

Chapter 179.
Workers' Compensation Act 1978.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 179.

Workers' Compensation Act 1978.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Workers' Compensation Act 1978,

Being an Act to provide for compensation to workers and their dependants in respect of injuries suffered by workers arising out of or in the course of their employment, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

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

“**the Chief Commissioner**” means the Chief Commissioner of Workers’ Compensation appointed under Section 3(1);

“**Commissioner**” means a Commissioner of Workers’ Compensation appointed under Section 3(3);

“**custom**” means the customs and usages of the indigenous inhabitants of the country existing in relation to the matter in question at the time when, and the place in relation to which, the matter arose regardless of whether or not the custom or usage had existed from time immemorial;

“**dependant**” means, in relation to a deceased worker—

(a) those members of the family of the worker who—

(i) were wholly, mainly or partially dependant on his earnings on the date of his death; or

(ii) would, but for the incapacity due to the injury, have been so dependent; and

¹ Section 1 (definition of “worker”) repealed and replaced by the *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s2.

- (b) other than a non-automatic citizen worker—any person who by custom has a right to share in compensation awarded in respect of the death of a worker;

“Deputy Registrar” means a Deputy Registrar of Workers’ Compensation appointed under Section 10(1);

“employer” includes—

- (a) the State; and
- (b) a Provincial Government; and
- (c) an authority or instrumentality constituted under any law in force in the country; and
- (d) any body of persons corporate or unincorporate; and
- (e) the legal personal representative of a deceased employer;

“the Fund” means the Workers’ Compensation Fund established under Section 15;

“husband”, in relation to a worker who is a female, includes—

- (a) a husband by custom; and
- (b) a man who is not married to the worker but who is living with the worker on a permanent basis as her de facto husband;

“injury” means any physical or mental injury and includes—

- (a) a disease contracted by the worker in the course of his employment, whether at or away from his place of employment, and to which the employment was a contributory factor; and
- (b) the aggravation, acceleration, exacerbation, deterioration or recurrence of any pre-existing injury or disease where the employment was a contributing factor to that aggravation, acceleration, exacerbation, deterioration or recurrence;

“the Insurance Commissioner” means the Insurance Commissioner appointed under the *Insurance Act 1995*;

“members of the family”, in relation to a worker—

- (a) means the wife or husband, father, mother, grandmother, grandfather, step-father, step-mother, son and daughter whether legitimate or ex-nuptial, grandson, granddaughter, step-son, step-daughter, brother, sister, step-brother, step-sister, half brother, half sister, mother-in-law or father-in-law of the worker; and
- (b) includes—
 - (i) an adopted child, the brother of his father, a son of his father’s brother, his brother’s son, his brother’s daughter, his mother’s brother, his mother’s sister, a daughter of his

mother's sister, a son of his sister, a daughter of his sister and son of his mother's sister; and

- (ii) any person in relation to whom the worker stands in place of a parent;

“nominal dependant” means a person who by custom has the right by that custom to determine the distribution of a compensation payment;

“occupational disease” means any of the diseases specified in Column 1 of Schedule 2 and includes any recurrence or consequence of any of those diseases;

“Office” means the Office of Workers' Compensation established by Section 2.

“officer” means—

- (a) an officer appointed to the Public Service under Section 25, 27 or 39 of the *Public Services (Management) Act 1995*; or
- (b) a person employed to render temporary or casual assistance in the Public Service under the *Public Services (Management) Act 1995*; or
- (c) a person who occupies an office for the time being declared by notice under Subsection (6);

“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 person who gave out the articles or materials;

“proceedings”, in relation to a tribunal, include all matters, proceedings and enquiries before the tribunal;

“the Registrar” means the Registrar of Workers' Compensation appointed under Section 10(1);

“the repealed Act” means the *Workers' Compensation Act* replaced by this Act;

“seamen” includes a master, officer, apprentice or other person employed or engaged in any capacity on board ship;

“ship” means any ship, vessel, boat or other craft not ordinarily propelled by oars;

“this Act” includes the regulations;

“tribunal” means a tribunal established under Section 22(1);

“wife”, in relation to a worker, includes—

- (a) a wife by custom; and
- (b) a woman who is not married to the worker but who is living with the worker on a permanent basis as his de facto wife;

“**worker**” means—

- (a) a member of a Provincial Assembly; or
- (b) a person (including a domestic servant) who has entered into or works under a contract of employment or apprenticeship or otherwise with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is expressed or implied or is oral or is in writing but does not include—
 - (i) an outworker; or
 - (ii) a person whose employment is of a casual nature and is not for the purpose of the employer’s trade or business.

²(2) For the purposes of this Act—

- (a) any reference in this Act to a worker who has been injured includes, where the worker is dead, a reference to his legal personal representative or to his dependants or other persons to whom or for whose benefit compensation is payable; and
- (b) any reference in this Act to the wife or the widow of a worker shall, where the worker is a female, be read as a reference to the husband or widower, as the case requires, of the worker; and
- (c) the exercise and performance of the powers, duties or functions of a statutory body shall be deemed to be the trade or business of that body.

(3) For the purposes of Subsection (2)(c) “**statutory body**” means any body corporate or unincorporate constituted by an Act in respect of which the Head of State, acting on advice, has the right to appoint one or more of the persons comprising the body or concerned in its management and includes—

- (a) a Provincial Government; and
- (b) a Local-level Government Special Purposes Authority or a Local-level Government or any body exercising the powers, duties and functions of a Local-level Government; and
- (c) any body similar in nature and function to a Local-level Government established by a Provincial Government.

(4) In this Act a reference applicable to a worker after the date of injury shall be read as including a reference to a worker whose contract of employment or apprenticeship has expired or been terminated.

(5) For the purposes of this Act, in the case of an injury that is a disease, the injury shall be deemed to have occurred on the day on which the worker became totally or partially physically or mentally incapacitated because of the injury but where a particular day cannot be ascertained then the injury shall be deemed to have

² Section 1 (definition of “worker”²) repealed and replaced by the *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s2.

occurred on a day certified by a medical practitioner to be the day on which the worker was so incapacitated by reason of the injury.

(6) The Minister may, by notice in the National Gazette, declare an office for the purpose of the definition of “officer” in Subsection (1).

PART II. – ADMINISTRATION.

2. OFFICE OF WORKERS' COMPENSATION.

(1) The Office of Workers' Compensation is hereby established for the administration of this Act.

(2) The Office shall consist of–

- (a) the Chief Commissioner; and
- (b) the Commissioners (if any); and
- (c) the Registrar; and
- (d) the Deputy Registrar; and
- (e) such other staff referred to in Section 13 as are necessary for the proper administration of this Act.

3. THE CHIEF COMMISSIONER AND COMMISSIONERS.

(1) There shall be a Chief Commissioner of Workers' Compensation who shall be–

- (a) an officer; and
- (b) appointed by the Minister by notice in the National Gazette.

(2) There shall be such number of Commissioners of Workers' Compensation as the Minister determines.

(3) A Commissioner shall–

- (a) if he is an officer–be appointed by the Minister by notice in the National Gazette; and
- (b) if he is a person other than an officer–be appointed by the Minister from a panel or panels of names submitted by–
 - (i) the employer industrial organizations of a national nature registered under the *Industrial Relations Act 1962* in consultation with the Papua New Guinea Insurance Underwriters' Association; and
 - (ii) the employee industrial organizations of a national nature registered under the *Industrial Relations Act 1962*,

or either of them, as the case requires, by notice in the National Gazette.

(4) Where the number of Commissioners appointed or to be appointed under Subsection (3)(b) permits, 50% of them shall be appointed from the panel or panels of names submitted by the organizations referred to in Subsection (3)(b)(i) and 50% of them shall be appointed from the panel or panels of names submitted by the organizations referred to in Subsection (3)(b)(ii).

(5) If the Minister is not satisfied that there is on a panel or panels of names submitted to him in accordance with Subsection (3) the name of a person suitable for appointment as a Commissioner, the Minister may request the organizations referred to in Subsection (3)(b)(i) or (ii), as the case requires, to submit a further name or names.

(6) In the event of a failure on the part of the organizations referred to in Subsection 3)(b)(i) or (ii), as the case requires, to submit a panel of names in accordance with Subsection (3)(b), or a further name or names under Subsection (5), within, in the opinion of the Minister, a reasonable time after being requested by him to do so, the Minister may appoint a person to be the Commissioner.

(7) This section does not compel the Minister to appoint Commissioners.

4. PERSONS INELIGIBLE FOR APPOINTMENT.

A person who—

- (a) is less than 21 years of age; or
- (b) is an undischarged bankrupt or insolvent; or
- (c) has been convicted of an offence punishable under a law of Papua New Guinea by death or imprisonment for one year or longer and, as a result of the conviction, is subject to be sentenced to death or is undergoing imprisonment, or is under bond to appear for sentence if called on; or
- (d) is of unsound mind as that expression is used in the *Public Health Act 1973*,

shall not be appointed or nominated as a Commissioner.

5. TERM OF OFFICE.

(1) Subject to this Act, a Commissioner referred to in Section 3(3)(b) holds office for a term of five years, and is eligible for re-appointment.

(2) Notwithstanding Subsection (1), where a Commissioner is appointed to an office from which a Commissioner has been removed or resigned, the Commissioner so appointed holds office for the balance of the term of office of the previous Commissioner, and is eligible for re-appointment.

6. REMOVAL FROM OFFICE.

If a Commissioner referred to in Section 3(3)(b)—

- (a) declines to act; or
- (b) becomes permanently incapable of performing his duties as a Commissioner; or
- (c) becomes a person disqualified under Section 4 from being appointed as a Commissioner; or

- (d) without first obtaining the approval of the Minister, engages in paid employment, outside the duties of his office; or
- (e) is guilty of misbehaviour,

the Minister may, by notice in the National Gazette, remove the Commissioner from office.

7. TERMS AND CONDITIONS OF APPOINTMENT.

³The salary and other terms and conditions of appointment of Commissioners referred to in Section 3(3)(b) are as determined by the Minister after consultation with the Departmental Head of the Department of Personnel Management.

8. LEAVE OF ABSENCE.

The Chief Commissioner may grant leave of absence to a Commissioner referred to in Section 3(3)(b) on such terms and conditions as to remuneration or otherwise as the Minister determines.

9. RESIGNATION.

A Commissioner referred to in Section 3(3)(b) may resign his office by writing under his hand delivered to the Chief Commissioner.

10. REGISTRAR AND DEPUTY REGISTRARS.

(1) For the purposes of this Act, the Minister may, by notice in the National Gazette, appoint—

- (a) a Registrar of Workers' Compensation; and
- (b) such Deputy Registrars of Workers' Compensation as the Minister considers necessary,

each of whom shall be an officer of the Public Service.

(2) The powers, functions, duties and responsibilities of a Deputy Registrar are—

- (a) as prescribed; or
- (b) as directed by the Chief Commissioner with, where the Deputy Registrar is an officer of the Department, the approval of the Secretary of the Department.

11. ACTING REGISTRAR.

(1) At any time when the position of Registrar is not filled on a permanent basis, or when the Registrar is absent from the country or for any reason is not able

³ Section 7 amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s65.

to carry out his duties, the Chief Commissioner may appoint a member of the staff of the Office or an officer to act as the Registrar.

(2) The appointment of an Acting Registrar under Subsection (1) continues until a permanent Registrar is appointed or until the Registrar returns to the country or becomes able again to carry out his duties, as the case may be.

(3) An Acting Registrar has and may exercise and perform all the powers, functions, duties and responsibilities of the Registrar.

12. FUNCTIONS, ETC., OF REGISTRAR.

The Registrar shall—

- (a) keep a register in the prescribed form and shall enter or cause to be entered in the register all the prescribed particulars of—
 - (i) all claims received by the Office for workers' compensation; and
 - (ii) all determinations, awards and orders of a tribunal that arise out of those claims; and
- (b) carry out such other functions and duties as are prescribed or as are directed by the Chief Commissioner.

13. STAFF.

(1) Subject to Subsection (2), any staff required for the purposes of this Act shall be officers or employees of the Public Service.

(2) Subsection (1) does not prevent any person from being employed, on contract or otherwise, under any other law of Papua New Guinea to perform functions in relation to the Office.

14. DECLARATION OF OFFICE.

The Chief Commissioner, each Commissioner, the Registrar and each Deputy Registrar shall, before taking up the duties of his office, make a Declaration of Office as set out in Schedule 1.

PART III. – THE WORKERS' COMPENSATION FUND.**15. THE WORKERS' COMPENSATION FUND.**

The Workers' Compensation Fund is hereby established, into which shall be paid such moneys as are specified by this Act.

16. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

Except where this Act provides to the contrary, the provisions of the *Public Finances (Management) Act 1995* relating to Trust Accounts within the meaning of that Act apply to and in relation to the Fund.

17. CONTRIBUTIONS TO THE FUND.

(1) Each insurer shall contribute annually to the Fund a sum amounting to a percentage to be fixed by the Chief Commissioner on the total amount of the premium income (whether received by or owing to the insurer) of the insurer in respect of the year ended 31 December immediately preceding in respect of insurance or indemnity indemnifying employers against their liability in relation to workers' compensation under this Act and any other law in respect of persons employed by them, excluding any part of premiums actually paid by way of re-insurance to any other insurer contributing under this Act.

(2) Each public employer who is a self-insurer shall, in respect of any period for which contributions to the Fund are payable by the insurer, contribute to the Fund such amount as the Chief Commissioner determines and as is assessed on the wages paid by the public employer to employees during that period, having regard to the premium payable for insurance or indemnity by employers engaged in the same or any similar trade, occupation, calling or industry.

(3) The percentage shall, for the purposes of Subsection (1), be uniform for all insurers.

(4) The amount of any annual contribution—

(a) shall be paid in quarterly instalments on or before 1 January, 1 April, 1 July and 1 October in each year, or on such other days as the Chief Commissioner determines; and

(b) is recoverable as a debt due to the State in any court of competent jurisdiction.

(5) An insurer who fails to pay an instalment of the annual contribution within 30 days after the date it became payable by him, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

18. EXPENDITURE FROM THE FUND.

There shall be paid out of the Fund—

- (a) all moneys payable on account of the employment of the Chief Commissioner, Commissioners (if any), the Registrar, the Deputy Registrars and the staff of the Office; and
- (b) all moneys payable on account of the functioning and administration of the Office; and
- (c) compensation payable under an order of a tribunal where the employer of the worker in relation to whom the order was made—
 - (i) has not effected insurance or indemnity against his liability to pay compensation under this Act and the compensation is not paid within 30 days after the date of the award; or
 - (ii) cannot, after diligent inquiry, be found; and
- (d) all other money required by the Chief Commissioner for carrying out this Act.

19. ESTIMATES OF EXPENDITURE.

(1) The Chief Commissioner shall, prior to 1 January in each year, prepare estimates of expenditure for that year and submit them to the Minister.

(2) Expenditure shall not be incurred in relation to any estimates of expenditure unless and until those estimates have been approved by the Minister.

(3) Where, in any year, the amount actually contributed to the Fund under Section 17—

- (a) is less than the expenditure actually incurred in that year, the deficit shall be added to the estimated expenditure for the next succeeding year, and the rate of contribution increased proportionately; or
- (b) exceeds the expenditure actually incurred in that year, the excess shall be regarded as a credit against contributions for the next succeeding year, and the rate of contribution may be reduced proportionately.

20. INSUFFICIENCY OF FUND.

(1) Where—

- (a) the amount standing to the credit of the Fund is, at any time, insufficient to make any payment which is required by this Act to be paid; and
- (b) the Minister responsible for financial matters certifies as to the insufficiency,

the payment shall be made from the Consolidated Revenue Fund which to the necessary extent is appropriated accordingly.

(2) Any amount paid out of the Consolidated Revenue Fund under Subsection (1)—

- (a) is a charge on the Fund; and
- (b) shall, as soon as the Minister responsible for financial matters certifies that sufficient funds are standing to the credit of the Fund, be repaid from the Fund to the Consolidated Revenue Fund.

21. RETURNS TO BE FURNISHED BY INSURERS.

(1) In January of each year or at such other time as the Chief Commissioner appoints, every insurer shall furnish to the Chief Commissioner—

- (a) a return showing the amount of the premium income (whether received or owing to the insurer) in respect of insurance of employers against their liability to pay compensation under this Act and their liability under any other law in respect of persons employed by them during the immediately preceding year, excluding any part of that premium income actually paid by way of re-insurance to any other insurer contributing under this Act; and
- (b) a statutory declaration by the insurer or his or its manager, secretary or agent in Papua New Guinea, that he has carefully examined the return and to the best of his knowledge, information and belief, the return is a true return of that amount.

(2) An insurer who fails to furnish a return as required by Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K50.00 for each day the offence continues.

(3) An insurer who furnishes a return under Subsection (1) which is false or misleading in any material particular is guilty of an offence.

Penalty: A fine not exceeding K500.00.

PART IV. – CLAIMS.

Division 1.

Workers' Compensation Tribunals.

22. CONSTITUTION OF TRIBUNALS.

(1) For the purposes of this Act, the Chief Commissioner may, by instrument under his hand, establish Workers' Compensation Tribunals consisting of—

- (a) the Chief Commissioner; or
- (b) the Chief Commissioner and one or more Commissioners; or
- (c) one or more Commissioners.

(2) Where—

- (a) a tribunal consists of more than one person; and
- (b) a vacancy occurs in the membership of the tribunal,

the tribunal may continue to act notwithstanding the vacancy.

(3) Where a tribunal continues to act after a vacancy occurs in the membership of the tribunal, no act, proceeding, determination, order or award of the tribunal is to be called into question or invalidated merely by reason of the vacancy.

23. JURISDICTION OF TRIBUNALS.

(1) Subject to this Act, a tribunal has exclusive jurisdiction to examine, hear and determine all questions and matters arising under this Act, and the action or decision of a tribunal on any such matter is final and conclusive.

(2) Subsection (1) does not prevent a tribunal from reconsidering any matter which has been dealt with by it, or from rescinding, altering or amending any decision or order previously made by it.

(3) Without limiting the generality of Subsection (1), the jurisdiction of a tribunal extends to determining—

- (a) whether an injury has arisen out of, or in the course of, an employment within the meaning of this Act; and
- (b) the existence and degree of disability by reason of any injury; and
- (c) the permanence of disability by reason of any injury; and
- (d) the degree of diminution of earning capacity by reason of any injury; and
- (e) the amount of average earnings of a worker; and
- (f) the amounts of any refunds or adjustments of assessments which, in its discretion, it may deem proper to make; and
- (g) the existence and extent of dependency; and

- (h) whether a person is a worker within the meaning of this Act; and
- (i) whether any person or aggregation of persons is or is not an employer of a worker within the meaning of this Act and if so whether such worker is or is not entitled to compensation; and
- (j) for the purposes of this Act—the existence of any relationship of any member of the family of a worker; and
- (k) all cases of permanent, partial or total incapacity, and making awards of compensation within the limits prescribed in this Act as may appear proper after taking into consideration the circumstances of the case; and
- (l) the modification of weekly payments when a partially incapacitated worker resumes or is capable of resuming any employment other than his former employment; and
- (m) whether the circumstances of any particular case justify the making of an order for redemption of weekly payments of compensation by payment of a lump sum; and
- (n) the liability of any person in respect of the expenses of medical or surgical attendance on an injured worker at the suit of any person—
 - (i) by whom they have been incurred; or
 - (ii) entitled to receive payment in respect of them.

(4) An action shall not be brought or maintained against a tribunal or any member of a tribunal in respect of an act or decision done or made in the honest belief that it was within the jurisdiction of the tribunal.

Division 2.

Proceedings of Tribunals.

Subdivision A. – General.

24. REGULATION OF PROCEEDINGS.

(1) Subject to this Act, the procedure to be followed in any proceedings before a tribunal, the Chief Commissioner, a Commissioner, the Registrar or any other person or court acting as a delegate of a tribunal is as prescribed or, in the absence of prescription, is as determined by the tribunal, Chief Commissioner, Commissioner, Registrar or other person or body, as the case may be.

- (2) Any person who is a party to any proceedings before a tribunal may—
 - (a) appear in person; or
 - (b) be represented by—
 - (i) his lawyer; or
 - (ii) some other person duly appointed by the party for the purpose,

and, subject to this Act, every party who appears by his lawyer or other representative is bound by the acts of his lawyer or representative.

25. QUESTIONS DETERMINED ON SUBSTANTIAL MERITS.

(1) Subject to this Act, in the hearing and determination of any question, a tribunal, the Chief Commissioner, a Commissioner, the Registrar and any other person or court acting as a delegate of a tribunal—

- (a) shall act according to equity and good conscience and the substantial merits of the case; and
- (b) is not bound to observe strict legal procedure or to apply technical rules of evidence; and
- (c) shall inform itself or himself as to the matter by such means as in the circumstances are considered necessary and just; and
- (d) may, by order, require a person—
 - (i) to furnish in writing or otherwise, such particulars in relation to the matter as it or he requires; or
 - (ii) to attend before it or him and to give evidence on oath or otherwise; or
 - (iii) to answer any questions or to produce any documents or thing which in its or his opinion is or may be relevant to the matter.

(2) In considering a question as to whether a person who resides outside the country is a dependant of a worker, a tribunal—

- (a) shall require proof by or including documentary evidence that the worker has, wholly or in part, as the case may be, supported the person; and
- (b) shall not accept as sufficient proof a statutory declaration or affidavit which is unsupported by documentary evidence to that effect.

(3) The granting of relief or redress under this Act shall not necessarily be restricted to the specific claim made, nor to the subject matter of the claim.

(4) All proceedings before a tribunal are to be conducted in public unless the tribunal otherwise directs.

26. TRIBUNAL MAY ACT ON REPORT OF OFFICER, ETC.

(1) A tribunal may act on the report of any member of the staff of the Office.

(2) Any inquiry which a tribunal considers necessary to make may be made by—

- (a) the Chief Commissioner; or
- (b) a Commissioner; or

- (c) the Registrar or a Deputy Registrar; or
- (d) a member of the staff of the Office; or
- (e) some other person appointed by the tribunal to make the inquiry, and the tribunal may act on his report as to the result of the inquiry.

(3) A person appointed under Subsection (2) to make an inquiry has, for the purposes of making that inquiry, all the powers of a tribunal.

27. DELEGATION TO VILLAGE COURTS, ETC.

(1) A tribunal may delegate all or any of its powers relating to the determination of any question relating to the existence and extent of dependency to—

- (a) a Village Court; or
- (b) where no Village Court has been established for the relevant area, to the District Court,

but the delegation in each case shall be of a specific and not of a general nature.

(2) A tribunal is not bound to accept a decision of a Village Court or a District Court made under a delegation under Subsection (1) but such a decision is, in all other respects, as binding and effective as if it were a decision of the tribunal.

(3) Where a Village Court or a District Court has determined any question under this Section, that Court shall, within 14 days after making the determination, forward, or cause to be forwarded, to the tribunal, a report of its proceedings.

28. CASE STATED ON QUESTIONS OF LAW.

When any question of law arises in any proceeding before it, including any question as to whether or not a person is a worker, a tribunal—

- (a) may; and
- (b) shall, if requested to do so by any party to the proceedings before it,

state a case for the decision of the National Court.

29. CERTIFIED COPIES, ETC., OF RECORDS TO BE PRIMA FACIE EVIDENCE.

Every copy or extract from an entry of any book or record of a tribunal or of the Office and of any document filed with a tribunal or the Office purporting to be certified by the Registrar to be a true copy or extract shall be received in any court as *prima facie* evidence of the matter so certified without proof of the Registrars appointment, authority or signature.

30. ISSUE OF CERTIFICATE OF TRIBUNAL'S FINDING.

The Registrar may, in any case where he considers it necessary to do so, and shall, on the application of any employer or worker interested in any order, award,

ruling or decision of a tribunal, issue a certificate embodying the substance of the order, award, ruling or decision.

31. REGISTRAR TO INFORM WORKERS AND EMPLOYERS OF THEIR RIGHTS.

The Registrar shall, when requested to do so, furnish workers and employers with information as to their rights and liabilities in respect of injuries sustained by workers in connection with their employment.

32. ILLEGAL CONTRACTS.

Where in any proceedings for the recovery under this Act of compensation for an injury it appears to a tribunal that the contract of employment or apprenticeship under which the injured worker was engaged at the time when the injury happened was illegal, the tribunal may, if, having regard to all the circumstances of the case, it thinks it proper to do so, deal with the matter as if the injured person had at that time been a worker under a valid contract of employment or apprenticeship.

Subdivision B. – Expeditious Settlement of Disputes.

33. SUMMARY LIST.

(1) All proceedings before a tribunal shall, in the first instance, be placed on a list for hearing by the tribunal to be called the “**summary list**”.

(2) Proceedings in the summary list may be heard and determined by a tribunal expeditiously and informally and on the hearing of each proceeding the tribunal may determine the matter at issue without taking evidence on oath except that, if any party to the proceedings requests that any or all evidence be taken on oath, the tribunal shall take that evidence on oath.

