

ADMINISTRATION EMPLOYEES' COMPENSA- TION ORDINANCE 1939. ⁽¹⁾

No. 14 of 1939.

An Ordinance Relating to Compensation to Employees of the Administration for Injuries suffered in the course of their Employment.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Administration Employees' Compensation Ordinance 1939.* ⁽¹⁾ Short title.

2. This Ordinance shall not affect any proceedings pending at the commencement of this Ordinance under the *Commonwealth Workmen's Compensation Act 1912* of the Commonwealth in its application to the Territory, or any right or privilege acquired or duty imposed or liability incurred thereunder; and any such right, privilege, duty, or liability may be enforced, and any such proceedings continued, completed, and enforced, as if this Ordinance had not been passed. Saving.

3. In this Ordinance, unless the contrary intention appears— Definitions.

“Commissioner” means the Commissioner for Employees' Compensation appointed under this Ordinance;

“dependants” means such of the members of an employee's family as were wholly or in part dependent upon the earnings of the employee at the time of his death, or who would, but for the incapacity due to the accident, have been so dependent; and where the employee—

(a) being the parent or grandparent of an ex-nuptial child, leaves the child so dependent upon his earnings; or

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
5.9.1939	16.12.1939	5.9.1939 (<i>Laws of T.N.G.</i> , Vol. XV, p. 34)

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(b) being an ex-nuptial child, leaves a parent or grandparent so dependent upon his earnings, includes such an ex-nuptial child and parent or grandparent respectively;

“employee” means any person who is an officer in the Public Service of the Territory for the purposes of the *Public Service Ordinance 1922-1939*⁽²⁾ and includes—

- (a) the Administrator;
- (b) any Judge of the Supreme Court;
- (c) any person who is a member of the European Constabulary constituted under the *Police Force Ordinance 1930-1939*;⁽³⁾
- (d) any exempt officer as defined in the *Public Service Ordinance 1922-1939*;⁽²⁾
- (e) any person temporarily employed in the Public Service of the Territory;
- (f) any person who has entered into or works under a contract of service or apprenticeship with the Administration, whether by way of manual labour, clerical work, or otherwise, and whether the contract is express or implied, is oral or in writing,

but does not include—

- (g) any person who is not substantially of European origin; or
- (h) an outworker;

“ex-nuptial child” means a child not born in lawful wedlock;

“member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, or mother-in-law;

“outworker” means a person to whom articles or materials are given out to be treated or manufactured in his own home or on other premises not under the control or management of the Administration;

(2) Now the *Public Service Ordinance 1922-1940*.

(3) Now the *Police Force Ordinance 1930-1940*.

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“Regulations” means regulations made under this Ordinance.

4.—(1.) For the purposes of this Ordinance, there shall be a Commissioner.
Commissioner for Employees' Compensation.

(2.) The Administrator may, by notice, appoint an officer of the Administration to be Commissioner for Employees' Compensation.

5.—(1.) The Commissioner may, by notice, delegate any of his powers or functions under this Ordinance (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to any matter or class of matters specified in the notice of delegation. Power of Commissioner to delegate.

(2.) A delegation under this section shall be revocable at will, and a delegation shall not prevent the exercise of any power or function by the Commissioner.

6.—(1.) The Commissioner shall have power to examine, hear, and determine all matters and questions arising under this Ordinance and the Regulations. Powers and functions of Commissioner.

(2.) The Commissioner may reconsider any such determination and may alter, amend, or revoke any such determination.

(3.) In the determination of matters and questions, the Commissioner shall be guided by equity, good conscience, and the substantial merits of the case without regard to technicalities or legal precedent and shall not be bound by any rules of evidence.

(4.) In particular, the power of the Commissioner shall extend to determining—

- (a) the question whether an injury received by an employee entitles him to compensation under this Ordinance;
- (b) the existence and degree of incapacity for work by reason of injury;
- (c) the permanence of incapacity by reason of injury;
- (d) the degree of diminution of earning capacity by reason of injury;
- (e) the amount of the weekly pay of an employee;
- (f) the existence, for the purposes of this Ordinance, of the relationship of any member of the family of an employee as defined in this Ordinance; and
- (g) the existence and extent of dependency.

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No action
maintainable
against
Commissioner.

7. Subject to section seventeen of this Ordinance, no action, suit, or proceeding shall be instituted, brought, or maintained against the Administration or the Commissioner in respect of any action or determination taken or made under this Ordinance.

