



Republic of Namibia
Annotated Statutes

Employees' Compensation Act 30 of 1941 (SA)

(SA GG 2909)

brought into force in South Africa except for the portions of the Act on the right to compensation on 1 March 1943 by SA Proc. 50/1942 (SA GG 3011), with the excluded portions being brought into force in South Africa on 1 January 1942 by SA Proc. 293/1942 (SA GG 3120); all portions of the Act came into force in South West Africa on 1 September 1956 when SA Proc. 173/1956 (SA GG 5733) brought the amendments made by Act 51 of 1956, including the insertion of section 109bis, into force – with that Proclamation explicitly stating that the portions of the Act on the right to compensation would also come into force in South West Africa on that date

APPLICABILITY TO SOUTH WEST AFRICA: Section 109bis(1), as inserted by Act 51 of 1956, stated "This Act shall apply also in the territory and in relation to all persons in the portion of the territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory." This subsection was amended by Act 21 of 1964 to read as follows: "This Act and any amendment thereto shall apply also in the territory including the portion of the territory known as the 'Rehoboth Gebiet' and in relation to all persons in the Eastern Caprivi Zipfel referred to in section three of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory." The words "and any amendments thereto" were deleted by RSA Proclamation 45 of 1990. Section 109bis(2), as inserted by Act 51 of 1956, provides that all proclamations and notices issued under the principal Act prior to the 1956 amendment that made it applicable to South West Africa shall automatically apply to South West Africa, unless their applicability is expressly limited to an area that excludes South West Africa. Section 1, as amended by Act 51 of 1956, defined "employers' organization", "Gazette", "provincial or local division of the Supreme Court", "territory" and "Republic" appropriately to include South West Africa.

TRANSFER TO SOUTH WEST AFRICA: The relevant Transfer Proclamation is the Executive Powers (Labour) Transfer Proclamation, AG 17 of 1977, dated 20 December 1977. However, section 3 of this transfer proclamation excluded the Act from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of this Act was not transferred to South West Africa.

as amended by

Workmen's Compensation Amendment Act 27 of 1945 (SA) (SA GG 3504)
except where otherwise indicated, brought into force in part on 1 November 1945 and in part on 1 January 1946, by SA Proc. 224/1945 (SA GG 3560); these two differing effective dates have not been indicated in the annotations to individual sections

Finance Act 48 of 1947 (SA) (SA GG 3830)
came into force on date of publication: 10 June 1947

Workmen's Compensation Amendment Act 36 of 1949 (SA) (SA GG 4182)
brought into force on 1 July 1949 by SA Proc. 156/1949 (SA GG 4191)

Workmen's Compensation Amendment Act 5 of 1951 (SA) (SA GG 4563)
except where otherwise indicated in the annotations to individual provisions,
came into force on date of publication: 16 March 1951

SA Proclamation 147 of 1951 (SA GG 4644)
under the authority of section 94(2);

came into force on date of publication: 29 June 1951
SA Proclamation 63 of 1952 (SA GG 4817)

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- under the authority of section 94(2);
came into force on date of publication: 3 April 1952
- Workmen's Compensation Amendment Act 51 of 1956 (SA)** (SA GG 5703)
brought into force on 1 September 1956 by SA Proc. 173/1956 (SA GG 5733)
- SA Proclamation 170 of 1959** (SA GG 6274)
under the authority of section 94(2);
came into force on date of publication: 28 August 1959
- Railways and Harbours Superannuation Fund
Act 39 of 1960 (SA)** (SA GG 6431)
came into force on date of publication: 29 April 1960
- Workmen's Compensation Amendment Act 7 of 1961 (SA)** (SA GG 6649)
brought into force on 1 July 1961 by RSA Proc. 14/1961 (RSA GG 27)
- RSA Proclamation R.90 of 1962** (RSA GG 229)
under the authority of section 94(2);
came into force on date of publication: 27 April 1962
- Workmen's Compensation Amendment Act 21 of 1964 (RSA)** (RSA GG 746)
came into force on date of publication: 13 March 1964
- Bantu Laws Amendment Act 42 of 1964 (RSA)** (RSA GG 801)
read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 (RSA)
(RSA GG 240); brought into force on 1 January 1965 by RSA Proc. 339/1964 (RSA GG 967)
- Workmen's Compensation Amendment Act 58 of 1967 (RSA)** (RSA GG 1732)
came into force on date of publication: 1 October 1967
- Pension Laws Amendment Act 98 of 1969 (RSA)** (RSA GG 2463)
came into force on date of publication: 30 June 1969, but all amendments
to Act 30 of 1941 deemed to have come into force on 1 April 1969
- Workmen's Compensation Amendment Act 9 of 1970 (RSA)** (RSA GG 2647)
came into force on date of publication: 4 March 1970
- Second Black Laws Amendment Act 27 of 1970 (RSA)** (RSA GG 2665)
came into force on date of publication: 9 March 1970
- Workmen's Compensation Amendment Act 60 of 1971 (RSA)** (RSA GG 3156)
brought into force on 1 August 1971 by RSA Proc. R.162/1971 (RSA GG 3218)
- Insolvency Amendment Act 6 of 1972 (RSA)** (RSA GG 3407)
came into force on date of publication: 8 March 1972
- RSA Proclamation R.98 of 1973** (RSA GG 3856)
under the authority of section 94(2);
with effect from 1 January 1979 (in terms of Proclamation)
- Workmen's Compensation Amendment Act 11 of 1974 (RSA)** (RSA GG 4194)
brought into force on 1 April 1974, by RSA Proc. R.60/1974 (RSA GG 4239) - with the exception of
section 11(1)(a) and (b) insofar as they refer to a legislative assembly mentioned therein
(see annotations to section 70 of Act 30 of 1941), and section 11(2)
(which applies with effect from 3 October 1958 by its own terms)
- Workmen's Compensation Amendment Act 28 of 1977 (RSA)** (RSA GG 5465)
brought into force on 1 June 1977 by RSA Proc. R.94/1977 (RSA GG 5549)
- Workmen's Compensation Amendment Act 8 of 1979 (RSA)** (RSA GG 6341)
brought into force on 1 May 1979 by RSA Proc. R.67 of 1979 (RSA GG 6409)
- RSA Proclamation 233 of 1979** (RSA GG 6689)
under the authority of section 94(2);
with effect from 1 January 1970 (by its own terms)
- Native Laws Amendment Proclamation, AG 3 of 1979** (OG 3898)
deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)
- Workmen's Compensation Amendment Act 24 of 1981 (RSA)** (RSA GG 7453)
brought into force on 1 April 1981 by RSA Proc. 62/1981 (RSA GG 7515)
- Workmen's Compensation Amendment Act 9 of 1982** (OG 4652)
amendments deemed to have come into force on 1 June 1980 (section 1(2) of Act 9 of 1982)
- Workmen's Compensation Amendment Act 29 of 1984 (RSA)** (RSA GG 9127)
brought into force on 1 April 1984 by RSA Proc. R.48/1984 (RSA GG 9142)
- Transfer of Powers and Duties of the State President
Act 97 of 1986 (RSA)** (RSA GG 10438)
brought into force on 3 October 1986 by RSA Proc. 185/1986 (RSA GG 10475)