34. REMOVAL OF PROCEEDINGS FROM THE SUMMARY LIST.

(1) Where, in any proceedings in the summary list before a tribunal, the tribunal considers that difficult or complex questions of fact or law have arisen or are likely to arise, it may order that the proceedings be removed from the summary list and placed on the list for formal determination.

(2) Where proceedings have been removed from the summary list under Subsection (1) and it later appears to the tribunal bearing the proceedings that difficult or complex questions of fact or law have not arisen and that the proceeding could have been expeditiously determined at proceedings in the summary list, the tribunal may order the party responsible for having the matter removed from the summary list—

- (a) to pay the costs or any part of the costs involved in the removal and formal determination to the other party; and

- (b) where the party so responsible is an employer—it may determine that he has caused an unreasonable delay in the settlement of the claim for compensation and Section 35 applies.

35. UNREASONABLE DELAY IN SETTLEMENT OF CLAIMS.

(1) Where, in any proceedings under this Act for the settlement of a claim for compensation, a tribunal is of the opinion that the employer is responsible for or has caused an unreasonable delay in having the claim settled, it may order that the amount of compensation awarded or payable be increased by such amount as it specifies in the order.

- (2) An increase in compensation under Subsection (1) shall not exceed—
 - (a) in the case of a lump sum—10% of the total amount of the compensation; or
 - (b) in the case of a weekly payment—10% of the total amount of the weekly payment accrued at the date of assessment of compensation.

36. WEEKLY PAYMENTS.

(1) Subject to the succeeding provisions of this Division, unless a tribunal otherwise orders, the first weekly payment to an incapacitated worker provided for by Section 66(1)—

- (a) shall be made to the worker as soon as possible but not more than two weeks after the worker has provided evidence of his incapacity; and
- (b) shall be made on the day on which the worker would, but for his incapacity, have been paid his wages and afterwards weekly payment shall be made at seven day intervals calculated from that day.

(2) The weekly payment referred to in Subsection (1) shall be made as if the worker were totally incapacitated.

(3) An employer who disputes his liability to pay compensation under this Act may, within the period of two weeks referred to in Subsection (1), or such further time as the Chief Commissioner orders, apply to the Chief Commissioner for an order by a tribunal that Subsection (1) does not apply.

(4) An application under Subsection (3) shall be heard and determined as a proceeding on the summary list and, until the application has been determined, the operation of Subsection (1) is suspended.

- (5) On the hearing of an application under Subsection (3) the tribunal may—
 - (a) dismiss or adjourn the application on such terms as it thinks fit and, if it dismisses the application, make such order as to the modification of the application of Subsection (1) as it thinks fit, and then Subsection (1) applies and has effect accordingly; or

- (b) if it considers that a genuine dispute exists concerning the liability of the employer to pay compensation—order that Subsection (1) does not apply.

(6) The fact that an application under Subsection (3) has been dismissed shall not be taken into account by a tribunal in any other proceedings under this Act.

(7) The provisions of this Act which provide for a hearing to be removed from the summary list for formal determination do not apply to any proceedings under this section.

37. MAKING OF WEEKLY PAYMENT NOT AN ADMISSION OF LIABILITY.

For the purposes of this Act, the making of a weekly payment referred to in Section 36(1) does not of itself constitute an admission of liability to pay compensation.

38. WEEKLY PAYMENTS CANNOT BE RECOVERED UNLESS OBTAINED BY FRAUD.

Unless it appears to a court that the payment of weekly payments was obtained by fraud or misrepresentation on the part of a worker, the fact that an employer may be found by a tribunal not to be liable for such weekly payments does not entitle any person who made the weekly payments to sue for and recover from the worker the amount of any such weekly payments.

39. MAKING OF WEEKLY PAYMENTS NOT TO PRECLUDE SUBMISSION OF NOTICE OF INJURY.

⁴The making of weekly payments under this Division does not preclude the requirement of the submission of a notice of injury under Section 42.

Division 3.

Costs.

40. COSTS.

(1) The costs of and incidental to any proceedings before a tribunal shall—

- (a) subject to the regulations—be in the discretion of the tribunal; and
(b) not exceed the limit prescribed; and
(c) be taxed in the manner prescribed.

(2) A taxation of costs under Subsection (1) may be reviewed by the Registrar of the National Court.

⁴ Section 39 amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s3.

Division 4.***Notice of Injuries and Claims.*****41. TIME FOR TAKING PROCEEDINGS.**

(1) Without limiting the generality of the meaning of the expression “**reasonable cause**” in this section, it shall be deemed to include—

- (a) the making of any payment to a worker which he believes to be a payment of compensation under this Act; and
- (b) any conduct on the part of the employer or his insurer or agent, or on the part of an employee purporting to act on behalf of the employer, by which the worker is lead to believe—
 - (i) that compensation under this Act will or will probably be paid to him; or
 - (ii) that he is not entitled to any such compensation.

(2)⁵ ⁶Subject to Section 68, proceedings for the recovery under this Act of compensation are not maintainable unless—

- (a) notice of the injury has been given as soon as practicable after the injury occurs and before the worker has voluntarily left the employment in which he was injured; and
- (b) the claim for compensation with respect to the injury has been made within 12 months after the occurrence of the injury, or in the case of death within 12 months after the date of death.

(3) For the purposes of Subsection (2)(a), a worker shall not be deemed to have voluntarily left the employment in any case where by reason of the injury he was unable to continue in the employment.

(4) The want of or any defect or irregularity in a notice of injury is not a bar to the maintenance of proceedings for the recovery of compensation—

- (a) if the application is made in respect of the death of a worker resulting from an injury which occurred on the premises of the employer, or at any place where the worker at the time of the injury was working under the control of the employer or of any person employed by the employer and the worker died—
 - (i) on those premises; or
 - (ii) at that place; or
 - (iii) on any premises belonging to the employer; or
 - (iv) without having left the vicinity of the premises or place where the injury occurred; or

⁵ Section 41(2) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s4.

⁶ Section 41(2) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s4.

(b) if the employer is proved to have had knowledge of the injury from any other source at or about the time of the injury or, if it is found in the proceedings for settling the claim that the employer is not or would not, if a notice or amended notice were then given and the hearing postponed, be prejudiced in his defence by the want or defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the country or other reasonable cause.

(5) The notice referred to in Subsection (2)–

(a) may be given in writing or orally to the employer or any one of the employers or to any foreman or other official under whose supervision the worker is employed or to any person designated by the employer for the purpose; and

(b) shall specify the name and address of the person injured; and

(c) shall state in ordinary language the cause of the injury and the date on which the injury occurred.

(6) Where a principal contracts with a contractor for the execution of any work undertaken by the principal, notice of an injury to a worker employed by the contractor given to the contractor or to any foreman or other official under whose supervision the worker is employed or to any person designated for the purpose by the contractor, shall be deemed to be notice to the principal.

(7) The Registrar may receive, and a tribunal may determine, any application for compensation under this Act in any case where–

(a) the required notice has not been given; or

(b) the application has not been made in due time,

provided that the Registrar or tribunal, as the case may be, is satisfied that there was reasonable cause for the failure to give notice or to make the application in due time, as the case may be.

42. EMPLOYER TO GIVE NOTICE OF INJURY, ETC., TO REGISTRAR.

(1) Where an injury to a worker results–

(a) in the death of the worker within one day after the occurrence of the injury; or

(b) in the total or partial incapacity of the worker for a period exceeding one day,

whether or not the injury gives rise to any claim for compensation, the employer must–

(c) not later than seven days after the occurrence of the injury; or

(d) where the employer had no immediate knowledge of the injury, not later than seven days after the occurrence of the injury first came to his notice,

forward to the Registrar a notice in the prescribed form.

(2) Where an injury to a worker results in the death of the worker more than one day after the occurrence of the injury, the employer must, whether or not the death of the worker gives rise to any claim for compensation—

- (a) not later than seven days after the death; or
- (b) where the employer had no immediate knowledge of the death, not later than seven days after the death first came to his notice,

forward to the Registrar a notice in the prescribed form.

43. DEPUTY REGISTRAR TO ASCERTAIN WHETHER CLAIM FOR COMPENSATION MAY ARISE AND TO INFORM DEPENDANTS.

(1) As soon as practicable after a notice of injury or of death is received by the Registrar he may refer the notice to a Deputy Registrar who shall ascertain whether a claim for compensation may arise out of the injury or death.

(2) Where the Deputy Registrar to whom a notice is referred under Subsection (1) is of the opinion that a claim for compensation may arise, he shall—

- (a) in the event of the death of the worker—
 - (i) ascertain whether there are any dependants of the deceased worker; and
 - (ii) if there are any such dependants—
 - (A) inform them of the reported circumstances and cause of the death; and
 - (B) advise them of their possible rights to compensation under this Act; and
 - (C) if so required by all or any of them, make a claim for compensation on their behalf; and
- (b) in the event of an injury to the worker—
 - (i) if the claim is in respect of the incapacity of a worker and weekly payments are not being made under Section 36(1); or
 - (ii) if the claim is in respect of a specific injury under Section 66 or 67,

and if the worker so requests, make a claim for compensation on behalf of the worker.

44. EMPLOYER DEEMED TO HAVE KNOWLEDGE OF DEATH OF WORKER ON HIS PREMISES.

For the purposes of this Division, where the death of a worker occurs on premises belonging to or under the control of his employer, the employer shall be deemed to have knowledge of the death from the moment at which it occurred.

45. FAILURE TO GIVE NOTICE OF INJURY.

An employer who, without reasonable cause (proof of which is on him) fails to give to the Registrar a notice of injury or notice of death as required by Section 42, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Division 5.

Medical Examinations.

46. EMPLOYER MAY REQUIRE WORKER TO BE MEDICALLY EXAMINED.

(1) Where a worker—

- (a) has suffered an injury that may give rise to a claim for compensation under this Act; or
- (b) has given notice of an injury under this Act; or
- (c) is receiving weekly payments under this Act,

the worker shall, if so required by the employer, from time to time, submit himself for examination by a medical practitioner provided and paid for by the employer.

(2) Where a worker—

- (a) fails or refuses to submit himself for a medical examination when required to do so under Subsection (1); or
- (b) in any way obstructs the medical examination,

his right to weekly payments or to other compensation under this Act is suspended until the medical examination has taken place.

(3) The employer shall reimburse the worker the amount of any cost or out of pocket expenses reasonably incurred by the worker for the purpose of submitting himself to any medical examination under Subsection (1).

(4) A worker shall not be required to submit himself for examination by a medical practitioner under Subsection (1)—

- (a) otherwise than in accordance with the regulations; or
- (b) at more frequent intervals than are prescribed.

47. COST OF MEDICAL AND SURGICAL TREATMENT.

Where, during the period of his incapacity, a worker, at the request of the employer, receives medical or surgical treatment, the cost of, and incidental to, that treatment shall not be regarded as a payment, allowance or benefit within the meaning of this Act.

48. REPORTS OF MEDICAL EXAMINATION.

(1) Where a worker is required to submit himself to a medical examination under this Act, the employer must, at the request of—

- (a) the worker; or
- (b) any representative of the worker,

promptly supply, or cause to be supplied, to the worker or the representative—

- (c) a copy of every report furnished to the employer or his representative by the medical practitioner who conducted the examination; and
- (d) a written statement of all the facts, conclusions and opinions of the medical practitioner relating to the condition of the worker which have been communicated by the medical practitioner to the employer or to his representative.

(2) An employer who fails or refuses to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Division 6.***Appeals.*****49. APPEAL TO NATIONAL COURT.**

(1) Where in any proceedings under this Act a tribunal gives a decision or makes an order or award, either party to the proceedings may appeal from the decision, order or award on a question of law or fact, or both, to the National Court within the time and in accordance with the conditions prescribed by the Rules of Court for appeals from decisions of the District Court.

(2) An appeal under Subsection (1) may be by way of rehearing.

(3) The National Court shall decide the matter of the appeal and may affirm, quash or vary the decision, order or award appealed from, or substitute or make any decision, order or award which ought to have been made in the first instance, and may make such order as to the costs of the appeal or of the proceedings before the tribunal, or both, as it thinks proper.

Division 7.

Miscellaneous.

50. COPIES OF STATEMENTS TO BE GIVEN TO WORKER.

(1) An employer must, where a worker or his representative so requests, promptly supply, or cause to be supplied, to the worker or his representative a copy of any statement, that has been reduced to writing, made by the worker to the employer, or to any representative of the employer, in connection with an injury suffered by the worker whilst he was in the employ of the employer.

(2) An employer who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100.00.