Compensation
for personal
injuries to
employees.

8.—(1.) If personal injury by accident arising out of and in the course of his employment is caused to an employee, the Administration shall, subject to this Ordinance, be liable to pay compensation in accordance with the First Schedule to this Ordinance:

Provided that—

- (a) the employee shall not be entitled to recover compensation from the Administration or any person or to receive from the Administration any payment in respect of the accident, or in respect of the illness or incapacity arising from the accident, both independently of and also under this Ordinance; but subject to this paragraph this Ordinance shall not affect any civil liability of the Administration under any other law;
- (b) if it is proved that the injury to an employee is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed;
- (c) in the case of the death of an employee leaving no dependants, no compensation shall be payable under this Ordinance other than for medical, surgical, and hospital treatment and burial expenses;
- (d) if it appears that the claimant has a claim against the Administration or any person for compensation or for any payment in respect of the injury under any other law in force in the Territory or any other place, compensation under this Ordinance shall be allowed only upon the claimant undertaking not to claim compensation for the injury under any such law; and
- (e) where the employee continues in the service of the Administration after the injury, any salary, pay, or wages (not including allowances paid in respect of children of the employee) received by him from the Administration shall be deducted from any compensation payable under this Ordinance in respect of the same period.

(2.) If any question arises, in any proceedings under this

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Ordinance, as to the liability to pay compensation under this Ordinance (including any question as to whether the person injured is an employee to whom this Ordinance applies) or as to the amount or duration of compensation under this Ordinance, the question shall, subject to the provisions of the First Schedule to this Ordinance, be determined by the Commissioner.

(3.) Any undertaking given in pursuance of paragraph (d) of the proviso to sub-section (1.) of this section shall have effect as a contract between the claimant and the Administration or person, as the case requires, from whom the compensation or payment is claimed.

9.—(1.) Where—

- (a) an employee is suffering from any of the diseases mentioned in the first column of the Second Schedule to this Ordinance and is thereby incapacitated from earning full wages at the work at which he was employed; or
- (b) the death of an employee is caused by any of those diseases,

Compensation to employee affected by or dying from certain industrial diseases.

and the disease was caused, within twelve months prior to the date of incapacity, by the employment in which the employee was engaged by the Administration, the Administration shall, subject to this Ordinance, be liable to pay to the employee or his dependants compensation in accordance with this Ordinance as if the disease were a personal injury by accident within the meaning of the last preceding section.

(2.) If the Commissioner is satisfied that the employee, at the time of entering the employment of the Administration, wilfully and falsely represented himself as not having previously suffered from the disease, compensation shall not be payable.

(3.) A claimant for compensation under this section shall, if so required, furnish the Commissioner with such information as to the names and addresses of other employers of the employee as the claimant possesses.

(4.) If the disease is of such a nature as is contracted by a gradual process, the Administration shall be entitled to be indemnified by any other employers (if those employers are also liable to pay compensation) who employed the employee during the period of twelve months immediately preceding the incapacity in the employment to which the disease is due, and all questions as to the right to, and amount of, any such indemnity shall, in default of agreement, be settled by arbitration or by action in the Supreme Court.

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(5.) If the employee at the time of, or immediately before, the incapacity was employed in any process mentioned in the second column of the Second Schedule to this Ordinance and produces a certificate from a duly qualified medical practitioner that the disease contracted is the disease or one of the diseases in the first column set opposite the description of the process, that disease shall, in the absence of proof to the contrary, be deemed to have been caused by the employment in which the employee was engaged.

Medical benefits.

10. In addition to any compensation payable by the Administration under this Ordinance to, or in respect of, an employee, the Administration shall pay the cost, not exceeding in any case the sum of One hundred pounds, of such medical, surgical, and hospital treatment in relation to the injury as is, in the opinion of the Commissioner, reasonably necessary.

Compensation for certain injuries.

11. Where an employee sustains, by accident arising out of and in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Ordinance, the compensation payable under this Ordinance shall, when the injury results in total or partial incapacity, be the amount specified in the second column of that Schedule opposite the injury so sustained, less any amount received by the employee under the First Schedule to this Ordinance during any period of his total incapacity arising from his injury.

Maximum compensation.