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Workmen's Compensation Amendment Act 35 of 1987 (RSA) (RSA GG 10888)
brought into force on 1 October 1987 by RSA Proc. R.130/1987 (RSA GG 10907)

Workmen's Compensation Amendment

Proclamation 45 of 1990 (RSA) (RSA GG 12328)

deemed to have come into operation on 1 February 1990 (section 47 of Proclamation);
Part I of the Proclamation amended the Act as it applied in South West Africa

Employees' Compensation Amendment Act 5 of 1995 (GG 1038)

brought into force on 1 March 1995 by GN 52/1995 (GG 1039)

RSA Government Notice 1291 of 1989 (RSA GG 11960) set certain amounts and percentages for the purposes of sections 38(1)(a), 38(4), 39(1)(a), 39(1)(c), 39(2), 40(1)(a), 40(2), 43bis(1) and 43bis(2), with effect from 1 July 1989. These are worded as amendments to the Act, under the authority of sections 2, 3, 4 and 5 of the Workmen's Compensation Amendment Act 35 of 1987. However, these provisions of Act 35 of 1987 amend the stated sections of Act 30 of 1941 to authorise the Minister to set alternative amounts in respect of those sections, without empowering the Minister to amend the Act itself. Therefore these amounts are not incorporated into the Act as amendments.

ACT

To amend and consolidate the laws relating to compensation for disablement caused by accidents to or industrial diseases contracted by employees in the course of their employment, or for death resulting from such accidents and diseases.

*(Signed by the Governor-General in Afrikaans)
(Assented to 5th May, 1941)*

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[The statement above normally appears below the arrangement of sections, but it appears here in this Act because information about the division of the Act is presented in section 1 of the Act itself.

The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(a) that as from 31 May 1961, any reference to the Union of South Africa or the State in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic.

Act 29 of 1984 makes the following substitutions throughout the Act:

- * "State Revenue Fund" for "Consolidated Revenue Fund";
- * "Republic" for "Union";
- * "South African ship" for "Union ship";
- * "South African aircraft" for "Union aircraft"; and
- * "State President" for "Governor-General".

RSA Proc. 45 of 1990 makes the following substitutions throughout the Act:

- * "Administrator-General" for "State President", "Minister of Finance" and "Minister" (although there were no references to "Minister of Finance" in the Act);
- * "territory" for "Republic";
- * "government service" for "public service";
- * "Official Gazette" for "Gazette"; and
- * "Central Revenue Fund" for "State Revenue Fund".

Act 5 of 1995 makes the following substitutions throughout the Act:

- * "Minister" for "Administrator-General";
- * "Commission" for "commissioner";

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- * "public service" for "government service";
- * "Gazette" for "Official Gazette";
- * "Namibia" for "the territory", except in section 106(c); and
- * "employee" for "workman".

Act 5 of 1995 does not give a direction to change the article "a" preceding the word "workman" to the article "an" when preceding the word "employee", to make the substitutions grammatically correct; the resulting grammatical errors have not been indicated in the annotations to individual sections. The substitution of "employee" for "workman" has been understood to also require the substitution of the plural forms of these words ("employees" for "workmen"), even though the substitution of the plural word forms is not specifically directed by Act 5 of 1995. The substitution has not been made in respect of the titles of amending Acts passed prior to Act 5 of 1995, to avoid confusion.

Section 57(2) of Act 5 of 1995 states: "Every reference in the principal Act to an amount of money expressed in rand, shall be construed as a reference to an amount of money expressed in Namibia dollar."]

INTRODUCTORY

Division of Act

1. This Act is divided as follows:-

CHAPTER I

Definitions and application of the Act Sections *two* to *eleven*

2. Definitions
3. Definition of employee
4. Dependants of a employee
5. Definition of "employer"
6. [deleted]
7. Substitution of compensation for other legal remedy
8. Recovery from third party by employee of damages and by Commission or employer of compensation paid
9. Principals and contractors
10. Extra-territorial application of Act
11. Application of Act to seamen and airmen

CHAPTER II

Administration Sections *twelve* to *twenty-six*.

12. Administration of Act
13. [deleted]
14. Powers, duties and functions of Commission
15. [deleted]
16. [deleted]
17. Authorized persons and investigations
18. Preservation of secrecy
19. Advances to the accident fund from public funds
20. Administration of funds
21. Discharge from liability in respect of moneys due to accident fund
22. Accounting responsibility
23. Exemption from income tax

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- 24. Revision of compensation by Commission
- 25. Appeals against decisions of Commission
- 26. Commission may state a case for Labour Court

CHAPTER III

Right to compensation Sections *twenty-seven to thirty-six.*

- 27. Right of employee to compensation
- 28. Accidents during training for or performance of emergency services
- 29. **[deleted]**
- 30. Compensation of employee entitled to pension to which employer contributes
- 31. Compensation of employee who has previously received compensation or other benefits
- 32. Contracting out prohibited
- 33. Deduction from earnings prohibited
- 34. **[deleted]**
- 35. Special circumstances in which Commission may refuse award
- 36. When right to periodical payments ceases

CHAPTER IV

Liability for compensation Section *thirty-seven.*

- 37. Liability for compensation

CHAPTER V

Amount and method of compensation Sections *thirty-eight to forty-nine.*

- 38. Amount of compensation for temporary partial or total disablement
- 39. Amount of compensation for permanent disablement
- 40. Amount of compensation where employee dies
- 41. Method of calculating earnings
- 42. Compensation for permanent disablement where employee is under twenty-six
- 43. Compensation may be increased when accident due to employer's negligence
- 44. Where employee requires constant attendance
- 45. Pensioner resident outside Namibia
- 46. Control of payment of compensation
- 47. Advances against compensation
- 48. Payment of compensation by employers individually liable
- 49. Payment of lump sum in lieu of pension

CHAPTER VI

Recovery of compensation:

