , but subject to this section, where the death of an employee occurs while he is in receipt of a weekly payment under this Act in respect of incapacity due to disease, but is not caused by the disease, the dependants of the employee are, unless the Secretary otherwise determines, entitled to compensation as provided by that section; but where, by virtue of a determination made by the Secretary under section twenty-three , the total compensation payable to the employee is a proportion only of the total compensation that could have been paid to him under this Act if by reason of his suffering from a disease referred to in that section he was incapacitated from continuing to work as an employee, the appropriate multiplier referred to in subsection (2) of section twenty-four shall, for the purpose of determining the amount of compensation payable to his dependants under this section, be reduced in the like proportion.

(2) Notwithstanding anything in subsection (1) of this section, where it is established to the satisfaction of the Secretary that, at the time of the death of an employee to whom that subsection relates, the extent of the incapacity of that employee arising from the disease in respect of which he was in receipt of a weekly payment under this Act had increased since the time when that weekly payment commenced, the dependants of that employee shall be paid such further compensation as they might lawfully have been paid pursuant to that subsection if at the time when the weekly payment to the employee commenced he had been incapacitated to the extent to which he was incapacitated at the time of his death.

(3) Where an eligible employee who has not received any compensation under this Act dies and it is found that at the time of his death he was suffering from disease (whether the disease was a contributory cause of his death or not) the Secretary may, in its absolute discretion, pay to the dependants of that employee compensation at such rate, not exceeding a percentage of the compensation payable on death equal to the percentage of compensation that would have been payable to the employee under section twenty-three , if he had qualified for the payment of compensation under that section, as the Secretary may determine.

25AA. Calculation of payments, &c.

(1) Where, for the purposes of this Part, it is necessary to determine the aggregate of the payments made under this Part by way of compensation to any employee, that aggregate shall be deemed to be the aggregate of the following amounts, namely:

(a) The aggregate of the weekly payments made to the employee by way of compensation under this Part; and

(b) An amount that bears to the aggregate of the amounts of any lump sum payments made to the employee by way of compensation under this Part the same proportion as two hundred and eighty-four bears to two hundred and sixty-three.

(2) The average weekly wage for Hobart for any period shall be determined for the purposes of this Act by dividing by the number of weeks in the period the aggregate of the sums that would have been paid if on each day of the period a sum was paid that was equal to one-seventh of the basic rate for that day.

(3) References in this Part to the period of any payments shall in relation to a lump sum paid in respect of any incapacity be construed as references to the period commencing with the commencement of the period of the relevant incapacity and ending –

(a) where the lump sum is paid under an agreement made under subsection (5) of section twenty-two, on the date on which the agreement was entered into; or

(b) where the lump sum is paid under subsection (10) of that section, on the date on which the Secretary determined to make the payment of that lump sum.

(4) Where it has been established to the satisfaction of the Secretary in accordance with this Part that a person is suffering from an incapacity or disease to such an extent as would authorize or require the Secretary to make payments by way of compensation under this Part in respect of that incapacity or disease the date on which that fact is so established shall, for the purposes of subsection (3) of this section, be deemed to be the date of the commencement of the relevant period of incapacity in relation to any payments made by way of compensation under this Part in respect of that incapacity or that disease or any incapacity arising from the disease, whether or not those payments are made as a consequence of any increase in the severity or extent of the disease or incapacity.

25A.

PART IV -

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PART V - Miscellaneous

31. Medical examination of employees claiming or in receipt of pension

(1) An employee who claims compensation under this Act or is in receipt of a weekly payment under this Act shall present himself for medical examination or treatment, or further medical examination or treatment, as the case may be, at such times, in such manner, and subject to such conditions, as the Secretary may determine.

(2) If an employee fails to comply with the provisions of subsection (1) of this section his right, if any, to compensation under this Act is suspended until the required examination or treatment takes place.

(3) In such cases and to such extent as the Secretary may determine, the costs of any treatment for which an employee presents himself pursuant to this section shall, except as provided in subsection (3A) of section forty, be paid out of the Consolidated Fund without further appropriation than this section.

32. Appeal to medical referee

(1) If an employee or his employer is dissatisfied with a certificate (other than a certificate given on an initial medical examination) given by a certifying medical officer under this Act in relation to the employee, the employee or the employer, as the case may be, may appeal, as prescribed, to a medical referee against the certificate.