51. INSPECTION OF PREMISES, ETC.

A person who is in charge of—

(a) any premises or place; or

(b) any plant or machinery,

at or in relation to which an injury to a worker has occurred, and who unreasonably refuses to allow the worker, or a person nominated by the worker, to make a reasonable inspection or examination of those premises, that place or that plant or machinery, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

52. NOTICES, ETC., TO BE DISPLAYED.

(1) An employer shall display prominently at his place or places of employment such notices in relation to workers' compensation as the Chief Commissioner determines.

(2) An employer shall keep at his place or places of employment and make available at all reasonable times to all persons employed by him all books, pamphlets, and other documents relating to workers' compensation that may, from time to time, be issued by the Chief Commissioner.

PART V. – RIGHT TO COMPENSATION.**53. INTERPRETATION OF PART V.**

In this Part, unless the contrary intention appears–

“institution” means trade, technical or other school and university or other place of tertiary education;

“journey” means the passage by any reasonable, direct or convenient route between two places but does not include–

- (a) any substantial deviation from that route for purposes unconnected with the employment or other purpose for which the journey was undertaken; or
- (b) any substantial interruption of that passage for purposes unconnected with the employment or other purpose for which the journey was undertaken,

unless in the circumstances of that substantial deviation or substantial interruption the nature, extent, degree or content of the risk of injury to the worker was not materially changed or increased by reason only of the deviation or interruption;

“place of abode”, in relation to a worker, includes any place at which, under the terms of his employment, or at the request of his employer, he resides temporarily or at which it is necessary or convenient for him to reside temporarily for the purposes of his employment;

“place of employment” includes place of pick-up and where there is no fixed place of employment, the whole area, scope or ambit of employment;

“place of pick-up” means any pre-arranged place at which persons attend and at which employers select and engage persons for employment.

54. LIABILITY OF EMPLOYER TO COMPENSATE WORKER FOR INJURIES.

(1) If in any employment personal injury arising out of or in the course of the employment is caused to a worker, his employer shall, except as provided in this Act, be liable to pay compensation in accordance with this Act.

(2) Without limiting the generality of Subsection (1), an injury shall be deemed to arise out of or in the course of the employment of a worker if it occurs while the worker–

- (a) is in the course of a daily or other periodic journey between his place of abode and his place of employment, whether such journey is to or from his place of employment; or
- (b) is in the course of a journey between his place of employment or place of abode and an institution which he is required by law to attend, or which he attends at the request of or with the approval of the employer for the

purpose of attending a class or undertaking training at such an institution; or

- (c) is in attendance at an institution referred to in Paragraph (b) for a purpose referred to in that paragraph; or
- (d) is in the course of a journey between his place of abode or place of employment and any other place for the purpose of—
 - (i) obtaining a medical certificate in connection with any injury for which he has received compensation or for which a claim for compensation has been admitted; or
 - (ii) receiving attention or treatment in connection with any such injury, medical, surgical or hospital advice,
or is in attendance at any such place for any such purpose;
or
- (e) is in attendance at his place of employment for reasons connected with his employment including any period—
 - (i) before he has commenced his work for the day; and
 - (ii) after he has concluded his work for the day; and
 - (iii) during an authorized break in his work,
so long as the worker—
 - (iv) is not guilty of any misconduct or breach of his employer's instructions; and
 - (v) did not voluntarily subject himself to any abnormal risk of injury.

(3) While a worker is in the course of a journey from his place of employment under one employer to his place of employment under another employer, this section applies and has effect as if the first-mentioned place of employment were his place of abode.

(4) Notwithstanding any other law, a person who ordinarily engages in employment in connection with which he customarily attends at a place of pick-up, shall be deemed to be working under a contract of employment—

- (a) with the employer who selected and engaged him at the place of pick-up;
or
- (b) if no employer so selected or engaged him—with the last employer who, within the immediately preceding 21 days, selected and engaged him in that employment.

(5) Notwithstanding anything in this Act, compensation under this Act is not payable—

- (a) in respect of any injury that is consequent on or attributable to the serious and wilful misconduct of the worker unless that injury results in the death or permanent total incapacity of the worker; or
- (b) in respect of a deliberately self-inflicted injury.

55. ACTING IN EMPLOYMENT.

For the purposes of Section 54, a worker shall be deemed to be acting in the course of his employment notwithstanding the fact that—

- (a) he was acting in contravention of any statutory or other regulation applicable to the employment; or
- (b) he was acting without instructions from his employer,

if he was so acting for the purposes of, and in connection with, his employment.

56. COMPENSATION FOR INJURIES, ETC., RECEIVED OUTSIDE THE COUNTRY.

(1) Where an employer in Papua New Guinea employs a worker and that worker, whilst outside the territorial limits of Papua New Guinea—

- (a) receives an injury; or
- (b) dies,

under circumstances which, had the injury been received or the death occurred in Papua New Guinea, would entitle him (or, in the case of the death of the worker, his dependants) to compensation in accordance with the provisions of this Act, that worker is (or, in the case of the death of the worker, his dependants are) entitled to receive compensation in accordance with the provisions of this Act.

(2) For the purposes of Subsection (1), the provisions of this Act apply, with the necessary modifications, to and in relation to the injury or death.

(3) This Act shall not be construed so as to entitle a worker (or, in the case of the death of the worker, his dependants) to receive compensation for the same injury (or for the death) under this Act and under the corresponding law of any place other than Papua New Guinea.

(4) If a worker (or, in the case of the death of a worker, his dependants) receives compensation under this Act in respect of an injury (or death) and subsequently receives compensation under a corresponding law in force in a place other than Papua New Guinea in respect of the same injury (or death), the employer is entitled to recover from the worker (or, in the case of the death of the worker, his dependants) the amount of compensation paid by the employer under this Act.

57. DRIVERS OF CERTAIN PASSENGER VEHICLES UNDER CONTRACTS OF BAILMENT DEEMED TO BE EMPLOYEES.

Notwithstanding anything in this Act, where a person engaged in driving a vehicle used for carrying passengers or goods for reward has the use of that vehicle under a contract of bailment (not being a *bona fide* contract for the purchase of the vehicle whether by hire-purchase or otherwise) under which he is required to pay any sum or sums (whether of fixed amount or proportionate to mileage or receipts or otherwise) for the use of that vehicle, then for the purposes of this Act—

- (a) such person shall be deemed to be working under a contract of employment with an employer; and
- (b) the person from whom the use of the vehicle is obtained under the contract of bailment shall be deemed to be that employer.

58. SERVICES OF EMPLOYEE LENT BY EMPLOYER.

Where the services of a worker are lent or let on hire to another person by the person with whom the worker has entered into a contract of employment or apprenticeship, the latter person shall, for the purposes of this Act, be deemed to continue to be the employer of the worker while he is working for that other person.

59. SUB-CONTRACTING.

(1) In this section—

“**contractor**” means a person with whom a principal contracts for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;

“**principal**” means a person who, in the course of, or for the purpose of his trade or business, contracts with any other person for the execution by or under that person of the whole or any part of any work.

(2) Subject to Subsection (3), the principal is liable to pay to any worker employed in the execution of the work by the contractor, any compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him.

(3) Where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(4) Where the principal is liable to pay compensation under this section he is entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to, and amount of, any such indemnity shall, in default of agreement, be settled by a tribunal.

(5) This section does not prevent a worker from recovering compensation under this Act from the contractor instead of the principal.

60. APPLICATION OF ACT TO SEAMAN.

(1) In this section, “**Papua New Guinea ship**” means a ship which is—

- (a) registered in Papua New Guinea; or
- (b) owned by a corporation established under the laws of Papua New Guinea or having its principal office or place of business in Papua New Guinea, or in the possession of any such corporation by virtue of a charter; or
- (c) owned by a person or corporation whose chief office or place of business in respect of the management of the ship is in Papua New Guinea, or in the possession of any such person or corporation by virtue of a charter.

(2) Subject to the following modifications, this Act applies to a worker who is a seaman employed on a Papua New Guinea ship or a ship whose first port of clearance and whose destination are in Papua New Guinea:—

- (a) the notice of injury and the claim for compensation may, except where the person injured is a master, be given to the master of the ship as if he were the employer but, where the injury occurred or the incapacity commences on board the ship, it is not necessary to give notice of the injury;
- (b) in the case of the death of a seaman, the claim for compensation shall be made within 12 months after news of the death has been received by the claimant;
- (c) where an injured seaman is discharged or left behind in a foreign country, depositions respecting the circumstances and nature of the injury, taken by a Judge or magistrate or by a Papua New Guinea diplomatic or consular official in the foreign country, shall, in any proceedings for enforcing the claim, be admissible in evidence if authenticated by the signature of the Judge, magistrate or diplomatic or consular official, without proof of the signature or official character of the person appearing to have signed the deposition;
- (d) in the case of the death of a seaman leaving no dependants, compensation is not payable if the owner of the ship is, under any law in force in Papua New Guinea, liable to pay the expenses of burial;
- (e) the weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force in Papua New Guinea, liable to defray the expenses of maintenance of an injured seaman;
- (f) any sum payable by way of compensation shall be paid in full notwithstanding any limitation of liability in any other law;

- (g) in any proceeding for the recovery of compensation, if it is shown that the ship has 12 months or upwards before the institution of the proceedings left a port of departure, the ship shall, unless it is shown that it has been heard of within 12 months after that departure, be deemed to have been lost with all hands either immediately after the time it was last heard of or at such later time as the tribunal thinks probable;
- (h) any duplicate agreement or list of the crew made out or statement of change of the crew delivered to a public officer at the time of the last departure of the ship from a port or a certificate purporting to be a certificate from a consular or other public officer at any port, stating that certain seamen were shipped in the ship from the port, shall, if produced or purporting to be produced from proper custody, be, in the absence of proof to the contrary, sufficient proof that the seamen named as belonging to the ship were on board at the time of the loss;
- (i) in the case of a ship lost with all hands, proceedings for the recovery of compensation shall be maintainable if the claim is made within 18 months of the date at which the ship is deemed under Paragraph (g) to have been lost with all hands.

61. INSOLVENCY OF EMPLOYER.

(1) Where an employer who has entered into a contract with any insurers in respect of any liability under this Act to any worker—

- (a) becomes insolvent; or
- (b) makes a composition or arrangement with his creditors; or
- (c) being a company, has commenced to be wound up,

the rights of the employer against the insurers with respect to that liability shall, notwithstanding any Act relating to insolvency or to the winding-up of companies, be transferred to and vest in the worker.

(2) Where a transfer has been effected under Subsection (1), the insurers have the same rights and remedies and are subject to the same liabilities as if they were the employer, but they shall not be under any greater liability to the worker than they would have been under to the employer.

(3) If the liability of the insurers to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the insolvency or liquidation.

62. PERSONS ENTITLED TO COMPENSATION ON DEATH.

(1) Where an injury results in the death of a worker, the dependants of that worker are entitled to claim compensation under this Act.

- (2) Notwithstanding anything in this Act—

- (a) a wife or the wives; and
- (b) the children,

of a deceased worker who was or were wholly or mainly dependent for support on the earnings of the worker at the time of death of the worker or at any other relevant time shall be awarded jointly—

- (c) not less than 50%; or
- (d) such higher percentage as a tribunal considers just,

of the total amount of compensation awarded in respect of the death of the worker.

(3) Subject to this Act and in particular to Subsection (2), any question as to—

- (a) who is a dependant of a deceased worker; and
- (b) the amount payable to each such dependant,

shall be determined by a tribunal.

(4) Where a tribunal has determined to award compensation to a customary dependant or customary dependants of a deceased worker, the tribunal may award the compensation to a nominee dependant nominated by it for distribution by him to the persons who by custom have a right to share in any compensation payable in respect of the deceased worker, and the actual distribution by the nominee dependant shall be deemed to be a determination under Subsection (3).

(5) For the purposes of—

- (a) Subsection (4), the term “**customary dependant**” does not include a member of the family of a deceased worker who was mainly, wholly or partially dependent on the earnings of the worker at the date of his death, or would, but for the incapacity due to the injury have been so dependent; and
- (b) calculating the total amount of compensation payable under this section, no regard shall be had to any weekly payments awarded under this section.

62A. DISBURSEMENT OF CERTAIN MONIES.

⁷(1) Subject to Subsection (2), any money held belonging to—

- (a) a deceased worker; or
- (b) an injured worker; or
- (c) in the case of the death of the worker—his dependant,

shall, after three years from the date of the making of the award, be transferred to the Workers Compensation Trust Funds Account to meet payment of any uninsured claims being made.

⁷ Section 62A added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s5.

(2) Where a worker dies after the tribunal makes an award, and the death of the worker is not related to the injury received in the course of his employment, any compensation award to the deceased worker shall be paid to his next-of-kin.