(A) Notice of accidents Sections *fifty to fifty-three.*

- 50. Notice of accident by the
- 51. Employer to give notice of accident to Commission
- 52. Additional information by employee and employer
- 53. Procedure upon information of accident

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- (B) Lodging of claims Sections *fifty-four* and *fifty-five*.
 - 54. Claim for compensation
 - 55. Particulars in support of claim
- (C) Procedure for determination of claims Sections *fifty-six* to *sixty-three*.
 - 56. Formal hearing
 - 57. **[deleted]**
 - 58. **[deleted]**
 - 59. Representation
 - 60. Employee to submit to medical examination
 - 61. **[deleted]**
 - 62. Recovery of compensation or other benefit
 - 63. Agreements as to compensation

CHAPTER VII

The Accident and Reserve Funds:

- (A) Establishment of funds Sections *sixty-four* to *sixty-seven*.
 - 64. Establishment of accident fund
 - 65. Application of accident fund
 - 65*bis*. Establishment of accident pension fund
 - 66. Establishment of reserve fund
 - 67. Valuation of funds
- (B) Rendering of wage returns by employers Section *sixty-eight*.
 - 68. Wage-statements to be furnished by employers
- (C) Levying and recovery-of assessments and other charges Sections *sixty-nine* to *seventy-four*.
 - 69. Assessments on employers
 - 70. State exemption from assessment
 - 71. Variation of rate of assessment
 - 72. Assessments to be paid by employers to the Commission
 - 73. Failure to pay assessment or other moneys
 - 74. Contributions by employers individually liable

CHAPTER VIII

- Medical aid Sections *seventy-five* to *eighty-one*.
 - 75. First Aid
 - 76. Conveyance of injured employee
 - 77. Medical expenses
 - 78. Dispute as to treatment and medical report
 - 79. Fees for medical aid to be prescribed

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- 80. Contributions from employee towards cost of medical aid forbidden
- 81. When employer supplies medical aid
- 81*bis*. Consultation with Medical Board and Dental Board

CHAPTER IX

Compensation for Blacks.. Sections *eighty-two* to *eighty-eight*.

[chapter heading amended by Act 42 of 1964 and by AG 3 of 1979; remaining portions of chapter deleted by RSA Proc. 45 of 1990]

- 82. **[deleted]**
- 83. **[deleted]**
- 84. **[deleted]**
- 85. **[deleted]**
- 86. **[deleted]**
- 87. **[deleted]**
- 88. **[deleted]**

CHAPTER X

Industrial Diseases Sections *eighty-nine* to *ninety-four*.

- 89. Compensation in respect of scheduled industrial diseases
- 90. Liability to pay compensation
- 91. Notice of disablement and claim for compensation
- 92. Presumption as to cause of disease
- 93. Compensation for other than scheduled disease
[The word "scheduled" is misspelt in the Government Gazette, as reproduced above.]
- 94. Additions to scheduled diseases

CHAPTER XI

Miscellaneous Sections *ninety-five* to *one hundred and ten*.

- 95. **[deleted]**
- 96. Employers to notify Commission
- 97. Employer to keep records
- 98. Threats and compulsion
- 98*bis*. False statements
- 99. **[deleted]**
- 100. Compensation not to form part of deceased employee's estate
- 101. Certain documents exempt from stamp duty
- 102. Restrictions in respect of compensation payable in terms of Act
- 103. **[deleted]**
- 104. Evidence
- 105. Penalties
- 106. Reciprocal arrangements for the administration of compensation
- 107. Regulations
- 108. Delegation
- 109. Repeal of laws
- 109*bis*. Application of Act to territory of South-West Africa

110. Short title

First Schedule

Second Schedule

CHAPTER I

DEFINITIONS AND APPLICATION OF THE ACT

Definitions

2. In this Act, unless inconsistent with the context -

“accident” means an accident arising out of and in the course of a employee’s employment and resulting in a personal injury;

“accident fund” means the fund established by section 64 and includes, for the purposes of sections 64(1)(d) and 67, the accident pension fund established by section 65*bis*;

[definition of “accident fund” amended by RSA Proc. 45 of 1990 and by Act 5 of 1995]

“actuary” means a Fellow of an institute or a faculty, society or chapter of actuaries approved by the Minister;

[definition of “actuary” substituted by Act 29 of 1984]

“airman” means a employee employed in any capacity in an aircraft;

“agriculture” means any employment on a farm connected with farming, including horticulture and forestry irrespective of whether such employment necessitates the employee temporarily leaving the farm in the course of his employment;

“annual wages” means -

- (a) the amount of wages referred to in paragraph (a) of sub-section (1) of section *sixty-eight* if accepted by the Commission as correct; or
- (b) the amount of wages ascertained by the Commission where he is satisfied that the amount referred to in the said paragraph (a) is less than the amount actually paid; or
- (c)

[paragraph (c) deleted by Act 29 of 1984]

- (d) the estimate of wages made by the Commission in terms of sub-section (4) of the said section;

“assessment” means an assessment, or a provisional assessment, or any instalment of an assessment, made in terms of Part (C) of Chapter VII;

[definition of “Black” (originally a definition of “native”) amended by Act 51 of 1956, by Act 42 of 1964 (which substituted “Bantu” for “native”), by AG 3 of 1979 (which substituted “Black” for “Bantu”), and by Act 29 of 1984, and deleted by Proclamation 45 of 1990]

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“business” means any industry, undertaking, trade or occupation, including any private household or boarding house, or any activity in which any employee is employed;

[definition of “business” amended by Act 5 of 1995]

“child” means a son or daughter under the age of eighteen years and includes an illegitimate child of an employee or his or her spouse, a posthumous child, a step-child and an adopted child if the Commission is satisfied that the child was in fact adopted;

**[definition of “child” amended by Act 51 of 1956, Act 11 of 1974 and Act 5 of 1995
(which has incomplete amendment markings)]**

“Commission” means the Social Security Commission established by section 3 of the Social Security Act, 1994;

[definition of “commissioner” substituted by definition of “Commission”, by Act 5 of 1995]

“compensation” means compensation under this Act;

“continental shelf” means the continental shelf referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);

**[definition of “continental shelf” inserted by Act 9 of 1970
and substituted by RSA Proc. 45 of 1990 and by Act 5 of 1995]**

“contractor” means a person referred to as a contractor in section *nine*;

**[definition of “date of commencement of this Act” inserted
by Act 51 of 1956 and deleted by Act 5 of 1995]**

“dependant” means a person referred to as a dependant in section *four*;

“disablement” means disablement for employment or permanent injury or serious disfigurement;

“earnings” means the average remuneration of the employee at the time of the accident, calculated in the manner provided in section *forty-one*;

“employer” means a person defined as an employer in section *five* and includes a principal;

“employer individually liable” means an employer who in terms of section *seventy* is exempt from paying assessments to the accident fund;

[definition of “employer individually liable” amended by Act 36 of 1949]

“employers’ organization” means means an employers’ organisation registered under section 54 of the Labour Act, 1992 (Act 6 of 1992);

[The definition of “employer’s organization” is amended by Act 51 of 1956 and by Act 29 of 1984, and substituted by RSA Proc. 45 of 1990 and by Act 5 of 1995. The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007. Section 16 of Act 11 of 2007 provides that “any reference to a provision of the previous Act must be read as if it were a reference to the corresponding provision of this Act, in so far as possible”.]