(2) The matter of an appeal under this section shall be decided by the medical referee, who shall certify his decision, in writing, to the Secretary.

(3) A certificate of a medical referee under this section is conclusive as to all matters contained therein in relation to the health of the employee to whom it relates.

33. Expenses in connection with medical examinations and appeals

(1) An employee who presents himself for medical examination under this Act is entitled to be paid by the Secretary such compensation for the out-of-pocket expenses and loss of time, if any, incurred by him in relation to the examination as may be prescribed or, in the absence of regulations in that behalf, as the Secretary may, in a particular case, determine.

(2)

(3) An employer or employee who appeals against a certificate of a certifying medical officer and whose appeal is sustained is entitled to be paid by the Board such compensation for the out-of-pocket expenses and loss of time, if any, incurred by him in relation to the appeal as may be prescribed or, in the absence of regulations in that behalf, as the Board may, in a particular case, determine.

(4) Any payment made under this section shall be made out of the Consolidated Fund without further appropriation than this section.

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36. Information and evidence

(1) For the purposes of this Act, the Secretary may, by notice in writing to a person, require that person

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(a) to furnish the Secretary with such information as he or she may require and as may be specified in the notice; or

(b) to attend and give evidence before the Secretary; or

(c) to produce all books, documents and other papers that are in the custody or under the control of that person.

(2) A notice under subsection (1) of this section may be delivered to the person to whom it applies or

may be forwarded to him by post addressed to his usual or last-known place of abode or business.

(3) For the purposes of this section, the Secretary may require any information or evidence to be given on oath and either verbally or in writing and, for that purpose, the Secretary may administer oaths or affirmations.

(4) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend before the Secretary pursuant to this section.

37. Access to books, &c.

The Secretary has, at all times, full and free access to all buildings and places, and to all books, documents, and other papers, for any of the purposes of this Act, and, for those purposes, may make extracts from, or copies of, any books, documents, or papers.

38. Payments not assignable, &c.

A weekly payment, or a lump sum payable in lieu thereof, is not capable of being assigned, charged, or attached, and does not pass to any other person by operation of law, and no claim may be set off against it.

39. Compensation a bar to proceedings at law

Where an employee has been paid any compensation under this Act, he shall be deemed to have waived all rights at common law or otherwise against his employer in respect of temporary or permanent incapacity due to disease.

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43. Appeal from decisions of Secretary

(1) An employee who is aggrieved by a determination, order, ruling, direction or decision made or given by the Secretary may appeal to the Workers Rehabilitation and Compensation Tribunal established under the Workers Rehabilitation and Compensation Act 1988 which must hear and determine the appeal.

(2) For the purposes of subsection (1) –

(a) the application of the Workers Rehabilitation and Compensation Act 1988 extends to the hearing of the appeal as if the employee were an applicant as defined in that Act; and

(b) the appeal is to be instituted by an application in the prescribed form referred to in Part V of that Act and filed with the Registrar of the Workers Rehabilitation and Compensation Tribunal.

44. Power of Secretary to terminate payments in certain cases

(1) Where it appears to the Secretary that an employee to whom a sum by way of compensation is payable under this Act ought, on account of his neglect of his spouse, children, or other dependants, to be deprived of any part of that sum, or that the terms on which, or the manner in which, the sum is payable to him ought to be varied, the Secretary may cease to pay that sum to the employee, and may, if in his or her opinion the circumstances warrant it, pay the sum of which the employee has been deprived to, or for the benefit of, any member of his family, as in the circumstances he or she thinks just.

(2) An employee who is aggrieved by a decision of the Secretary under subsection (1) of this section may appeal therefrom, as prescribed, to a police magistrate.

(3) An appeal under subsection (2) of this section shall be heard and determined as prescribed.

(4) The decision of a police magistrate on the hearing of an appeal under subsection (2) of this section is final.

45. Statements to be exhibited in mines, &c.

An employer shall cause to be exhibited and kept exhibited in some conspicuous place at or in the mine, factory, workshop, room, premises, or other place where an employee employed by him is working, a statement in such form, and containing such particulars of the provisions of this Act, as may be prescribed.

Penalty: Minimum, fine not exceeding 1 penalty unit; maximum, fine not exceeding 10 penalty units, together with a daily fine not exceeding 1 penalty unit.