(3) For the purposes of this section, if a worker or his next-of-kin is identified after three years from the date of the making of the award, and the fund had already been transferred to the Workers' Compensation Trust Fund Account, the worker or, as the case may be, the next-of-kin, shall be paid out of the Trust Account.

63. DETERMINATION OF DEPENDENCY.

Notwithstanding anything to the contrary in this Act—

- (a) any child of a worker (including an ex-nuptial child) who is under 16 years of age at the time of the death of the worker or at any other relevant time shall, unless the contrary is proved, be deemed to have been—
 - (i) a dependant of the worker (where that fact is relevant); and
 - (ii) wholly dependent on the worker for support,
at the time of death or other relevant time; and
- (b) the amount of—
 - (i) any child endowment or similar payment made under the laws of any other country; or
 - (ii) any child allowance paid by the State,
in respect of any child shall be disregarded in ascertaining, for the purposes of this Act, whether or not that child is or was dependent on the earnings of the worker at the relevant time; and
- (c) where the wife of a worker has delivered to the employer, or to the Registrar, a statutory declaration made by her declaring that she was wholly, mainly or partially dependent on the earnings of the worker at the time of his death, or at the time of the injury which gave rise to his death or at any other relevant time, the wife shall, unless the contrary is proved, be deemed to have been—
 - (i) a dependant of the worker (where that fact is relevant); and
 - (ii) dependent on his earnings,
at the time of death, injury or other relevant time to the extent stated in the statutory declaration.

PART VI. – AMOUNT OF COMPENSATION.**64. INTERPRETATION OF PART VI.**

In this Part “**funeral expenses**” includes–

- (a) the transportation of the body of the deceased worker from the place of employment to his place of origin or any other place nominated by his dependants or, in the absence of dependants, his relatives, not being of greater expense of transportation than to his place of origin; and
- (b) if the worker is a citizen, the costs of customary burial rites (if any).

65. AMOUNT OF COMPENSATION PAYABLE ON DEATH OF WORKER.

(1) The amount of compensation payable in relation to the death of a worker shall, where the death of the worker results from or is materially contributed to by injury, be calculated as follows:–

- (a) where the worker leaves any dependants wholly dependent on his earnings and whether or not there exist persons who by custom have a right to share in compensation awarded in respect of the death of the worker, the amount of compensation payable–
 - (i)⁸ shall, subject to Subparagraphs (ii) and (iii), be an amount equal to eight times the annual earnings of the worker at the time of the injury plus K6.40 per week for each dependant child; and
 - (ii)⁹ shall be not less than K5,750.00 plus K6.40 per week for each dependant child; and
 - (iii)¹⁰ shall be not more than K17,000.00 plus K6.40 per week for each dependant child;
- (b) where the worker does not leave any dependants wholly dependent on his earnings and whether or not there exist persons who by custom have a right to share in compensation awarded in respect of the death of the worker, the amount of compensation payable shall be such amount as in the opinion of a tribunal is reasonable but shall not exceed the amount specified in Paragraph (a);
- (c) where there are–
 - (i) total and partial dependants; or
 - (ii) total and partial dependants and persons who by custom have a right to share in any compensation awarded in respect of the death of the worker,

⁸ Section 65(1)(a)(i) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(a)(i).

⁹ Section 65(1)(a)(ii) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(a)(ii).

¹⁰ Section 65(1)(a)(iii) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(a)(iii).

a tribunal may, subject to Section 62, apportion the compensation between the total dependants and the partial dependants and the persons who by custom have a right to share in the compensation;

(d) where the worker leaves no dependants totally or partially dependent on his earnings but there are persons who by custom have a right to share in compensation awarded in respect of the death of the worker, the amount of compensation payable shall be such amount as in the opinion of the tribunal is reasonable but shall not exceed the amount specified in Paragraph (a).

(2) If a deceased worker leaves no dependants the employer shall pay—

(a)¹¹ reasonable funeral expenses of the deceased worker not exceeding K500.00; and

(b) the reasonable expenses of medical attendances on the deceased worker, to the person or authority properly incurring such expenses.

(3)¹² ¹³In addition to any compensation paid or payable to them under Subsection (1), the dependants of a deceased worker who have paid or are liable to pay the funeral expenses of the worker are entitled to the amount of such expenses not exceeding K500.00.

(4) Amounts paid or payable before the death of a worker as weekly payments in respect of his total or partial incapacity for work resulting from the injury shall not be taken into consideration in calculating the amount of compensation payable on his death, but any amount paid before the death of a worker in redemption of the liability for weekly payments or in respect of an injury for which compensation is payable in respect of a specified injury (except so much of that amount as in the opinion of a tribunal is referable to compensation for total or partial incapacity before death) shall be deducted from the amount payable on death.

(5)¹⁴ ¹⁵The compensation amount specified in Subsection (1)(a)(ii) shall, in respect of the year specified in Column 1 of the table A below, be not less than the amount specified in column 2 of the table plus the amount specified in Column 3 for each dependant child:—

TABLE A		
Column 1	Column 2	Column 3
YEAR	AMOUNT	PER WEEK EACH DEPENDANT
1991	K6,500.00	K7.30

¹¹ Section 65(2)(a) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(b).

¹² Section 65(3) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(c).

¹³ Section 65(3) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(c).

¹⁴ Section 65(5) added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(d).

¹⁵ Section 65(5) added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s6(d).

Column 1 YEAR	Column 2 AMOUNT	Column 3 PER WEEK EACH DEPENDANT
1992	K7,250.00	K8.20
1993	K8,000.00	K9.10
1994	K8,750.00	K10.00.

(6) The compensation amount specified in Subsection (1)(a)(iii) shall, in respect of the year specified in Column 1 of the table B below, be not more than the amount specified in Column 2 of the table plus the amount specified in Column 3 for each dependant child:—

TABLE B

Column 1 YEAR	Column 2 AMOUNT	Column 3 PER WEEK EACH DEPENDANT
1991	K19,000.00	K7.30
1992	K21,000.00	K8.20
1993	K23,000.00	K9.10
1994	K25,000.00	K10.00.

(7) The funeral expenses specified in Subsection (2) and (3) shall, in respect of the year specified in Column 1 of the table C below, be not more than the amount specified in Column 2.

TABLE C

Column 1 YEAR	Column 2 AMOUNT
1991	K600.00
1992	K650.00
1993	K700.00
1994	K750.00.

(8) For the purposes of making a compensation claim under this Act, it is hereby declared that the amount of compensation, benefit or expenses an injured worker is (or, in the case of the death of the worker his dependants are) entitled to claim shall be that amount of compensation, benefit or expenses specified in respect of the year during which the worker is injured or killed.

66. COMPENSATION FOR INCAPACITY.

¹⁶(1) For the purposes of this section “**loss of weekly earnings**” means the difference between the amount of the average weekly earnings of the worker before the injury and the average weekly amount that the worker is earning or is able to earn from some suitable employment or business after the injury.

(2) For the purposes of this section where the question of the amount that an injured worker is earning or is able to earn arises and a tribunal considers that, because of the injury suffered by the worker (including any physical disfigurement of the worker), the worker is or will be unable to obtain employment or to remain in reasonably regular employment, the tribunal may decide that the worker is incapacitated by the injury—

- (a) totally or partially; and
- (b) permanently or temporarily,

as the circumstances of the case require and then compensation in accordance with this Act is payable.

(3) The amount of compensation payable in relation to the incapacity for work of a worker shall, where the incapacity results from or is materially contributed to by injury, be calculated as follows:—

- (a) in the case of total incapacity for work the amount of compensation payable weekly by the employer shall be—
 - (i) where the average weekly earnings of the injured worker before the injury was less than K14.00, an amount equal to the average weekly earnings; and
 - (ii) where the average weekly earnings of the injured worker before the injury was more than K14.00 and the injured worker has no person wholly or mainly dependent on him, an amount equal to—
 - (A) 80% of the average weekly earnings to a maximum of K45.00; or
 - (B) K14.00,
 whichever is the greater; and
 - (iii) where the average weekly earnings of the injured worker before the injury was more than K14.00 and the injured worker has a spouse who is wholly or mainly dependent on him for support, an amount equal to—
 - (A) 80% of the average weekly earnings to a maximum of K55.00; or
 - (B) K14.00,

¹⁶ Section 66 amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s8.

whichever is the greater together with, in the case where the injured worker has a child or children who is or are wholly or mainly dependent on him, an additional maximum amount of K6.40 in respect of each dependant child but the total of the additional amount shall not exceed the average weekly earnings of the worker prior to the injury,

and where, under this section, a weekly payment becomes payable in respect of a child who is born and becomes dependent on the earnings of the injured worker during the incapacity, that payment shall be made only from the date of the birth of the child; and

- (b) in the case of partial incapacity for work, the amount of the compensation payable weekly by the employer during the incapacity shall be such amount as bears the same ratio to the amount of the weekly payment which would have been payable if the worker was totally incapacitated for work as the worker's loss of weekly earnings bears to the amount of the average weekly earnings of the worker before the injury.

(4) The total liability of an employer in respect of payments to an injured worker under this section shall not exceed—

- (a) K14,000.00 unless the injury results in total incapacity; and
 (b) in any case, K17,000.00.

(5)¹⁷ ¹⁸For a single worker the weekly benefits referred to in Subsection (3)(a)(ii) shall, in respect of the year specified in column 1 of the table D below, be not less than the amount specified in Column 2 of the table and shall be not more than the amount specified in column 3.

Column 1 YEAR	Column 2 MINIMUM AMOUNT	Column 3 MAXIMUM AMOUNT
1991	K14.00	K50.00
1992	K16.00	K55.00
1993	K16.00	K60.00
1994	K18.00	K65.00

(6) For a married worker the weekly benefit referred to in Subsection (3)(a)(iii) shall, in respect of the year specified in column 1 of the table E below, be not less than the amount specified in column 2 and be not more than the amount specified in column 3.

¹⁷ Section 66(5) added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s8(c).

¹⁸ Section 66(5) added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s8(c).

TABLE E

Column 1 YEAR	Column 2 MINIMUM AMOUNT	Column 3 MAXIMUM AMOUNT
1991	K14.00	K60.00
1992	K16.00	K65.00
1993	K16.00	K70.00
1994	K18.00	K75.00

(7) The total liability of an employer referred to in Subsection (4) shall, in respect of the year specified in column 1 of the table F below, not to exceed the amount specified in column 2 of the table, unless the injury results in total incapacity, and, in any case the amount shall not exceed the amount specified in column 3.

TABLE F

Column 1 YEAR	Column 2 AMOUNT	Column 3 AMOUNT IN ANY CASE
1991	K16,000.00	K19,000.00
1992	K18,000.00	K21,000.00
1993	K20,000.00	K23,000.00
1994	K22,000.00	K25,000.00.

66A. CHILDREN'S WEEKLY BENEFITS INCREASE.

¹⁹The additional amount of K6.40 in respect of each dependant child refer to Section 66(3)(iii) shall be increased each year in accordance with this Act.

66B. COMPENSATION FOR INCAPACITY PAYABLE NOT TO EXCEED WEEKLY EARNINGS OF WORKER.

²⁰Subject to this Act, the amount of compensation payable to a worker in relation to the incapacity for work of the worker shall not exceed the worker's weekly earnings.

67. FIXED RATES OF COMPENSATION FOR CERTAIN INJURIES.

(1) For the purposes of this section—

- (a) an annual wage of K625.00 or less shall be deemed to be an annual wage of K625.00; and

¹⁹ Section 66A added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s7.

²⁰ Section 66B added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s7.

(b) an annual wage of K1,875.00 and more shall be deemed to be an annual wage of K1,875.00.

(2)²¹ ²²Subject to Subsection (4), the amount of compensation payable for the injuries specified in Column 1 of Schedule 3 shall be assessed in the manner indicated in Column 2 of that Schedule.

(3) Subsection (2) does not apply where, before the amount of compensation is settled, the worker, with the approval of the Registrar, by written notice to the employer, states that he does not desire to have the amount of compensation assessed under that subsection and in that case the amount of compensation shall be calculated as if this section had not been enacted.

(4) Where an injured worker at the time of the injury was receiving an annual salary of K625.00 or more but less than K1,875.00 the amount of compensation payable for the injury shall be calculated in accordance with the formula—

$$C = \frac{(W \times 8) \times P}{100}$$

where—

“C” is the amount of compensation payable; and

“W” is the worker’s annual wage; and

“P” is the percentage specified in Column 2 of Schedule 3 opposite the injury specified in Column 1 of that Schedule.

(5) Subsection (4) does not limit the amount of compensation payable for an injury to which that subsection applies during any period of incapacity resulting from that injury occurring before an assessment of compensation is made in accordance with that subsection.