12. Notwithstanding anything contained in this Ordinance, an employee shall not, in respect of any one accident, except where the injury results in total and permanent incapacity, be entitled to receive as compensation under this Ordinance an amount exceeding Seven hundred and fifty pounds in addition to such expenses as are awarded to him under section ten of this Ordinance.

Time for taking proceedings.

13.—(1.) The Commissioner shall not admit a claim for compensation under this Ordinance for an injury unless notice of the accident has been served upon him as soon as practicable after it has happened, and before the employee has voluntarily left the employment of the Administration, and unless the claim for compensation has been made—

(a) within six months from the occurrence of the accident;
or

(b) in case of death, within six months after advice of the death has been received by the claimant:

Provided that—

- (c) the want of, or any defect or inaccuracy in, the notice shall not prevent consideration of the claim by the Commissioner if he finds that the Administration is not prejudiced by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, absence from the Territory, or other reasonable cause; and
- (d) the failure to make a claim within the period above specified shall not prevent consideration of the claim by the Commissioner if he finds that the failure was occasioned by mistake, absence from the Territory, or other reasonable cause.

(2.) Notice in respect of any injury to which this Ordinance applies shall contain the name and address of the person injured, and a statement in ordinary language of the cause of the injury and the date at which the accident happened.

(3.) The notice may be served by sending it by post in a registered letter properly addressed to the Government Secretary, or by delivering it to the officer in charge of the work on which the employee was employed at the time of the accident, or in any other prescribed manner.

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

Remedies both against the Administration and a stranger.

- (a) the employee may take proceedings against that person to recover damages and may also make a claim against the Administration for the compensation, but shall not be entitled to recover both damages and compensation; and
- (b) if the employee has received compensation under this Ordinance, the Administration shall be entitled to be indemnified by the person so liable to pay damages, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be determined by the Supreme Court.

15.—(1.) The Administrator may appoint any duly qualified medical practitioners residing in or out of the Territory to be medical referees for the purposes of this Ordinance.

Medical referees.

(2.) Medical referees (other than medical practitioners in the Public Service of the Territory) shall be paid from the Public Revenue such fees as are prescribed.

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(3.) A medical referee who has been employed as a medical practitioner in connection with any case by or on behalf of the Administration or an employee, or by any insurers interested, shall not act as a medical referee in that case.

Medical examinations.

16.—(1.) Where notice has been given of an injury to an employee, or any employee is receiving weekly payments under this Ordinance, the employee shall, if required by the Commissioner, submit himself for examination by a medical referee or a medical board consisting of two or more medical referees, and if he refuses to submit himself to the examination, or in any way obstructs the examination, his right to compensation shall be suspended until the examination has taken place.

(2.) Where an employee is required by the Commissioner to submit himself for examination by a medical board, the employee may, within the prescribed period after being so required, nominate a duly qualified medical practitioner who shall thereupon be one of the members of that board.

(3.) An employee shall not be required to submit himself for medical examination, otherwise than in accordance with this Ordinance and the Regulations or at more frequent intervals than are prescribed.

(4.) The medical referee or medical board to whom any matter is referred shall, as prescribed, give a certificate as to the condition of the employee, and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and such other information as the Commissioner requires. Any such certificate given by a medical board shall be conclusive evidence as to the matters so certified.

(5.) The cost of conducting any examination required for the purposes of this section, and the expenses incurred by an employee in travelling to and from the place of examination, shall be paid by the Administration.

Appeals.

17. Any person affected by any determination or action of the Commissioner under this Ordinance may, within thirty days of the date of the determination or the taking of the action or within such extended time as the Supreme Court upon application in that behalf allows, appeal to the Supreme Court against the determination or action, and the Supreme Court shall have jurisdiction to hear and determine the appeal, and the appeal may be in the nature of a re-hearing.

Returns as to compensation.

18. The Commissioner shall, as prescribed, furnish to the Administrator correct returns specifying—

- (a) the number of injuries in respect of which compensation has been paid under this Ordinance during the previous year;
- (b) the amount of compensation paid during that year; and
- (c) such other particulars as are prescribed.

19. The Administrator in Council may make regulations,⁽⁴⁾ not Regulations. inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the procedure in regard to the medical examination of injured employees;
- (b) the duties and fees of medical referees appointed under this Ordinance;
- (c) the fees and expenses to be paid for medical examinations and medical attendance;
- (d) the forms to be used in connection with this Ordinance; and
- (e) the manner in which documents are to be furnished or served.

