

Act No. 28, 1897.

EMPLOYERS'
LIABILITY.

An Act to consolidate the Acts extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service. [6th December, 1897.]

BE it enacted by the Queen'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:—

Short title.

1. This Act may be cited as the "Employers' Liability Act of 1897."

Repeal.

2. The Acts described in the Schedule hereto are hereby repealed.

Interpretation.

3. In this Act, unless the context or subject matter otherwise indicates or requires,—

"Ship."

56 Vic. No. 6, s. 2.

"ship" includes every vessel of whatever kind, whether propelled by steam, sails, oars, or otherwise;

"Employer."

50 Vic. No. 8, s. 9.

"employer" includes a body of persons whether corporate or unincorporate, and a corporation sole;

"Seaman."

56 Vic. No. 6, s. 2.

"seaman" means any person employed upon a ship owned in New South Wales, or who has signed articles of engagement in the said Colony;

"Workman."

50 Vic. No. 8, s. 9.

56 Vic. No. 6, s. 5.

"workman" means a seaman as above defined, a railway servant, and any other person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under or above the age of twenty-one years, has entered into

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into or works under a contract with an employer, whether the contract was made before or after the passing of this Act, is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour;

the expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour. "Person who has superintendence." 50 Vic. No. 8, s. 3.

4. Where personal injury is caused to a workman other than a scaman— Right of compensation for personal injury. Ibid. s. 1.

- (I) by reason of any defect in the state or condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or
- (II) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence; or
- (III) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or
- (IV) by reason of the act or omission of any person in the service of the employer, done, or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (V) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points, engine, or train upon a rail or tramway; or—

when within the jurisdiction of New South Wales a ship is moored or at anchor, receiving or discharging cargo, coals, ballast, or dunnage, and personal injury is caused to a workman being a scaman—

- (VI) by reason of any defect in the condition of the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship, or by reason of the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture of such ship; or
- (VII) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him by such employer whilst in the exercise of such superintendence; or
- (VIII) by reason of the negligence of any person in the service of the employer of the scaman to whose orders and directions the scaman was at the time of the injury bound to conform and did conform, where such injury resulted from his having so conformed, the

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59 Vic. No. 8, s. 1.
56 Vic. No. 6, s. 3.

the workman, or in case the injury results in death, the legal personal representatives of the workman and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

Limiting right of
compensation for
personal injury.
50 Vic. No. 8, s. 2.
Ibid.

5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say:—

Ibid.

(I) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition.

56 Vic. No. 6, s. 4.

(II) Under subsection four of section four unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned.

Ibid.

(III) Under subsection six of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship were in proper condition, or unless the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture was due to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the same were duly provided.

(IV) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person intrusted with any duties of superintendence, in or over that department in which the defect or negligence existed, whether such superintendent be ordinarily engaged in manual labour or not, unless the injured person should himself perform duties of superintendence, in which case such injured person must have given notice to the employer or to a person intrusted with any superintendence over himself, unless the employer or person so intrusted already knew of the said defect or negligence.

Notice of injury.
50 Vic. No. 8, s. 4.
Commencement of
action.

6. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced

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commenced within six months from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death :

Provided always that the want of such notice shall be no bar to the maintenance of such action if upon motion made for leave to proceed notwithstanding no such notice has been given, a judge shall be of opinion that there was reasonable excuse for such want of notice ; and where the action is intended to be brought in any District Court, the judge thereof shall, for the purpose of this proviso, have all the powers of a judge of the Supreme Court. Proviso as to want of notice.
50 Vic. No. 8, s. 4.

7. The Court in which any action for recovery of compensation under this Act is commenced or is pending, may at any stage of the proceedings, amend any defect in a notice of injury or death, or direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct. Defective notice may be amended.
Ibid. s. 7.

8. (I) Notice in respect of any injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained. Form of notice.
Ibid. s. 8.

(II) No such notice shall be deemed invalid by reason of any defect or inaccuracy therein unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy. Defect or inaccuracy.
Ibid.

9. (I) Notice in respect of any injury under this Act shall be served on the employer, or if there is more than one employer, upon one of such employers. Service of notice.
Ibid.

(II) Such 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.

(III) Such 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, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(IV) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

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Limit of sum recoverable as compensation.
50 Vic. No. 8, s. 3.

10. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earning during the three years preceding the injury of a person in the same grade employed during those years in the like employment, and in the district or port in which the workman is employed at the time of the injury.

Money paid as penalty to be deducted from compensation.
Ibid. s. 5.

11. (I) There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which has been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action.

No penalty in respect of any injury for which action has been brought.
Ibid.

(II) Where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action.

Expenses under 27 Vic. No. 13, s. 66, to be deducted.
56 Vic. No. 6, s. 3.

(III) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman, or persons claiming by, under, or through a seaman) in respect of any cause of action arising under this Act, any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of the Act twenty-seventh Victoria number thirteen.

Employer entitled to credit for insurance effected by him.
50 Vic. No. 8, s. 6.

12. In determining in any case the amount of compensation payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer.

SCHEDULE.

Title of Act.	Reference to Act.
Employers' Liability Act of 1886	50 Victoria No. 8.
Employers' Liability Act Amendment Act, 1893	56 Victoria No. 6.