46. Offences and penalties

(1) A person must not –

(a) fail to furnish any information or perform any duty as and when required by or under this Act or fail to comply with any lawful requirement of the Secretary under this Act; or

(b) without just cause, fail to attend and give evidence before the Secretary when so required pursuant to section 36 ; or

(c) fail to answer fully and truthfully any question that is put to him or her when attending before the Secretary or to produce any book, document or paper that he or she is required pursuant to that section to produce; or

(d) give to the Secretary any information, whether verbally or in writing, that is false or misleading in a material particular; or

(e) in the case of an employee, fail to comply with any provision of this Act requiring him or her to present himself or herself for a medical examination or to undergo any test or treatment.

Penalty: Fine of not less than 5 penalty units and not more than 10 penalty units.

(2) A person who, after conviction for an offence against paragraph (a) or paragraph (b) of subsection (1) of this section, continues to fail to comply with any requirement of this Act or of the Secretary in respect of which he was convicted, is liable to a fine of not less than 10 penalty units or more than 100 penalty units.

(3) It is a defence to proceedings in respect of an offence against paragraph (d) of subsection (1) of this section if the defendant proves that the return or information to which the proceedings relate was given in good faith and without negligence.

(4) No person shall, except in the performance of his duties under this Act, divulge any information as to the health of an employee that is acquired by him in the performance of his duties, except to that employee.

Penalty: Fine not exceeding 10 penalty units.

(5) Notwithstanding the foregoing provisions of this section –

(a) a person who, with intent to defraud, delivers to the Secretary a return that is false in any particular, or, with that intent, omits any particulars that should be included therein; or

(b) a person who, by any wilful act, default, or neglect, or by any fraudulent act or contrivance, avoids or attempts to avoid payment of any moneys that he is required, by or under this Act, to pay –

is liable to a fine of not less than 10 penalty units or more than 100 penalty units, and to payment of a further amount equal to thrice the amount of the moneys the payment of which would have been avoided if the return had been accepted by the Secretary, or, as the case may be, of the moneys the payment whereof he avoids or attempts to avoid.

(6) The imposition of a penalty in respect of an offence against this Act does not relieve the defendant from liability for the payment of any moneys that he would otherwise be liable to pay under this Act.

47. Time limit for taking proceedings

- (1) Except as provided by subsection (2) of this section, proceedings in respect of offences against section forty-six may be commenced only within three years after the commission of the offence.
- (2) Proceedings in respect of offences against paragraph (a) or paragraph (d) of subsection (1) of section forty-six may be commenced at any time.

48. Regulations

- (1) The Governor may make regulations under this Act.
- (2) Without prejudice to the generality of subsection (1) of this section, the regulations may –
 - (a)
 - (ab) require the payment to the Secretary of sums in reimbursement of the expenses incurred by it in the arrangement of a medical examination or medical treatment for any person under this Act to which that person without reasonable excuse fails to submit himself; and
 - (ac) authorize the Secretary to deduct those sums from any payments due to that person from the Secretary or to recover those sums from the employer of that person and, where those sums are so recovered from that employer, authorize him to make corresponding deductions in the remuneration of that person; and
 - (ad) provide for the issue to any person who is or has been an employee of a record book and for the recording therein of the medical examinations and medical treatment to which that person has submitted himself under this Act; and
 - (ae) require the production on such occasions or in such circumstances as may be prescribed of a record book so issued; and
 - (af) require the payment of a fee on the issue of a record book in place of one that has been lost, destroyed, or defaced; and
 - (b) provide that any return, application, or other document required by the regulations to be delivered to, or filed with, the Board, or any information or particulars contained therein, shall be verified by statutory declaration; and
 - (c) impose fines, not exceeding 10 penalty units, for offences against the regulations.

PART VI - Savings and Transitional Provisions

49. Power of Secretary to wind up administration of this Act

The Secretary may, for the purpose of winding up the administration of this Act by the Board before the commencement date, enter into such contracts, agreements and arrangements as he or she thinks fit for the sale or other disposal of all or any of the Board's property to any person.

50. Saving for contracts, &c., of the Board

All contracts, agreements, arrangements and undertakings which were entered into by the Board before, but which were not performed or discharged by, the commencement date are, except in relation to an obligation which was required to be performed before that day, discharged.