(6) For the purposes of this section, an eye, a foot or other member shall be deemed to be lost if it is rendered permanently and wholly useless, and a finger shall be deemed to be lost if two joints of the finger are severed from the hand or rendered permanently and wholly useless.

(7) Where a worker suffers injury to any limb, member, faculty, organ, power or sense specified in Schedule 3 so that the worker permanently has less than the full efficient use of it, the worker shall be entitled to the percentage of the compensation payable under this section for the total loss of that limb, member, faculty, organ, power or sense equal to the percentage of the full, efficient use of it lost by the worker.

(8) Subject to Subsection (9) for the purpose of determining the percentage or the full and efficient use lost by the worker of any limb, member, faculty, organ,

²¹ Section 67(2) Section 67(2) amended by *Workers Compensation (Amendment) Act* 1990 (No. 11 of 1990), s9(a)(i).

²² Section 67(2) Section 67(2) amended by *Workers Compensation (Amendment) Act* 1990 (No. 11 of 1990), s9(a)(i).

power or sense specified in Schedule 3, no regard shall be had to the extent to which that loss may be reduced or limited by the use by the worker of any external and removable artificial aid or appliance.

(9) Where a worker has suffered an injury to his eye the percentage of the full and efficient use of that eye lost by the worker shall be determined by reference—

- (a) to the vision of that eye as corrected; or
- (b) if a refractive error of the eye has been produced or changed by the injury—to the corrected vision or uncorrected vision whichever reference discloses the greater loss.

(10) Where a worker suffers by the same occurrence from more than one of the injuries specified in Schedule 3, he is not entitled in any case to receive in respect of the fixed sums specified in that Schedule more than—

- (a)²³ K17,000.00; or
- (b) subject to Subsection (4), eight times his annual wage,

whichever is the less.

(11) Notwithstanding Subsection (2), where a worker suffers a subsequent injury in respect of which he is entitled to payment of compensation under this section, the amount of compensation payable is the difference between the amount otherwise payable under this section and the amount of compensation that has been paid under this section or under the repealed Act in respect of the prior injury.

(12) In Subsection (11)—

“**prior injury**” means any injury or disease in respect of which compensation has been paid under this section or the repealed Act;

“**subsequent injury**” in relation to a prior injury means an injury or disease that is an aggravation, acceleration, exacerbation, deterioration or recurrence of the prior injury.

67A. FIXED RATES TO BE INCREASED EVERY YEAR.

²⁴The amount specified in Section 67(10)(a) shall, in respect of the year specified in column 1 of the table G be not more than the amount specified in column 2.

TABLE G

Column 1 YEAR	Column 2 AMOUNT
1991	K19,000.00
1992	K21,000.00

²³ Section 67(10)(a) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s9(a)(i).

²⁴ Section 67A added by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s9(b).

Column 1 YEAR	Column 2 AMOUNT
1993	K23,000.00
1994	K25,000.00.

68. OCCUPATIONAL DISEASES.

(1) Where a worker contracts an occupational disease which—

- (a) results in the total or partial incapacity (whether of a permanent or temporary nature), or the death, of the worker; and
- (b) is due to the nature of any employment in which the worker was employed at any time prior to the incapacity or death, whether under one or more employers,

the worker (or, in the case of the death of the worker, his dependants) is entitled to compensation under this Act as if that incapacity or death had arisen out of or in the course of employment in respect of which Section 54 applies, and this Act, with the necessary modifications, applies, subject to the following modifications:—

- (c) the incapacity or the death shall be treated as the happening of the injury;
- (d) where it is proved that the worker, at the time he entered into the employment, wilfully and with intent to deceive, represented in writing that he had not previously suffered from the disease which resulted in the incapacity or death—compensation is not payable;
- (e)²⁵ subject to Subsection (4), compensation is recoverable from the employer who last employed the worker in the employment to the nature of which the disease was due, immediately preceding the incapacity or death;
- (f)²⁶ the amount of compensation shall be calculated with reference to the earnings of the worker under the employer from whom compensation is recoverable under Paragraph (e) or Subsection (4), as the case requires;
- (g) the notice of incapacity or death—
 - (i) shall be given to the employer who last employed the worker immediately preceding the incapacity or death in the employment to the nature of which the disease was due; and
 - (ii) may be given notwithstanding that the worker has voluntarily left that employer's employment.

(2) Where a worker suffers incapacity or dies as a result of an occupational disease the worker or his dependants, as the case may be, if required to do so, shall furnish the employer who last employed the worker immediately preceding the

²⁵ Section 68(1)(e) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s10.

²⁶ Section 68(1)(f) amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s10.

incapacity or death in the employment, to the nature of which the occupational disease was due, with such information as he or they possess as to the names and addresses of all other employers who employed him in such employment.

(3) Where information is required to be furnished to an employer under Subsection (2) and that information—

- (a) is not furnished; or
- (b) is furnished in insufficient detail to enable the employer to take proceedings under Subsection (4),

the employer, on proving that the disease was not contracted whilst the worker was in his employment, is not liable to pay compensation.

(4) Where the employer who last employed the worker immediately preceding the incapacity or death in the employment, to the nature of which the occupational disease was due, alleges that the disease was contracted whilst the worker was in the employment of some other employer and not whilst in his employment, he may join the other employer as a party to the proceedings in respect of the claim to compensation and, if the allegation is proved, compensation is recoverable from that other employer.

(5) If the occupational disease which results in the incapacity or death of a worker is of such a nature as to be contracted by a gradual process, the other employers (if any) who employed the worker before his incapacity or death in employment, to the nature of which the disease was due, are liable to make to the employer from whom compensation is payable under Subsection (1)(e) or (4) such contribution as, in default of agreement, may be determined by a tribunal.

(6) Subsections (2) and (4) do not prevent a worker or his dependants, as the case may be, from recovering compensation under this section from any other employer who previously employed the worker in employment, to the nature of which the occupational disease was due, in the event of the employer who last employed the worker in such employment proving that the disease in question was not contracted whilst the worker was in his employment.

(7) For the purposes of this section, the date of the incapacity shall, in the absence of agreement, be such date as a tribunal determines as being the date on which the incapacity commenced and a worker shall not be prejudiced in any claim for compensation under this section by reason only that the notice of incapacity given to the employer, specified some other date.

(8) An employer may, before employing a worker in any trade, industry or process specified in Column 2 of Schedule 2, require the worker to undergo a medical examination by a medical practitioner at the cost of the employer.

(9) Subject to Subsection (10) a worker who refuses to undergo a medical examination required under Subsection (8) is not entitled to recover from that employer compensation under this Act for incapacity or death suffered as a result of an occupational disease.

(10) Subsection (9) does not apply unless the refusal referred to in that subsection is evidenced in writing under the hand of the worker.

(11) Where a worker suffers incapacity or death as a result of an occupational disease specified in Column 1 of Schedule 2, and he was, immediately preceding the incapacity or death, employed in a trade, industry or process specified in Column 2 of that Schedule opposite to the disease, it shall be presumed, until the contrary is proved, that the disease was due to the nature of the employment.

(12) This section does not prejudice the right of a worker to recover compensation under this Act in respect of a disease to which this section does not apply if the disease is a personal injury within the meaning of Section 54.

(13) The Head of State, acting on advice, may by order in the National Gazette amend Schedule 2.

69. ADDITIONAL COMPENSATION.

(1) In this section—

“ambulance services” means transport by a vehicle to a hospital or other place for medical examination or medical treatment or rehabilitation and, where necessary, on the return journey;

“constant attendance service” means the service, not being nursing services, of a person in any case where the injury is of such a nature that the worker must have the regular or constant personal attendance of another person;

“hospital services” means—

- (a) maintenance, attendance and treatment in a hospital; or
- (b) the provision by a hospital of medical and nursing services, medical, surgical and other curative materials, appliances and apparatus; or
- (c) other usual or necessary hospital services;

“medical services” means—

- (a) attendance, examination or treatment of any kind administered by a medical practitioner, by a registered dentist, by a registered optician or on the prescription of a medical practitioner by a registered physiotherapist or by a registered chiropodist; or
- (b) the provision and the repair, adjustment or replacement of skiagrams, artificial limbs, eyes or teeth, crutches, splints, spectacles, and other medical and surgical aids and curative appliances or apparatus; or
- (c) the repair or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles or other medical or surgical aids or

curative appliances destroyed or damaged at the time of the injury; or

- (d) the provision by a registered pharmaceutical chemist of medicines or curative appliances or materials on the prescription of a medical practitioner; or
- (e) the provision by a medical practitioner, registered dentist, registered physiotherapist, registered optician or registered chiropodist of any certificate required by the worker, his legal personal representatives or his dependants for the purposes of this Act;

“nursing services” means nursing services rendered by a registered nurse otherwise than as a member of the nursing staff of a hospital;

“reasonable”, in relation to any costs or claims, means reasonable having regard not only to the service or provision actually rendered but also to the necessity of that service or provision in the circumstances of the case.

(2) Where a worker is entitled to compensation under the other provisions of this Act or under Subsection (6), the employer is liable to pay as compensation to the worker such reasonable expenses as were incurred by the worker as a result of his injury—

- (a) for medical services, hospital services, nursing services, constant attendance services and ambulance services; and
- (b) not exceeding K75.00 for repairing or replacing damaged clothing; and
- (c) not exceeding K200.00 for repairing or replacing damaged tools of trade.

(3) Where a person or authority—

- (a) has rendered to or provided for a worker any medical services, hospital services, nursing services, constant attendance services or ambulance services for the cost of which the employer is required under this section to compensate the worker; and
- (b) has not been paid the full amount to which he or it is entitled for those services,

the employer may pay to the person or authority the whole or any part of the amount owing to him or it and such a payment shall, to the extent of the amount paid, be a discharge of the liability of the worker under this section and of the liability of the worker to the person or authority for the service.

(4) The amount for which an employer shall be liable in respect of medical services, hospital services, nursing services, constant attendance services or ambulance services is such as is agreed on by the employer and the worker or, in default of such agreement, as is determined by a tribunal.

(5) The compensation payable under this section is additional to all other compensation payable to the worker and the fact that a worker is entitled to

compensation under this section shall not restrict the compensation payable to him under any other provision of this Act.

(6) Where, in any employment, personal injury arising out of or in the course of employment is caused to a worker and the worker is not disabled for at least one day from earning full wages at his work, this section shall apply to the same extent as if the worker was so disabled for at least one day and whether or not the worker is entitled to compensation other than compensation for expenses referred to in this section.

70. COMPUTATION OF “ANNUAL EARNINGS” AND “AVERAGE WEEKLY EARNINGS”.

(1) In this Part any reference to the annual earnings of a worker shall be taken to refer to an amount of 52 times his average weekly earnings calculated in accordance with Subsection (2).

(2) In this Part any reference to the average weekly earnings of a worker before an inquiry shall, subject to this subsection, be taken to refer to his average weekly earnings during the period of 12 months immediately preceding the injury if he has been so long employed by the same employer but, if not, then for any lesser period during which he has been so employed and, in the ascertainment of such average weekly earnings, the following provisions shall be observed:—

- (a) in computing average weekly earnings, amounts paid for overtime worked by the worker shall be included;
- (b) where, by reason of—
 - (i) the shortness of time during which the worker has been in the employment of his employer; or
 - (ii) the terms of the employment,
 - it is impracticable at the time of the injury to compute the average weekly earnings of the worker under that employer, regard may be had to the average weekly amount which during the 12 months previous to the injury was being earned—
 - (iii) by a person in the same grade employed at the same work by the same employer; or
 - (iv) if there is no person so employed—by a person in the same grade employed in the same class of employment and in the same area;
- (c) where—
 - (i) the worker had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer; or
 - (ii) the worker's employment has been of a casual nature,

his average weekly earnings shall be computed as if his earnings under all such 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 the injury;

- (d) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or other unavoidable cause, and the worker 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 any cost of living adjustments;
- (e) where the employer has been accustomed to pay to the worker any 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;
- (f) in computing average weekly earnings, the value of food and accommodation supplied by an employer, the cost of which is not deducted from the wage of the worker, shall be included;
- (g) where the worker delivers to the employer a written statement verified by statutory declaration setting out the amount of his earnings during any period the statement is prima facie evidence that the amount was the earnings of the worker during that period.

71. ALLOWANCES, ETC., TO BE TAKEN INTO ACCOUNT IN FIXING WEEKLY PAYMENT.

In fixing the amount of any weekly payment—

- (a) regard shall be had to any payment or allowance or benefit the worker may receive from the employer during the period of his incapacity; and
- (b) regard shall not be had to any sum paid or payable under any contract of assurance or insurance or of any industrial award or determination providing for additional compensation payments.