[definition of “excavation” deleted by Act 51 of 1956]

[definition of “excavation work” deleted by Act 51 of 1956]

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“executive officer” means the executive officer as defined in section 1 of the Social Security Act, 1994;

[definition of “executive officer” inserted by Act 5 of 1995]

“financial year” means the period between the first day of March in any year and the last day of February in the following year, both dates included;

[definition of “financial year” amended by Act 11 of 1974]

[definition of “fixed date” amended by Act 51 of 1956 and deleted by Act 5 of 1995]

[definition of “Gazette” inserted by Act 51 of 1956 and deleted by RSA Proc. 45 of 1990]

[definition of “government service” inserted by RSA Proc. 45 of 1990 and deleted by Act 5 of 1995]

“institution” includes any charitable, educational or like institution, whether conducted by the State or by any other body or person;

[definition of “local authority” deleted by RSA Proc. 45 of 1990]

[definition of “machinery” inserted by Act 36 of 1949 and deleted by Act 29 of 1984]

“medical aid” means medical, surgical, or hospital treatment, skilled nursing services any special remedial treatment approved by the Commission. and the supply and repair of any artificial part of the body or any device necessitated by disablement;

[The definition of “medical aid” is amended by Act 27 of 1945. There should be a comma between “skilled nursing services” and “any special remedial treatment”, and the full stop after “the Commission” should be a comma.]

“medical practitioner” means a person duly registered as such under the law relating to the registration of medical practitioners in Namibia;

“Minister” means the Minister of Labour and Human Resources Development;

[definition of “Minister” amended by Act 29 of 1984, deleted by RSA Proc. 45 of 1990 and inserted by Act 5 of 1995]

[definition of “mutual association” deleted by RSA Proc. 45 of 1990]

“natural resources” means the natural resources referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990;

[definition of “natural resources” inserted by Act 9 of 1970, and substituted by RSA Proc. 45 of 1990 and by Act 5 of 1995]

[The definition of “native” is amended by Act 51 of 1956 and by Act 42 of 1964 (which substituted “Bantu” for “native”) and by AG 3 of 1979 (which substituted “Black” for “Bantu”), both of which required a change of placement in the list of definitions to retain correct alphabetical order. The definition of “Black” was then deleted by RSA Proc. 45 of 1990.]

“objection committee” means the committee referred to in section 25(2)(a);

[definition of “objection committee” inserted by Act 29 of 1984]

“pension” means a pension referred to in section *thirty-nine* or in paragraph (a), (b), (c) or (d) of sub-section (1) of section *forty*;

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“periodical payment” means a periodical payment of compensation in respect of temporary disablement;

“person under disability” means a minor, a lunatic, or any person who by law is subject to curatorship or tutorship;

“prescribed” means prescribed under this Act or by regulation;

“principal” means a person referred to as the principal in section *nine*;

[definition of “provincial or local division of the Supreme Court” inserted by Act 51 of 1956 and deleted by RSA Proc. 45 of 1990]

“public service” means the public service referred to in section 2 of the Public Service Act, 1980 (Act 2 of 1980);

[The definition of “public service” is inserted by Act 5 of 1995. The Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

“regulation” means a regulation made under this Act;

“reserve fund” means the fund established under section *sixty-six*;

[The definition of “revision board” is inserted by Act 29 of 1984 (“revision board’ means a board referred to in section 25(4)(a)”) and also inserted by RSA Proc. 45 of 1990 (“revision board’ means a revision board referred to in section 25(2)”), then deleted by Act 5 of 1995.]

“scheduled disease” means any disease specified in the Second Schedule to this Act;

“seaman” means a employee within the meaning of section *three* employed in any capacity on board a ship by the owner or master;

“serious and wilful misconduct” means -

- (a) drunkenness; or
- (b) a contravention of any law or statutory regulation made for the purpose of ensuring the safety or health of employees or of preventing accidents to employees if the contravention is committed deliberately or with a reckless disregard of the terms of such law or regulation; or
- (c) any other act or omission which the Commission, having regard to all the circumstances, considers to be serious and wilful misconduct.

“ship” means a vessel of any description used in navigation, other than an aircraft;

[definition of “ship” substituted by RSA Proc. 45 of 1990]

“silicosis” means a pathological condition of the lungs due to the inhalation of silicon dioxide;

“temporary partial disablement” in relation to a employee means the temporary inability of such employee as the result of an accident in respect of which compensation is payable to perform the whole of the work at which he was employed at the time of such accident or to resume work at a rate of earnings not less than that which he was receiving at the time of such accident;

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“temporary total disablement” in relation to a employee means the temporary inability of such employee as the result of an accident in respect of which compensation is payable, to perform the work at which he was employed at the time of such accident, or work similar thereto;

“territory” means the territory of South-West Africa;

[The definition of “territory” is inserted by Act 51 of 1956. Act 5 of 1995 directs that “Namibia” should be substituted for “the territory” throughout the Act, but that substitution would be nonsensical here.]

“this Act” includes the schedules thereto and any regulation;

“trade union” means a trade union registered under section 54 of the Labour Act, 1992.

[The definition of “trade union” is amended by Act 51 of 1956 and by Act 29 of 1984, and substituted by RSA Proc. 45 of 1990 and by Act 5 of 1995. The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007.]

[The definition of “Union” is inserted by Act 51 of 1956, changed to a definition of “Republic” by the global substitution made by Act 29 of 1984, and deleted by RSA Proc. 45 of 1990.]

[The definition of “Union aircraft” is changed to a definition of “South African aircraft” by the global substitution made by Act 29 of 1984, and deleted by RSA Proc. 45 of 1990.]