THE FIRST SCHEDULE.

Section 8.

SCALE AND CONDITIONS OF COMPENSATION.

(1.) The amount of compensation under this Ordinance shall be—

- (a) where death results from the injury—
 - (i) if the employee leaves any dependants wholly dependent upon his earnings, a sum equal to one hundred and fifty-six times his weekly pay at the time of the injury, or the sum of Four hundred pounds, whichever of those sums is the larger, but not exceeding in any case Seven hundred and fifty pounds:

Provided that the amount of any weekly payments made under this Ordinance, and any lump sum paid in redemption thereof, shall be deducted from such sum, but so that the amount payable to the dependants upon the death of the employee shall not be less than Two hundred pounds;

(4) See the *Administration Employees' Compensation Regulations*, printed on p. 4312.

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- (ii) if the employee does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as is considered by the Commissioner to be reasonable and proportionate to the injury to the dependants; and
 - (iii) if the employee leaves no dependants, the reasonable expenses of his burial, not exceeding Twenty-five pounds;
- (b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding two-thirds of the employee's weekly pay at the time of the injury, the weekly payment not to exceed Five pounds:

Provided that as respects the weekly payments during total incapacity of an employee who is under twenty-one years of age at the date of the injury, and whose weekly pay is less than Two pounds five shillings, one hundred per centum shall be substituted for two-thirds of his weekly pay, but the weekly payment shall in no case exceed One pound ten shillings; and

- (c) where total incapacity for work results from the injury, there shall be added to any amount payable under the foregoing provisions of this Schedule an amount of Ten shillings per week in respect of each child totally or mainly dependent upon the employee at the time of the injury who is under the age of sixteen years, and the payment of that amount shall be continued during the incapacity until the child in respect of whom the payment is received attains the age of sixteen years:

Provided that—

- (i) if the employee is entitled under any Ordinance or Act to the payment of a weekly allowance or endowment in respect of any dependent child, the amount of any such weekly payment shall be deducted from the weekly amount payable under this paragraph in respect of such dependent child; and
- (ii) the total amount payable in respect of dependent children shall not exceed such an amount as would, when added to the weekly amount payable under paragraph (b) of this clause, exceed the amount of the employee's weekly pay at the time of the injury.

(2.) For the purposes of the provisions of this Schedule, "pay" means the salary or daily or weekly wage of the employee at the time of the injury, together with any amount paid as a fixed allowance of a permanent nature in addition to salary or wage, but does not include any payment by way of child endowment.

(3.) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the employee may receive from the Administration during the period of his incapacity, and, in the case of partial incapacity, the weekly payment shall in no case exceed the difference between the amount of the weekly pay of the employee before the accident and the weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as the Commissioner thinks proper.

(4.) Where an employee has given notice of an accident, he shall, if so required by the Commissioner, submit himself for examination by a duly qualified medical practitioner provided and paid by the Administration, and, if he refuses to submit himself to the examination, or in any way obstructs it, his right to compensation, and to take or prosecute any proceeding under

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this Ordinance in relation to compensation, shall be suspended until the examination has taken place.

(5.) The payment in the case of death shall, unless otherwise prescribed, be paid to the Commissioner, and the sum so paid shall be invested or applied by the Commissioner, in such manner as he thinks fit, for the benefit of the persons entitled thereto:

Provided that, if so agreed, the payment in the case of death shall, if the employee leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the persons to whom payments in respect of medical, surgical, and hospital treatment and burial expenses are due.

(6.) Where a weekly payment is payable under this Ordinance to a person under any legal disability, the weekly payment shall be paid during the disability to the Commissioner, and dealt with by him, in such manner as he thinks fit, for the benefit of the person entitled thereto.

(7.) Any question as to who is a dependant, and the amount payable to each dependant, shall be settled by the Commissioner.

(8.) Where there are both total and partial dependants, the Commissioner may allot the compensation partly to the total and partly to the partial dependants.

(9.) Where, on application being made to the Commissioner that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of any of the dependants, or for any other sufficient cause, a determination by the Commissioner as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any dependant is to be dealt with, ought to be varied, the Commissioner may vary that determination in such manner as he thinks just.

(10.) Any weekly payment may be reviewed by the Commissioner at the request either of the Administration or of the employee and on such review may be ended, diminished, or increased subject to the maximum above provided:

Provided that, where the employee was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding two-thirds of the weekly sum which the employee would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding Five pounds.