51. Outstanding claims for compensation

On and from the commencement date all claims for compensation under this Act that would have been payable from the Workers' Fund before that date are to be paid from the Consolidated Fund without further appropriation than this section.

52. Transfer of assets, &c., of Board

(1) On and from the commencement date –

(a) such part of the Workers' Fund as consists of contributions made by the Treasurer is repayable to the Crown; and

(b) the balance of the Workers' Fund is payable to the University of Tasmania to be held on the trusts specified in section 53 ; and

(c) all other property that, immediately before that date, was vested in or belonged to the Board vests in and belongs to the Crown and all responsibility for the management and control of that property vests in the Crown; and

(d) all money, debts and claims, liquidated or unliquidated, that, immediately before that date, were payable to, due to or recoverable by, the Board are taken to be money, debts or claims payable to, due to or recoverable by, the Crown; and

(e) all money, debts and claims, liquidated or unliquidated, that immediately before that date were payable by, due from or recoverable against the Board are taken to be money, debts or claims payable by, due from or recoverable against, the Crown; and

(f) the Crown may enforce and realize any security existing immediately before that date in favour of the Board and exercise any powers conferred on the Board pursuant to that security as if the security were a security in favour of the Crown; and

(g) all legal proceedings pending immediately before that date which were instituted by or against the Board are taken to be legal proceedings pending on that date which were instituted by or against the Crown, as the case may be; and

(h) legal proceedings which could have been instituted by the Board to enforce an obligation that was required to be performed, or a right that has accrued, before that date may be instituted by the Crown; and

(i) legal proceedings which could have been instituted by a person against the Board to enforce an obligation that was required to be performed, or a right that had accrued, before that date may be instituted by that person against the Crown; and

(j) any judgment or order of a court obtained by the Board and not executed or satisfied before that date is taken to be a judgment or order in favour of the Crown; and

(k) any judgment or order of a court obtained by a person against the Board and not executed or satisfied before that date is taken to be a judgment or order against the Crown; and

(l) any document which was addressed to, and which purported to have been served on or notified to, the Board and which, whether under this Act or otherwise, had not ceased to have effect before that date is taken to have been served on, or notified to, the Crown; and

(m) any document which was addressed to, and which purported to have been served on or notified to, a person by or on behalf of the Board and which, whether under this Act or otherwise, had not ceased to have effect before that date is taken to have been served on, or notified to, that person by the Crown.

(2) The rights, obligations and exceptions conferred on, imposed on or applicable to, the Crown under Part VI of the Supreme Court Civil Procedure Act 1932 apply to and in respect of legal proceedings and claims referred to in subsection (1), notwithstanding that those rights, obligations and exceptions or any of them were not conferred or imposed on, or applicable to, the Board in respect of legal proceedings or claims concerning the Board before the commencement date.

(3) Where property which becomes vested in the Crown by virtue of subsection (1) (a) or (c) consists of money, that money, except in so far as the regulations otherwise provide, is to be paid into the Consolidated Fund.

53. Administration of research fund by University of Tasmania

(1) The principal and interest of the money paid to the University of Tasmania under section 52 (1) (b) is to be available for the encouragement of medical research into the causes, treatment and prevention of any disease, injury or medical condition which may occur in, or arise from, mining operations and also into rehabilitation after any such disease, injury or condition.

(2) In the administration of the trusts arising under this section by the University of Tasmania –

(a) grants for research are not to be made except after consultation with organizations representing the interests of the employers and employees engaged in mining operations; and

(b) the University may reimburse itself for any expense reasonably incurred for the purposes of those trusts.

(3) In the selection of research projects for the purpose of making a grant, preference is to be given –

(a) in the first instance, to projects to be conducted in Tasmania or projects likely to benefit research into the health of mining employees in Tasmania; and

(b) secondly, to projects to be conducted in Australia.

(4) In the exercise of its powers under this section, the University of Tasmania must endeavour to ensure that as far as practicable the principal and interest of the money paid to it under section 52 (1) (b) is applied during a period of 2 years commencing on the commencement date.