Definition of employee

3. (1) Subject to the provisions of sub-section (2) and unless inconsistent with the context, “employee” in this Act means any person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes -

- (a) any person whose occupation is conveying for gain, persons or goods by means of any vehicle, ship or aircraft, the use of which he has obtained under any contract other than a purchase or hire-purchase agreement, whether or not the remuneration of such person under such contract be partly an agreed sum and partly a share in takings, but does not include any such person whose remuneration is fixed solely by a share in takings;
- (b) any person or class of persons excluded from the scope of this Act by the provisions of subsection (2)(b) or (g), if the employer of such person or class of persons has made special arrangements with the Commission to that effect and complied with the conditions prescribed by the Commission in regard thereto;

[paragraph (b) substituted by Act 58 of 1967 and amended by Act 5 of 1995]

- (c) when a employee is dead or under disability, his representative, his dependants and any other person to whom or for whose benefit compensation is payable; and

[The word “and” at the end of paragraph (c) should have been deleted and moved to paragraph (b) after the deletion of paragraph (d), and the semicolon changed to a full stop.]

- (d)

[paragraph (d) deleted by Act 29 of 1984]

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Provided that if in any claim for compensation under this Act it appears to the commissioner that the contract of service or apprenticeship or learnership under which the injured employee was working at the time when the accident causing the injury happened was invalid for any reason whatever, the commissioner may in his discretion deal with the matter as if such contract had at the time aforesaid been valid.

(2) The following persons shall not be regarded for the purposes of this Act as employees -

- (a) (i) members of the Namibian Police Force while employed in a war or other emergency to assist in the defence of Namibia;
- (ii) members of the Namibian Defence Force while employed in a war or other emergency to assist in the defence of Namibia or any international peacekeeping operation;

[paragraph (a) amended by RSA Proc. 45 of 1990 and by Act 5 of 1995]

- (b) persons whose annual earnings calculated in the manner set forth in section 41 exceed R24 000 or, from a date determined by the Minister by notice in the *Gazette*, such higher amount as he may so determine;

[Paragraph (b) is substituted by Act 58 of 1967, Act 11 of 1974 and Act 28 of 1977, and amended by Act 24 of 1981, Act 29 of 1984, Act 97 of 1986 and Act 35 of 1987.]

- (c) persons employed casually and not for the purpose of the employer's business;
- (d) outworkers, that is to say, persons to whom articles or materials are given out by employers to be made up, cleaned, washed, ornamented, finished, repaired, adapted for sale, altered or otherwise worked with on premises not under the control of the employer;
- (e) persons who contract for the carrying out of work and themselves engage other persons to perform such work unless they are included in the statement of annual wages referred to in section *sixty-eight* and are regarded as employees by the Commission in terms of paragraph (d) of sub-section (1) of this section;
- (f)

[paragraph (f) deleted by Act 5 of 1995]

- (g) persons employed as seamen or airmen, excluding such persons employed in circumstances referred to in section 10(1A) and save as provided in section 11;

[paragraph (g) substituted by Act 9 of 1970]

- (h) persons employed outside Namibia, save as provided in sections *ten* and *eleven*; or

[The semicolon and the word "or" at the end of paragraph (h) should have been changed to a full stop when paragraph (i) was deleted.]

- (i)

[paragraph (i) deleted by Act 58 of 1967]

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(3) An employer who has made any special arrangement contemplated in paragraph (b) of sub-section (1) shall not be entitled to withdraw or depart therefrom unless he has not later than the first day of July in any year, given notice to the Commission of his intention to terminate such arrangement.

(4) Any notice under sub-section (3) shall operate from the first day of January following the date of the notice and from that date the person or class of persons in respect of whom or which the arrangement was made and in respect of whom or which such notice was given shall, unless otherwise included in the definition of "employee", cease to be employees for the purposes of this Act.

[Section 3 is amended by Act 27 of 1945, Act 48 of 1947, Act 36 of 1949, Act 51 of 1956, and Act 7 of 1961, and substituted by Act 21 of 1964. Section 1(2) of Act 21 of 1964 provided the following transitional provision:

"Notwithstanding the provisions of sub-section (1) of this section [which substituted section 3], paragraph (g) of sub-section (2) of section three of the principal Act [Act 30 of 1941], as it existed immediately prior to the commencement of this Act, shall remain in operation until the thirty-first day of December, 1964."

Dependants of a employee

4. (1) Subject to the further provisions of this section and unless inconsistent with the context, "dependant" in this Act means -

- (a) the surviving spouse, if married to the employee at the time of the accident;

[paragraph (a) amended by Act 5 of 1995]

- (b) if there is no surviving spouse who, at the time of the accident, was wholly or partly dependent upon the employee for the necessaries of life, any person with whom the employee was in the opinion of the Commission living as man and wife at the time of the accident;

[paragraph (b) amended by Act 27 of 1945 and by Act 5 of 1995]

- (c) any child: Provided that in the case of an adopted child the Commission is satisfied that the child was adopted prior to the accident;

- (d) a parent or step-parent or an adoptive parent who adopted such employee if the Commission is satisfied that the employee was in fact adopted and in either case that the employee was adopted prior to the accident;

- (e) a son or daughter (other than a child as defined): a brother, sister, half-brother, or half-sister: a sister or brother of a parent: a grand-parent or grandchild: or

[The Government Gazette uses colons in paragraph (e), as reproduced above.]

- (f) any other person who, in the opinion of the Commission, was at the time of the accident wholly or partly dependent on the employee for the necessaries of life:

[paragraph (f) substituted by Act 28 of 1977]

Provided that -

- (i) a dependant other than one referred to in paragraph (f) shall not be entitled to compensation unless, at the time of the accident, he was wholly or partly dependent upon the employee for the necessaries of life;

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- (ii) any right to compensation shall *ipso facto* cease upon the death of the dependant to whom such compensation was payable; and
- (iii) unless the contrary is proved, the surviving spouse or child of an employee or a person referred to in the second proviso to section 40(1)(c) who would, if under eighteen years of age, be the child of the employee, shall be deemed to be dependent for the necessaries of life upon such employee.

[paragraph (iii) amended by Act 51 of 1956, Act 11 of 1974 and Act 5 of 1995]

(2)

[subsection (2) deleted by RSA Proc. 45 of 1990]

(3) For the purposes of this section, “surviving spouse” includes a surviving partner in a marriage by customary law.

[subsection (3) amended by Act 42 of 1964 and by AG 3 of 1979, and substituted by RSA Proc. 45 of 1990 and by Act 5 of 1995]

Definition of “employer”

5. (1) Subject to the further provisions of this section and unless inconsistent with the context, “employer” in this Act means a person who employs a employee and includes the State and any person controlling the business of an employer.