72. CESSATION OF WEEKLY PAYMENTS IN RESPECT OF DEPENDANT CHILDREN.

A weekly payment in respect of a dependant child referred to in this Part ceases to be payable when the dependant child—

- (a) attains the age of 16 years; or
- (b) marries; or
- (c) dies,

whichever first occurs.

PART VII. – PAYMENT AND INVESTMENT OF WORKERS' COMPENSATION.

73. CERTAIN PURPORTED PAYMENTS OF COMPENSATION INVALID.

(1) A payment, other than a weekly payment under Section 36, shall not be deemed to be a payment of compensation, or valid compromise of any claim under this Act, unless–

- (a) the payment is made under an award of a tribunal; or
- (b) a tribunal orders that the payment is to be deemed to be a payment of compensation.

(2) Where any person, except in accordance with an award of a tribunal, makes any payment, other than a weekly payment under Section 36, in purported payment of compensation or in purported compromise of any claim under this Act–

- (a) the person who makes the payment; and
- (b) if that person is an employer or agent of the employer concerned or of that employer's insurer–the employers or insurer, as the case may be,

are each and severally guilty of an offence.

Penalty: For a first offence–a fine not exceeding K100.00.

For a second or subsequent offence–a fine not exceeding K500.00.

(3) It is a defence to a prosecution for an offence against Subsection (2) if the defendant proves that a tribunal ordered that the payment be deemed to be a payment in full settlement of compensation in accordance with or in valid compromise of the whole claim under this Act.

74. COMPROMISE AWARD BY CONSENT OF PARTIES.

Where the parties agree on any claim for compensation under this Act, a tribunal may, after such investigation as it thinks proper, make an award by consent of the parties.

75. INVESTMENT OF COMPENSATION.

(1) Unless otherwise ordered, compensation, other than weekly payments, shall be paid into the Office and the receipt of the Registrar shall be sufficient discharge in respect of any amount of compensation so paid in.

(2) If so agreed the payment of compensation in the case of death shall, if the worker leaves no dependants, be made to his legal personal representative or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(3) The Chief Commissioner may invest, apply or otherwise deal with any sum paid into the Office under Subsection (1) in such manner as in his discretion he thinks fit for the benefit of the person entitled to it under this Act.

(4) The Chief Commissioner in his administration of any moneys paid into the Office under Subsection (1), is not bound by any law relating to the administration or investment of trust funds but he is bound in administering such moneys to act in good faith.

76. UNLAWFUL DISCONTINUANCE OF WEEKLY PAYMENTS.

(1) Except where a provision of this Act specifically provides otherwise, a weekly payment made under this Act shall not be discontinued or diminished without the prior consent of the Registrar.

(2) Where the Registrar has given his consent or refused to give his consent under Subsection (1), the worker or employer, as the case may be, may, within 21 days after giving or refusal of consent, apply to the Chief Commissioner for an order by a tribunal that—

- (a) the weekly payments not be discontinued or diminished; or
- (b) the weekly payments be discontinued or diminished,

as the case may be, and such application is to be heard and determined as a proceeding on the summary list.

(3) On the hearing of an application referred to in Subsection (2), the tribunal may—

- (a) adjourn the application on such terms as it thinks fit; or
- (b) dismiss the application; or
- (c) make such order as to the continuance, discontinuance or diminution of weekly payments as it thinks fit.

(4) Any weekly payment may, on the application of the worker, at intervals of not less than 12 months, be reviewed by a tribunal and where the review takes place more than three months after the injury, the amount of the weekly payment may be increased by an amount not exceeding 80% of the cost of living increases that would have been granted to the worker but for the injury.

(5) A hearing or review under this section shall be heard and determined as proceeding on the summary list and Section 34(1) does not apply.

(6) If weekly payments are discontinued or diminished otherwise than in accordance with this Act, the employer is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(7) A conviction for an offence against Subsection (6) does not affect any liability for the making of weekly payments under this Act.

77. WEEKLY PAYMENTS TO WORKER CEASING TO RESIDE IN PAPUA NEW GUINEA.

(1) Where a worker who is receiving a weekly payment ceases, without the consent of his employer to reside in Papua New Guinea, he shall cease to be entitled to receive any weekly payment unless a tribunal otherwise orders.

(2) Where, under Subsection (1)–

- (a) the employer consents to the worker ceasing to reside in Papua New Guinea; or
- (b) a tribunal orders that the worker continue to be eligible to receive the weekly payment,

the weekly payments shall be paid quarterly in arrears for so long as the worker proves his identity and the incapacity in respect of which the weekly payment is payable in such manner and at such intervals as the tribunal directs.

78. SUSPENSION OF PAYMENT OF WEEKLY PAYMENTS.

Where a right to compensation is suspended under this Act, weekly payments are not payable in respect of the period of suspension.

79. WEEKLY PAYMENTS NOT ASSIGNABLE.

A weekly payment, or a sum paid by way of redemption of a weekly payment–

- (a) is not capable of being assigned, charged or attached; and
- (b) shall not pass to any other person by operation of law; and
- (c) shall not have any claim set off against it.

80. WEEKLY SUM DUE TO PERSON UNDER A LEGAL DISABILITY.

Where a weekly payment is payable under this Act to a person under any legal disability, a tribunal may, on application being made to the Chief Commissioner, order that the weekly payment be paid during the disability into the Office, and the provisions of this Act with respect to sums required by this Act to be paid into the Office, apply to the sums so paid into the Office.

81. LUMP SUM IN REDEMPTION OF WEEKLY PAYMENTS.

(1) The liability for weekly payments or other compensation under this Act may, with the approval of a tribunal on application by or on behalf of either the worker or the employer, be redeemed by the payment of a lump sum to be settled by proceedings under this Act.

(2) Proceedings under Subsection (1) may be in the form of an award by consent of the parties.

(3) Where permanent, total or partial incapacity of the worker results from the injury, any weekly payments made prior to an application under Subsection (1) shall

be in addition to any such lump sum and, in settling a lump sum payment, the tribunal shall treat a worker as totally incapacitated for work as a result of the injury if he is fitted only for employment of a kind that is not reasonably available to him.

82. APPLICATION FOR PAYMENT OF AWARD AGAINST UNINSURED EMPLOYER OUT OF THE FUND.

(1) Where—

- (a) an award of compensation is made or has been made under this Act or the repealed Act in respect of the death, incapacity or disablement of a worker or the costs of medical, hospital, nursing or ambulance services or of cremation or burial, and an employer whose liability in respect of that death, incapacity or disability, or those costs, is not covered by a policy of insurance or indemnity in accordance with this Act; and
- (b) any payment required to be made under that award, whether of a lump sum or any weekly payment and whether as compensation or for costs or otherwise, remains unpaid for a period of not less than one month after the due date for its payment,

the person or the agent of the person in whose favour the award was made may, after giving such notices as are prescribed, apply to the Chief Commissioner for an order for payment out of the Fund of all or any of the moneys payable or to become payable under that award.

(2) Where, in or in relation to any application under Subsection (1), it is alleged that the liability of an employer in respect of the death, incapacity or disablement of any worker is not covered by a policy of insurance or indemnity in force under this Act, that liability, unless the contrary is proved, shall, for the purposes of this section, be deemed not to be covered.

(3) Where an application has been made under Subsection (1), the insurance Commissioner shall represent the Fund and is entitled by himself or his representative to show cause to a tribunal why an order should not be made.

(4) Where, on the hearing of an application under Subsection (1), the tribunal is satisfied that the award is not likely to be fully satisfied except under this section—

- (a) the tribunal may direct that all or any part of the payments required to be made under the award, whether payable at the date of the order or to become payable afterwards, shall be paid out of the Fund; and
- (b) after presentation of a certificate of the tribunal's order to the Secretary for Finance, the payments specified in the order shall be made out of the Fund.

(5) Where any compensation is paid out of the Fund under Subsection (4), the Registrar may institute civil proceedings against the employer for the recovery of the amount of compensation paid, and any moneys received as a result of the proceedings shall be paid into the Fund.

83. TRIBUNAL MAY MAKE INTERIM AWARDS.

(1) Where, in respect of a claim, a tribunal is reasonably satisfied that compensation is payable under this Act but it is unable for any reason to make an award in settlement of the claim promptly, it may, if it is satisfied that the total amount payable will not be less than a specific sum, make an interim award for payment of the whole or any part of that sum.

(2) The making of an interim award under Subsection (1), does not—

- (a) preclude a tribunal from later making, in respect of the claim, a further interim award or final award; or
- (b) prejudice the rights of either of the parties in respect of any further or final claim.

PART VIII. – ALTERNATIVE REMEDIES.

84. LIABILITY INDEPENDENTLY OF ACT.

(1) This Act, except as expressly provided in it, does not affect any liability which exists independently of it.

(2) Where a worker or his dependants, as the case may be, has received or is entitled to receive, compensation under this Act or under the repealed Act, in respect of an injury, he shall not bring an action against the employer for damages in respect of the same injury unless he commences that action within three years from the day on which the injury occurred.

(3) Where a worker has recovered judgement against an employer independently of this Act for damages in respect of an injury, he shall not commence or continue any proceedings for or in relation to compensation under this Act in respect of the same injury.

(4) A worker shall not commence or continue any proceedings against his employer for damages independently of this Act in respect of any injury after he has obtained a final award against his employer, under which his employer is liable to pay compensation under this Act in respect of the same injury.

(5) Any sum received by a worker from an employer by way of damages in respect of an injury shall be deducted from the sum recoverable by the worker from the employer by way of compensation under this Act in respect of the same injury.

(6) Any sum received by a worker from an employer by way of compensation under this Act or under a law of any other country in respect of an injury shall be deducted from the sum recoverable by the worker from the employer by way of damages in respect of the same injury.

85. ACTION BROUGHT FOR INJURY UNDER THIS ACT.

(1) If, within the time limited by this Act for taking proceedings, an action is brought to recover damages independently of this Act for an injury, and it is determined in that action that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under this Act, the action shall be dismissed, but the court in which the action is tried—

- (a) shall, if either party so chooses, proceed to assess the compensation; and
- (b) may deduct from the compensation all or part of the costs which, in its judgement, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(2) If, within the time limited by this Act for taking proceedings, an action is brought to recover damages independently of this Act for an injury and it is determined in the action that—

- (a) the person against whom the action was brought would have been liable to pay compensation under this Act in respect of that injury; and

- (b) the damages that would have been recovered in that action would have been less than the amount of compensation that the person would have been liable to pay under this Act,

proceedings in the action may be stayed and the court in which the action is tried—

- (c) shall, if either party so chooses, proceed to assess the compensation; and
- (d) may deduct from the compensation all or part of the costs which, in its judgement, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(3) In any proceedings under this section, when the court in which the action is tried assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and the certificate shall have the force and effect of an award of a tribunal under this Act.

(4) A copy of the certificate referred to in Subsection (3) shall be transmitted to the Registrar by the proper officer of the court referred to in that subsection.

86. REMEDIES AGAINST EMPLOYER AND STRANGER.

(1) In this section “**the third party**” means a person other than the employer having a legal liability to pay damages in respect of an injury for which compensation is payable under this Act.

(2) Where the injury for which compensation is payable under this Act was caused by a third party—

- (a) the worker may take proceedings both against the third party to recover damages and against the employer for compensation; and
- (b) a worker who receives any money from a third party in respect of an injury and compensation under this Act shall repay to the employer such amount of that compensation as does not exceed the amount recovered from the third party; and
- (c) on notice to the third party, the employer shall have a first charge on moneys payable by the third party to the worker, to the extent of any compensation which the employer has paid to the worker; and
- (d) if the worker has received compensation under this Act, but no damages or less than the full amount of damages to which he is entitled—
 - (i) the third party shall be liable to indemnify the employer against so much of the compensation paid to the worker as does not exceed the damages for which the third party is still liable; and
 - (ii) the employer may enforce the indemnity against the third party by action by the employer; and
- (e) payment of money by a third party to the employer under Paragraph (d) shall, to the extent of the amount paid, be a satisfaction of the liability of the third party to the worker.

87. WHERE CLAIM EXISTS ELSEWHERE AS WELL AS IN PAPUA NEW GUINEA.

(1) If a claim for compensation has already been made by the claimant in respect of the injury under any law not being a law of Papua New Guinea, and compensation has been recovered under that claim, compensation under this Act shall not be allowed to the claimant.

(2) A person referred to in Subsection (1) having a claim under any law not being a law of Papua New Guinea shall not claim under this Act unless he declares in writing that he has not claimed, and will not claim, compensation or damages for the injury under any such law.

88. CONTRACTING OUT.

This Act applies notwithstanding any contract to the contrary.