SCHEDULE 1 - ACTS REPEALED

Section 2

Year and number of Act.	Short title of Act.
19 Geo. V No. 52	<i>Workers' (Occupational Diseases) Relief Fund Act 1928</i>
1 Geo. VI No. 13	<i>Workers' (Occupational Diseases) Relief Fund Act 1937</i>
2 Geo. VI No. 60	<i>Workers' (Occupational Diseases) Relief Fund Act 1938</i>
3 & 4 Geo. VI No. 67	<i>Workers' (Occupational Diseases) Relief Fund Act 1939</i>
4 & 5 Geo. VI No. 81	<i>Workers' (Occupational Diseases) Relief Fund Act 1940</i>
5 Geo. VI No. 51	<i>Workers' (Occupational Diseases) Relief Fund Act 1941</i>
7 Geo. VI No. 17	<i>Workers' (Occupational Diseases) Relief Fund Act 1943</i>
7 & 8 Geo. VI No. 76	<i>Workers' (Occupational Diseases) Relief Fund Act 1944</i>
8 & 9 Geo. VI No. 51	<i>Workers' (Occupational Diseases) Relief Fund Act 1945</i>
11 Geo. VI No. 17	<i>Workers' (Occupational Diseases) Relief Fund Act 1947</i>
No. 1 of 1948	<i>Workers' (Occupational Diseases) Relief Fund Act 1948</i>
No. 55 of 1948	<i>Workers' (Occupational Diseases) Relief Fund Act (No. 2) 1948</i>
No. 53 of 1949	<i>Workers' (Occupational Diseases) Relief Fund Act 1949</i>
No. 88 of 1950	<i>Workers' (Occupational Diseases) Relief Fund Act 1950</i>
No. 25 of 1952	<i>Workers' (Occupational Diseases) Relief Fund Act 1952</i>
No. 21 of 1953	<i>Workers' (Occupational Diseases) Relief Fund Act 1953</i>
No. 82 of 1953	<i>Workers' (Occupational Diseases) Relief Fund Act (No. 2) 1953</i>

SCHEDULE 2 - DISEASES FOR THE PURPOSES OF PART III.

Section 3

Silicosis.

Pneumonokoniosis.

Fibrosis.

Lead Poisoning and the sequelae thereof.

Arsenic poisoning.

Carbon-monoxide poisoning.

Cadmium poisoning.

Ankylostomiasis.

Nystagmus.

Contact dermatitis caused by work.

SCHEDULE 3

SCHEDULE 4 - Method of Determining the Average Weekly Earnings of an Employee

Section 3

For the purposes of this schedule, *average weekly earnings* means the average weekly earnings during the twelve months immediately preceding the incapacity or death, as the case may be, of an employee.

Subject to this schedule, the average weekly earnings of an employee shall be computed in such manner as is best calculated to give the weekly rate at which the employee was being remunerated.

For the purposes of this schedule –

(a) in computing average weekly earnings, amounts paid for overtime worked by an employee shall be included, but any amounts paid to an employee at the discretion of his employer by way of bonus, gratuity, or other similar payment shall be excluded;

(b) where, by reason of the shortness of time during which an employee has been in the employment of his employer, or the terms of his employment, it is impracticable to compute the average weekly earnings of the employee under that employer during any relevant period under that employer, those average weekly earnings shall, for the purposes of this Act, be taken to be the average weekly earnings during that period by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district;

(c) where an employee had entered into concurrent contracts of service with two or more employers under which he worked at one time for one of those employers and at another time for the other or another of those employers, or where an employee's employment had been of a casual nature, his average weekly earnings shall, subject to paragraph (d) of this clause, be computed as if his earnings under all those contracts or in the employment of his several employers were earnings in the employment of the employer for whom he was working at the time of his incapacity or death, as the case may be;

(d) where one of the contracts referred to in paragraph (c) of this clause is a full-time contract of service, the average weekly earnings of the employee who is a party to the contract shall be computed by reference only to the full-time contract of service;

(e) employment by the same employer shall be taken to mean employment by the same employer in the grade in which an employee was employed at the time of his incapacity or death, uninterrupted by absence from work due to illness or any other unavoidable cause, and an employee shall be deemed to have been employed in a new grade of employment whenever his rate of payment has been lawfully increased or decreased otherwise than by reason of a decision affecting the persons engaged in his grade of employment generally;

(f) where an employer has been accustomed to pay to an employee 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; and

(g) where an employee delivers to his employer a statement in writing, verified by statutory declaration, setting out the amount of his earnings during any period, that statement is evidence that that amount was the earnings of the employee during that period.