(2) If the services of a employee are temporarily lent or let on hire by his employer to another person, such employer shall be deemed to continue to be the employer of such employee whilst he is working for that other person.

(3) In respect of a employee whose occupation is conveying for gain any persons or goods by means of any vehicle, ship or aircraft, the use of which the employee obtained from some other person under a contract other than a purchase or hire-purchase agreement, such other person shall for the purposes of this Act be deemed to be the employer.

(4) In respect of a employee employed by a club or an association of persons, the members of the managing committee, the secretary or other responsible officer of the association or club shall be deemed to be the employer.

(5) For the purposes of the giving or receiving of statements, notices or other documents under this Act, the term “employer” shall include the manager, secretary, accountant, treasurer, duly authorized agent or other responsible person or, in the case of the employer of a domestic employee, the owner or occupier of the premises where he or she is so employed.

[subsection (5) amended by Act 5 of 1995]

6.

[section 6 deleted by Act 5 of 1995]

Substitution of compensation for other legal remedy

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7. (a) No action at law shall lie by an employee or any dependant of an employee against such employee's employer to recover any damages in respect of an injury due to accident resulting in the disablement or the death of such employee.
- (b) No liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of any such disablement or death.

[paragraph (b) amended by Act 27 of 1945 and by Act 5 of 1995; not all changes made by Act 5 of 1995 are indicated by amendment markings]

Recovery from third party by employee of damages and by Commission or employer of compensation paid

8. (1) Where an accident in respect of which compensation is payable, was caused in circumstances creating a legal liability in some person other than the employer (hereinafter referred to as the third party) to pay damages to the employee in respect thereof -

- (a) the employee may both claim compensation under this Act and take proceedings in a court of law against the third party to recover damages: Provided that where any such proceedings are instituted, the court shall in awarding damages, have regard to the amount which, by virtue of the provisions of paragraph (b), is likely to become payable to the Commission or the employer individually liable (hereinafter referred to as the employer), as the case may be, by the third party; and
- (b) the Commission or the employer by whom compensation is payable shall have a right of action against the third party for the recovery of the compensation he is obliged to pay under this Act as a result of the accident, and may exercise such right either by intervening in proceedings instituted by the employee against the third party or by instituting separate proceedings: Provided that the amount recoverable in terms of this paragraph shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the employee but for the provisions of this Act.

(2) The employee shall before instituting proceedings under sub-section (1) in writing notify the Commission or the employer, as the case may be, of his intention to do so, and shall likewise notify the Commission or the employer if he decides to abandon such proceedings or to relinquish or settle his claim for damages, and shall in connection with any such notification furnish such particulars as the Commission may require.

(3) Notwithstanding anything contained in any law, no claim by the Commission or by the employer under sub-section (1) shall become prescribed until after the expiration of a period of three months from the date on which the Commission has made an award of compensation certified by him to be a final award, provided written notice of the intention of the Commission or the employer to institute proceedings in terms of this section has been given to the third party within twelve months of the receipt by the Commission or the employer, as the case may be, of due notice of the accident.

[The pronoun "him" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(4) For the purposes of this section, "compensation" includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the Commission, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment, or allowance, as the case may be, which constitutes the liability.

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(5) No proceedings in a court of law to recover damages against any person referred to in subsection (1) may be taken by a employee without the written consent of the Commission unless he has lodged a claim for compensation.

[subsection (5) amended by AG 3 of 1979 and by Act 29 of 1984]

(6) Notwithstanding anything to the contrary contained in any law and without derogating from the provisions of subsection (1)(a), the Commission may enter into an agreement with the Director: Motor Vehicle Accidents Fund referred to in section 4 of the Motor Vehicle Accidents Act, 1990 (Act 30 of 1990), for the payment, in respect of a term mutually agreed upon between the Commission and the said Director: Motor Vehicle Accidents Fund, of a global sum, similarly agreed upon between the Commission and the said Director: Motor Vehicle Accidents Fund, by the Motor Vehicle Accidents Fund established by section 2 of that Act to the Commission, in lieu of all such compensation as the Commission might, in terms of subsection (1)(b), otherwise have recovered from the said Fund or the appointed agents contemplated in section 5 of that Act in respect of claims arising during such term.

[Subsection (6) is inserted by Act 28 of 1977 and amended by Act 5 of 1995. The Motor Vehicle Accidents Act 30 of 1990 was repealed by the Motor Vehicle Accidents Fund Act 4 of 2001, which was repealed in turn by the Motor Vehicle Accident Fund Act 10 of 2007.]

[Section 8 is amended by Act 27 of 1945 and by Act 36 of 1949, substituted by Act 21 of 1964, and amended by Act 42 of 1964 to substitute certain terms.]

Principals and contractors

9. (1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his business contracts with any other person (in this section referred to as the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any employee engaged upon such work shall be deemed to be the employee of the principal unless and until such contractor is in respect of such work assessed as an employer and has paid all assessments due by him to the accident fund, and any reference in this Act to the employer shall be deemed to be a reference to the principal, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed.

[subsection (1) amended by Act 7 of 1961]

(1)*bis* The Commission may, on the request of the principal, issue the principal with a prescribed certificate in which shall be stated whether the contractor -

- (a) is being assessed as an employer;
- (b) has paid all assessments due by him or her to the accident fund,

in respect of the work contemplated in subsection (1) and any employee concerned.

[subsection (1)*bis* inserted by Act 5 of 1995]

(2) Where a principal has paid an assessment or compensation which, but for the provisions of sub-section (1) he would not have been liable to pay he shall be entitled to reimbursement by the contractor to such extent as the Commission finds that such contractor would have been liable had he been deemed under this Act to be the employer of the employee.

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(3) It shall be the duty of the principal to ensure that any assessment for which the contractor is liable is paid, and if any such principal fails to do so he shall be personally liable to pay such assessment to the Commission and the provisions of this Act with regard to enforcing assessments shall apply to him. The principal shall be entitled to reimbursement by the contractor of any sum paid under this sub-section.

(4) Where a principal, in terms of sub-section (2) or (3) has paid to the Commission any assessment or compensation he shall, unless he has been reimbursed by the contractor, be entitled to deduct an amount determined in accordance with sub-section (2) from any moneys due by him to the contractor.

(5) Notwithstanding the preceding provisions of this section the employee or the Commission may recover compensation from the contractor instead of the principal, and, in the event of failure to recover fully from one of them, may recover the balance from the other of them.

