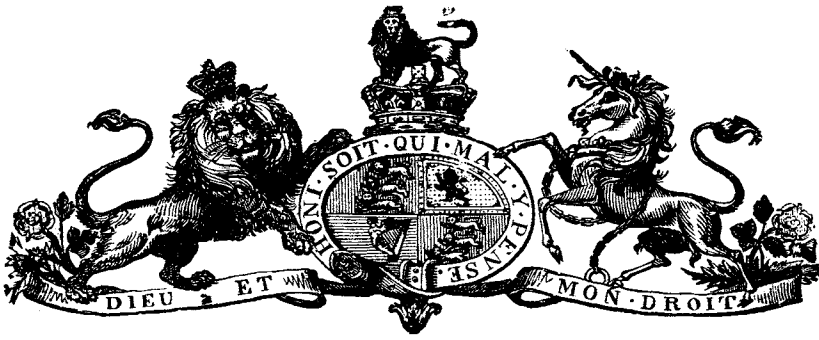


T A S M A N I A.



1895.

ANNO QUINQUAGESIMO-NONO

VICTORIÆ REGINÆ,

No. 25.

Amended by 62 Vict. No. 27
3 Edw VII No 14

AN ACT to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service. [24 October, 1895.] A.D. 1895.

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:—

1 This Act may for all purposes be cited as "The Employers' Liability Act, 1895." Short title.

2 In this Act—

Interpretation.

"Employer" includes a body of persons corporate or unincorporate: "Employer."

"Person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence: "Person."

"Workman" means a railway servant and any person (other than a domestic servant) who, being a labourer, servant in husbandry, journeyman artificer, handicraftsman, or otherwise engaged in manual labour, whether under the age of Twenty-one years or above that age, has entered into or works under a contract under an employer, whether the contract be made before or after the passing of this Act, be expressed or implied, oral or in writing, and be a contract of service or a

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contract personally to execute any work or labour, but shall not include any person coming under the operation of Part VI. of "The Mining Act, 1893," (57 Victoria, No. 24).

Amendment of law.

3 Where after the commencement of this Act personal injury is caused to a workman—

- 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 entrusted 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, locomotive, engine, or train upon a railway—

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.

Exceptions to amendment of law.

4 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 :—

- i. Under Sub-section One of the last preceding Section, 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 entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition :
- ii. Under Sub-section Four of the last preceding Section, unless the injuries resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned: Provided that where a rule or by-law has been approved or has been accepted as a proper rule or by-law by the Governor in Council or by any Department of the Government or by any officer under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law :
- iii. 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 superior to him—

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self in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence. A.D. 1895.

5 An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice in writing that injury has been sustained is given within Three months and the action is 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 in case of death the want of such notice shall be no bar to the maintenance of such action if the Judge shall be of opinion that there was reasonable excuse for such want of notice. Limit of time for recovery of compensation.

6 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 may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman or the representatives of any workman or any person claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not been previously made of any penalty or part of a penalty under any other Act of Parliament 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 of Parliament in respect of the same cause of action. Money payable under penalty to be deducted from compensation.

7 The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings 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 in which the workman is employed at the time of the injury. Limit of sum recoverable as compensation.

8 Every action for recovery of compensation under this Act shall be brought in any Court of competent jurisdiction. Such Court shall have jurisdiction to give damages to any amount that may be considered just, subject to the limitation subscribed in this Act. Upon the trial of any such action in a Court before a Judge without a jury One or more assessors may be appointed for the purpose of ascertaining the amount of compensation. Trial of actions.

For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a Court, and otherwise preventing multiplicity of such actions, rules and orders may be made, varied, and repealed from time to time in the same manner as rules and orders for regulating the practice and proceedings in other actions in Courts.

9 Notice in respect of an 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 Mode of serving notice of injury.

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sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

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.

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, 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.

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.

A notice under this Section shall not 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, and that the defect or inaccuracy was for the purpose of misleading.

Limitation of
Act.

10 This Act shall continue and be in force until the Thirty-first day of *December*, One thousand eight hundred and ninety-eight, and no longer.

Rep.