(11.) Where, in any case other than one of total and permanent incapacity, any weekly payment has been continued for not less than six months, the liability therefor may, at the option of the Commissioner, and with the consent of the employee, but subject to the Regulations, be redeemed by the payment of a lump sum of such an amount as is determined by the Commissioner having regard to the injury and the age and occupation of the employee at the time of the injury, and the lump sum may be invested or otherwise applied by the Commissioner for the benefit of the person entitled thereto.

(12.) If an employee receiving a weekly payment ceases to reside in the Territory, he shall cease to be entitled to receive any weekly payment, unless he obtains the consent of the Administrator to leave the Territory or unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the Administrator so consents or if the medical referee so certifies, the employee shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

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(13.) Any amount paid in compensation under this Ordinance, whether by way of weekly payment or sum paid in redemption thereof, or lump sum payment for a specific injury fixed in accordance with the Third Schedule to this Ordinance, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.

(14.) Where under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

THE SECOND SCHEDULE.

Section 9.

Description of Disease.	Description of Process.
Arsenic, phosphorus, lead, mercury, or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds
Anthrax	Woolcombing, wool-sorting; handling of hides, skins, wool, hair, bristles, or carcasses
Zymotic diseases	Persons employed in a hospital or quarantine station, or in an ambulance brigade
Poisoning by benzol or its homologues or their nitro and amido derivatives (dinitro benzol, anilin, and others)	Any process involving the use of benzol or its homologues or their nitro and amido derivatives or their preparations or compounds
Poisoning by carbon bisulphide ..	Any process involving the use of carbon bisulphide or its preparations or compounds
Poisoning by nitrous fumes ..	Any process in which nitrous fumes are evolved
Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used
Poisoning by carbon monoxide ..	Any process in which carbon monoxide is used or evolved
Chrome ulceration	Any process involving the use of chromic acid, or bichromate of ammonium, potassium, or sodium, or their preparations Any industrial process
Dermatitis produced by dust or caustic or corrosive liquids or ulceration of the mucous membranes of the nose or mouth produced by dust	
Ankylostomiasis	Any employment involving exposure to hook-worm infestation
Pneumoconiosis	Quarrying or stone crushing or cutting
Nystagmus	
Subcutaneous cellulitis of the hand (beat hand)	
Subcutaneous cellulitis over the patella (miner's beat knee) ..	
Acute bursitis over the elbow (miner's beat elbow)	} Mining, quarrying, or stone crushing or cutting
Inflammation of the synovial lining of the wrist joint and tendon sheath	

THE THIRD SCHEDULE.

Section 11.

COMPENSATION FOR SPECIFIED INJURIES.

Nature of Injury.	Amount Payable.	
	£	s. d.
Loss of both eyes	750	0 0
Loss of an only eye		
Loss of both hands		
Loss of both feet		
Loss of a hand and a foot		
Total and incurable loss of mental powers, involving inability to work	675	0 0
Total and incurable paralysis of limbs or mental powers		
Loss of either arm, or of the greater part thereof	600	0 0
Loss of the lower part of either arm, either hand, or five fingers of either hand	600	0 0
Loss of a leg	562	10 0
Loss of the lower part of a leg	525	0 0
Loss of a foot	675	0 0
Loss of one eye, with serious diminution of the sight of the other	375	0 0
Loss of the sight of one eye (a)	600	0 0
Loss of hearing	200	0 0
Complete deafness of one ear	225	0 0
Loss of a thumb	112	10 0
Loss of a joint of a thumb	150	0 0
Loss of a forefinger	110	0 0
Loss of two joints of a forefinger	112	10 0
Loss of a little finger, middle finger, or ring finger	100	0 0
Loss of two joints of a little finger, middle finger, or ring finger	100	0 0
Loss of a great toe	80	0 0
Loss of a joint of a great toe	90	0 0
Loss of a toe or a joint of a finger	75	0 0
Loss of a joint of a toe		

(a) For the partial loss of the sight of one eye, there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

For the purposes of this Schedule, the loss of a specified part of the body shall be deemed to include—

- (i) the loss of the use of that part; and
- (ii) the loss of the efficient use of that part in and for the purposes of his employment:

Provided that in that case a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use as aforesaid, may be awarded in lieu of the full amount.