(6) This section shall not impose any liability on the principal in respect of any accident which occurs elsewhere than on or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Extra-territorial application of Act

10. (1) Where an employer carries on business chiefly within Namibia and the usual place of employment of his employee is in Namibia, and an accident happens to his employee while the employee is temporarily employed by him out of Namibia, the employee shall be entitled to compensation in the same manner as if the accident had happened in Namibia: Provided that the amount of compensation shall be determined on the basis of the earnings which the employee, in the opinion of the Commission, would have received if he had remained in Namibia: Provided further that this sub-section shall cease to apply to a employee after he has been employed out of Namibia for a continuous period of twelve months, save by arrangement between the Commission, the employee and the employer concerned, and subject to such conditions as the Commission may determine.

(1A) Where an accident happens to a employee resident in Namibia, while employed in, on or above the continental shelf in connection with surveys, research, prospecting or exploitation in respect of natural resources, this Act shall apply in respect of such accident as if it had happened in Namibia.

[subsection (1A) inserted by Act 9 of 1970]

(2) (a) Where an employer carries on business chiefly outside Namibia and an accident happens to his employee ordinarily employed outside Namibia, but temporarily employed by him in Namibia, such employee shall not be entitled to compensation out of the accident fund unless the employer has previously agreed with the Commission that such employee shall be entitled to compensation, and has paid assessment.

(b) Any such employee so employed for a continuous period of more than twelve months shall be deemed to be ordinarily employed by such employer in Namibia.

(3) Where by the law of the country in which an accident happens, a employee in the circumstances described in subsection (1) is entitled to compensation in respect of such accident, or where an accident happens to a employee in the circumstances described in subsection (1A) or in Namibia and he would be entitled to compensation under the law of any

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other country as well as under this Act, he shall, by notice to the Commission, elect to claim compensation either under this Act, or under the law of the other country: Provided that -

[introductory phrase of subsection (3) amended by Act 9 of 1970]

- (a) if he elects to claim compensation under this Act, he shall -
 - (i) present a claim under this Act, and
 - (ii) cede to the Commission or the employer, as the case may be, his claim under the law of the other country, and if the amount recoverable under such other law exceeds the amount of the compensation under this Act, the cession shall be effective in respect of so much of the claim as equals the amount of such compensation;
- (b) if he elects to claim compensation under the law of the other country -
 - (i) where the amount so recoverable is less than the compensation which would have been payable under this Act, the Commission may, in his discretion, award compensation not exceeding the amount of such difference; and
 - (ii) where the claim lies against an employer who has paid assessments, the Commission shall reimburse such employer to the extent of the compensation payable under this Act.

Application of Act to seamen and airmen

11. This Act shall apply in respect of an accident (other than an accident referred to in section 10 (1A)) to a seaman or airman whose remuneration is not fixed solely by a share in the takings -

[introductory phrase substituted by Act 9 of 1970]

- (a) while he is employed -
 - (i) in the case of a seaman, on a ship which is registered under the laws in force in Namibia in relation to the registration of ships or the laws of any other country and which is owned or chartered by a person whose principal office or place of business is in Namibia, or by a person who resides in Namibia; or
 - (ii) in the case of an airman, on an aircraft registered or licensed under the laws in force in Namibia in relation to the registration or licensing of aircraft and whereof the owner resides or has a place of business in Namibia:

Provided that if the accident happened outside Namibia, the provisions of this Act shall not apply unless the employee is a member of the crew of the ship or aircraft; or

[paragraph (a) amended by Act 36 of 1949 and substituted by RSA Proc. 45 of 1990]

- (b) subject to the provisions of sub-section (2) of section *ten*, while employed in Namibia on any other ship or aircraft.

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ADMINISTRATION

Administration of Act

12. Subject to the provisions of section 58(6) of the Employees' Compensation Amendment Act, 1994, the provisions of this Act shall, with effect from the date of commencement of the Employees' Compensation Amendment Act, 1994, be administered by the Commission.

[Section 12 amended by Act 27 of 1945, Act 36 of 1949 and Act 97 of 1986, and substituted by Act 5 of 1995. Section 9(2) of Act 5 of 1995 provides the following interpretive provision:

"Any reference in any law, register, deed or any other document to the Workmen's Compensation Commissioner, shall be deemed to be a reference to the Commission."]

13.

[section 13 amended by Act 27 of 1945, Act 36 of 1949, Act 29 of 1984 and RSA Proc. 45 of 1990, and deleted by Act 5 of 1995]

Powers, duties and functions of Commission

- 14.** (1) Subject to the provisions of this Act the Commission shall -
- (a) receive notices of accidents and claims for compensation;
 - (b) enquire into or cause enquiry to be made into accidents;
 - (c) adjudicate upon all claims and other matters coming before the Commission for decision;
 - (d) issue an order in the prescribed form for the payment of compensation in respect of any award made by the Commission;
 - (e) determine whether any person is an employee, employer, principal or contractor for the purposes of this Act;
 - (f) decide any question relating to -
 - (i) the right to compensation;
 - (ii) the submission, consideration and determination of claims for compensation;
 - (iii) the computation of earnings;
 - (iv) the degree of disablement of any employee;
 - (v) the amount and method of payment of any compensation;
 - (vi) the award, withholding, revision, discontinuance, suspension, increase or reduction of any compensation;

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- (g) determine whether any person is a dependant under this Act and, if so, the degree of dependency, and, where there is more than one dependant, which shall receive compensation and the allocation of compensation among them;
- (h) consider and decide upon applications in terms of section 63;
- (i) determine any question arising in respect of the necessity for or the character or sufficiency of any medical aid;
- (j) determine any question relating to liability for assessment, rates of assessment, amount of assessment, method of payment of assessment and any other matter falling within the Commission's purview under parts (B) and (C) of Chapter VII;
- (k) determine any other question falling within the Commission's purview in connection with the application of this Act to or in respect of any employer or employee;

(l)

[paragraph (l) deleted by Act 5 of 1995]

- (m) to make recommendations to the Minister regarding the application of this Act, amendments thereto, and the making of regulations;
- (mA) to advise the Minister on any power, duty or function which may or is required to be exercised or performed in terms of this Act;
- (mB) to acquire, hire, improve and, with the approval of the Minister and the Minister of Finance, dispose of property;
- (mC) with the approval of the Minister, to borrow money on the security of the assets of the Commission, or accept and administer any trust or donation;

(n)

[paragraph (n) deleted by Act 5 of 1995]

- (o) collect, and record statistics and information relating to the occurrence or cause of accidents and scheduled diseases and the grant of benefits to persons under this Act;
- (p) make any investigation and perform such other functions as may be prescribed, or as the Commission deems necessary for the administration of this Act.