PART IX. – COMPULSORY WORKERS' COMPENSATION INSURANCE.**89. LICENSED INSURERS ONLY MAY CARRY ON WORKERS' COMPENSATION BUSINESS.**

A person, other than a licensed insurer within the meaning of the *Insurance Act 1995*, who carries on workers' compensation business for the purposes of this Act is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

Note The *Insurance Act* (Chapter 255) was repealed and replaced by the *Insurance Act 1995*.

90. COMPULSORY INSURANCE.

(1) An employer other than—

(a) the State; or

(b) a statutory authority approved by the Minister responsible for financial matters by notice in the National Gazette,

who employs any worker in any employment unless there is in force in relation to that worker a policy of insurance or indemnity issued by a licensed insurer for the full amount of the liability of the employer under this Act (other than additional liability under Section 35) for any injury to the worker arising out of or in the course of his employment, is guilty of an offence.

Penalty: For a first offence—a fine not exceeding K500.00.

For a second or subsequent offence a fine not exceeding K1,000.00.

(2) Where an employer employs workers, the Chief Commissioner or any person authorized by him may require the employer to produce for inspection by the Chief Commissioner or authorized person any policy of insurance or indemnity effected for the purpose of Subsection (1) or a cover note in respect of such policy of insurance or indemnity.

91. CERTAIN CONDITIONS TO BE OF NO EFFECT.

(1) Any condition in a policy of insurance or indemnity issued for the purposes of this Part which provides that no liability shall arise under the policy or that any liability so arising is to cease in the event of some specified thing being done or omitted to be done after the happening of the injury giving rise to the claim under the policy shall be of no effect on a claim made by a worker under this Act.

(2) Subsection (1) does not render void any provision in a policy of insurance or indemnity issued under this Part requiring an insured employer to repay to the insurer any such claims which the insurer may have paid under the policy in satisfaction of any such claim.

92. RECORD OF WAGES, ETC., TO BE KEPT AND SUPPLIED.

(1) Every employer applying to an insurer to issue or review a policy of insurance or indemnity under this Part must supply to the insurer a full and correct statement of all wages paid to workers in his employment during the period relevant to the determination of the premium payable by him for the policy.

(2) An employer who fails to supply a full and correct statement of wages in respect of his workers as required by Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) Every employer shall keep accurate records of—

- (a) all wages paid to workers employed by him; and
- (b) the trade, occupation or calling of each worker employed by him; and
- (c) such other matters relating to wages as may be prescribed,

and shall retain those records in his possession in good order and condition for three years.

(4) The records required to be kept under Subsection (3) may be combined with other records of wages required by any other Act to be kept by an employer.

(5) The Insurance Commissioner may, on application by an insurer who has issued a policy of insurance or indemnity to an employer, and whether or not the policy is still in force, order the employer—

- (a) to supply to the insurer within a time specified in the order—
 - (i) a full and correct statement of all wages paid during a period so specified, being a period during which the policy was in force and which commenced not more than three years before the making of the application, to the workers in the employment of that employer; and
 - (ii) such information as to trade, occupation or calling of the workers and other prescribed matters relating to those wages as may be specified; and
- (b) to make available at or within such time or times and at such place as is specified in the order for inspection by—
 - (i) an officer authorized for the purpose by the Insurance Commissioner; or
 - (ii) a person authorized for the purpose by the specified insurer,

the records required by this subsection to be kept by the employer and, at the time of the order, to be retained by him in respect of a specified period, being a period when the policy was in force.

(6) Any officer or person authorized under Subsection (5) may inspect such records in accordance with the terms of the order and make copies of them and take extracts from them.

(7) An employer who fails to comply with an order issued under Subsection (5) is guilty of an offence.

Penalty: A fine exceeding K1,000.00.

(8) Subsection (7) does not affect the authority of the Insurance Commissioner to make a further order or orders against the employer under Subsection (5).

93. WORKER MAY REQUIRE NAME, ETC., OF INSURER.

A worker may require his employer to supply him with the name and address of the insurer from whom the employer has obtained a policy of insurance or indemnity under Section 90.

94. DEDUCTIONS TOWARDS COMPENSATION NOT LAWFUL.

An employer, insurer or other person on behalf of any employer or insurer shall not directly or indirectly take or receive any money from any worker, whether by way of deduction from wages or otherwise in respect of any liability of an employer to pay compensation under this Act and all moneys so taken or received from any worker, whether with the consent of the worker or not, may be recovered in any court of competent jurisdiction as a debt due to him by the employer, insurer or person who took or received it.

PART X. – MISCELLANEOUS.

95. ANNUAL REPORT.

The Chief Commissioner shall prepare and furnish to the Minister on or before 31 March in each and every year a report for presentation to the Parliament containing—

- (a) a statement in detail of the receipts and expenditure of the Fund; and
- (b) a statement of the Office's activities relating to the Fund; and
- (c) such other matters as the Minister directs,

relating to the preceding year ended 31 December.

96. GENERAL PENALTY.

Any person who commits an offence against this Act for which no special penalty is provided in this Act is liable to a fine not exceeding K200.00.

97. OFFENCES TO BE DEALT WITH SUMMARILY.

All proceedings in respect of offences against this Act shall be dealt with summarily.

98. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to—

- (a) the fees and expenses to be paid for medical examinations and medical attendances; and
- (b) the forms to be used in connection with this Act; and
- (c) the procedure and practice before a tribunal; and
- (d) the matters in which fees shall be paid and the fees to be paid; and
- (e) the manner of doing or performing anything by this Act required to be done or performed; and
- (f) the imposition of penalties of fines not exceeding K150.00 for offences against the regulations.

SCHEDULE 1 – DECLARATION OF OFFICE.

Sec. 14.

“I, . . . , do promise and declare that I will well and truly serve the independent State of Papua New Guinea and its People in the office of . . . and that I will in all things uphold the Constitution and the laws of the independent State of Papua New Guinea and that I will do right to all manner of people in accordance therewith, without fear or favour, affection or ill-will.”

SCHEDULE 2 – ²⁷OCCUPATIONAL DISEASE.

Secs., 1, 68.

Column 1. Description of disease.	Column 2. Nature of trade, industry or process.
Poisoning by lead	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of lead, or a compound of lead or a substance containing lead.
Poisoning by mercury	Any occupation involving the use of or handling of, or exposure to the fumes, dust or vapour of mercury or a compound of mercury or a substance containing mercury.
Anthrax	Any process involving the handling of wool, hair, bristles, hides or skins or other animal products or residues or contact with animals infected with Anthrax or loading and unloading or transport of merchandise.
Silicosis with or without pulmonary tuberculosis	Any process involving exposure to silica dust.
Poisoning by phosphorus	Any occupation involving the use or handling of or exposure to the fumes, dust or vapour of phosphorus or a compound of phosphorus or a substance containing phosphorus.
Poisoning by arsenic	Any occupation involving the use or handling of or exposure to the fumes, dust or vapour of arsenic or a compound of arsenic or a substance containing arsenic.
Poisoning by benzene or a homologue of benzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing benzene or any of its homologues.
Poisoning by a nitro-derivative or amido-derivative of benzene or a homologue of benzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing a nitro-derivative or amido-derivative of benzene or a homologue of benzene.
Poisoning by halogen derivatives of hydrocarbons of the aliphatic series	Any process involving the production, liberation or utilization of halogen derivatives of hydrocarbons of the aliphatic series.

²⁷ Schedule 2 amended by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s11.

Column 1. Description of disease.	Column 2. Nature of trade, industry or process.
Pathological manifestations due to radium or other radioactive substances or X-Rays	Any process involving exposure to the action of radium, radioactive substances or X-rays.
Primary epitheliomatous cancer of the skin	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.

SCHEDULE 3 – ²⁸COMPENSATION FOR SPECIFIED INJURIES.

Sec., 67.

Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:–				
	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Permanent and incurable loss of mental capacity resulting in total inability to work	100	100	100	100	100
Total and incurable paralysis of the limbs	100	100	100	100	100
Eye injuries–					
Total loss of sight of both eyes	100	100	100	100	100
Total loss of sight of one eye	50	50	50	50	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellen type with correction or absent	100	100	100	100	100
Hearing injuries–					
Total loss of hearing	75	75	75	75	75
Speech loss–					
Total loss of the speech	75	75	75	75	75
Sensory loss–					
Total loss of senses of taste and smell	50	50	50	50	50
Total loss of sense of taste	25	25	25	25	25
Total loss of sense of smell	25	25	25	25	25

²⁸ Schedule 3 repealed and replaced by *Workers Compensation (Amendment) Act 1990* (No. 11 of 1990), s12.

Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:-				
	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Arm injuries-					
Loss of arm at or above elbow	90	90	90	90	90
Loss of arm below elbow	80	80	80	80	80
Hand injuries-					
Loss of both hands	100	100	100	100	100
Loss of hand and foot	100	100	100	100	100
Loss of hand or loss of thumb and four fingers	80	80	80	80	80
Loss of thumb	35	35	35	35	35
Loss of forefinger	25	25	25	25	25
Loss of middle finger	20	20	20	20	20
Loss of ring finger	20	20	20	20	20
Loss of little finger	14	14	14	14	14
Total loss of movement of joint of thumb	15	15	15	15	15
Loss of distal phalanx of thumb	17	17	17	17	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15	15	15	15	15
Loss of distal phalanx of forefinger	11	11	11	11	11
Loss of distal phalanx of other fingers	9	9	9	9	9
Leg injuries-					

Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:—				
	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Loss of leg at or above knee	90	90	90	90	90
Loss of leg below knee	80	80	80	80	80
Foot injuries—					
Loss of both feet	100	100	100	100	100
Loss of foot and hand	100	100	100	100	100
Loss of foot	75	75	75	75	75
Loss of great toe	25	25	25	25	25
Loss of any other toe	10	10	10	10	10
Loss of two phalanges of any other toe	8	8	8	8	8
Loss of phalanx of great toe	11	11	11	11	11
Loss of phalanx of any other toe	7	7	7	7	7
Miscellaneous—					
Loss of genitals	50	50	50	50	50
Severe facial scarring or disfigurement to a maximum of	80	80	80	80	80
Severe bodily, other than facial, scarring or disfigurement to a maximum of	50	50	50	50	50
Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:—				

	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Permanent and incurable loss of mental capacity resulting in total inability to work	100	100	100	100	100
Total and incurable paralysis of the limbs	100	100	100	100	100
Eye injuries–					
Total loss of sight of both eyes	100	100	100	100	100
Total loss of sight of one eye	50	50	50	50	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellen type with correction or absent	100	100	100	100	100
Hearing injuries–					
Total loss of hearing	75	75	75	75	75
Speech loss–					
Total loss of the speech	75	75	75	75	75
Sensory loss–					
Total loss of senses of taste and smell	50	50	50	50	50
Total loss of sense of taste	25	25	25	25	25
Total loss of sense of smell	25	25	25	25	25
Arm injuries–					
Loss of arm at or above elbow	90	90	90	90	90
Loss of arm below elbow	80	80	80	80	80
Hand injuries–					
Loss of both hands	100	100	100	100	100

Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:—				
	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Loss of hand and foot	100	100	100	100	100
Loss of hand or loss of thumb and four fingers	80	80	80	80	80
Loss of thumb	35	35	35	35	35
Loss of forefinger	25	25	25	25	25
Loss of middle finger	20	20	20	20	20
Loss of ring finger	20	20	20	20	20
Loss of little finger	14	14	14	14	14
Total loss of movement of joint of thumb	15	15	15	15	15
Loss of distal phalanx of thumb	17	17	17	17	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15	15	15	15	15
Loss of distal phalanx of forefinger	11	11	11	11	11
Loss of distal phalanx of other fingers	9	9	9	9	9
Leg injuries—					
Loss of leg at or above knee	90	90	90	90	90
Loss of leg below knee	80	80	80	80	80
Foot injuries—					
Loss of both feet	100	100	100	100	100
Loss of foot and hand	100	100	100	100	100

Column 1.	Column 2.				
Nature of Injury.	The ratio which the fixed sum payable as compensation under Section 67 bears to:-				
	1990 K17,000 %	1991 K19,000 %	1992 K21,000 %	1993 K23,000 %	1994 K25,000 %
Loss of foot	75	75	75	75	75
Loss of great toe	25	25	25	25	25
Loss of any other toe	10	10	10	10	10
Loss of two phalanges of any other toe	8	8	8	8	8
Loss of phalanx of great toe	11	11	11	11	11
Loss of phalanx of any other toe	7	7	7	7	7
Miscellaneous-					
Loss of genitals	50	50	50	50	50
Severe facial scarring or disfigurement to a maximum of	80	80	80	80	80
Severe bodily, other than facial, scarring or disfigurement to a maximum of	50	50	50	50	50