[subsection (1) amended by Act 5 of 1951, Act 51 of 1956, RSA Proc. 45 of 1990 and Act 5 of 1955]

(2) The Commission may -

- (a) promote, establish or subsidize, or assist in the promotion, establishment or maintenance of any body, organization or scheme whose objects consist of or include one or more of the following:
 - (i) the prevention of accidents or of any disease which is due to the nature of any occupation;
 - (ii) the promotion of the health or safety of employees;

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- (iii) the provision of facilities designed to assist injured employees to return to work or to reduce or remove any handicap resulting from their injuries; or
- (iv) the carrying out of any activity conducive to the attainment of any of the objects referred to in paragraphs (i), (ii) and (iii);
- (b) purchase or otherwise acquire shares in any body referred to in paragraph (a), and alienate any shares so acquired; and
- (c) in the prescribed manner, apply unclaimed moneys for the general welfare of employees.

[subsection (2) inserted by Act 5 of 1951, with this insertion deemed to have come into force on 1 July 1950, and amended by Act 11 of 1974, AG 3 of 1979, Act 29 of 1984 and Act 5 of 1995]

15.

[section 15 amended by Act 27 of 1945 and deleted by Act 5 of 1995]

16.

[section 16 deleted by Act 5 of 1995]

Authorized persons and investigations

17. (1) This section in so far as it provides for a limitation on the fundamental rights contemplated in Subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communications, is enacted upon the authority conferred by that Subarticle.

(2) The Commission may, for purposes of the effective application of this Act, at any time authorize any one or more members of its staff or, on such terms and conditions as may be determined by mutual agreement, any other person, who shall, subject to the direction and control of the Commission, exercise and perform the powers, duties and functions conferred or imposed upon an authorized person.

(3) An authorized person shall at the time of his or her authorization be furnished with a certificate of authorization in the prescribed form.

(4) Subject to subsection (5), an authorized person may, for the purposes of the application of this Act -

- (a) *mutatis mutandis* in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice -
 - (i) enter any premises which he or she has reason to believe is occupied or used by an employer in connection with any matter to which this Act relates or where any employee is employed;

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- (ii) search for any book, record, statement, other document or thing used by any employer or which concerns any employee;
- (iii) seize or make any copy of or extract from such book, record, statement, other document or thing,

as if such authorized person were a police official referred to in that Act and such book, record, statement, document or thing were concerned in the commission of any offence;

- (b) question any employer, employee or other person who is present on any such premises in connection with -
 - (i) the payment of assessments in respect of any employee;
 - (ii) any claim lodged or the payment of compensation to any employee; or
 - (iii) any other matter to which this Act relates;
- (c) direct that such premises or any part thereof or anything therein be left undisturbed, whether generally or in any particular respects, for as long as it is reasonably necessary to search such premises for any book, record, statement, other document or thing prepared or used in connection with any matter to which this Act relates;

[The word "undisturbed" is misspelt in the *Government Gazette*, as reproduced above.]

- (d) by notice in writing addressed and delivered to any person who has control over or custody of any such book, record, statement, other document or thing which has been prepared or used in connection with any matter to which this Act relates, require such person to produce such book, record, statement, other document or thing to him or her forthwith or at such place, date and time as such authorized person may determine;
- (e) examine any book, record, statement, other document or thing and require from any employer, employee or other person who is present on such premises or exercises control or custody as contemplated in paragraph (d), an explanation regarding an entry in such book, record, statement, other document or thing;
- (f) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.

(5) When an authorized person exercises or performs a power or duty under this Act in the presence of any person affected thereby, the authorized person shall on demand by such person produce to him or her the certificate issued to such authorized person in terms of subsection (2).

(6) A member of the Namibian Police Force required, or any other person requested, by an authorized person to assist him or her as provided in subsection (4)(f) may accompany such authorized person in the exercise or performance of his or her powers, duties or functions as if such member or person were an authorized person.

(7) Any employer, employee or other person in charge of any premises on which persons are employed, shall at all times furnish such assistance as are reasonably required by an authorized person in order to enable him or her to exercise or perform his or her powers, duties

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or functions effectively on or in any premises occupied or used by such employer, employee or other person.

(8) Whenever any work has been given out on contract to any person by a principal or contractor, any authorized person may exercise in relation to that principal or contractor all the powers in relation to an employer conferred upon an authorized person by this section.

(9) No person shall -

- (a) hinder or obstruct an authorized person in the exercise or performance of his or her powers, duties or functions;
- (b) refuse or fail to comply to the best of his or her ability with any requirement made by an authorized person in the exercise or performance of his or her powers, duties or functions;
- (c) subject to Article 12(1)(f) of the Namibian Constitution, refuse or fail to answer to the best of his or her ability any question which an authorized person has lawfully put to him or her in the exercise or performance of his or her powers, duties or functions;
- (d) wilfully furnish information to an authorized person which is false or misleading;
- (e) falsely give himself or herself out as an authorized person.

(10) For the purpose of this section, "premises" include any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

(11) Any person who contravenes or fails to comply with subsection (5) or (9) shall be guilty of an offence.

(12) A member of the Commission may, subject to the provisions of this section, exercise any powers which are conferred under this section on an authorized person.

[section 17 amended by RSA Proc. 45 of 1990 and substituted by Act 5 of 1995]

Preservation of secrecy

18. (1) Every person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon him or her in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication -

- (a) is made in the ordinary course of the exercise of his or her powers or the performance of his or her duties under this Act or any other law, or is required by an order of a competent court;
- (b) is effected with the prior written permission of the person concerned.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or

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to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

[section 18 substituted by Act 5 of 1995]

Advances to the accident fund from public funds

19. (1) The Minister may, out of moneys appropriated by law for the purpose, advance to the accident fund moneys sufficient to meet preliminary expenses incurred in connection with the administration of this Act, and such further expenditure as may be required pending payment of assessments by employers.

[subsection (1) amended by RSA Proc. 45 of 1990]

(2) The moneys so advanced and the interest thereon shall be a charge upon the accident fund.

Administration of funds

20. (1) The Commission shall in accordance with sound business principles, administer every fund established by this Act.

- (2) (a) The Commission shall in respect of every such fund, open a current account with a banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965), into which shall be deposited all moneys accruing to the fund concerned.

[The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998.]

- (b) No moneys shall be withdrawn from any such account except by means of cheques signed by the executive officer and one other employee of the Commission specially authorized thereto by the Commission, or by two such employees so authorized.

(3) The Commission may after consultation with the Minister, invest such moneys of any fund administered by it which are not required to meet administrative expenses or for the payment of compensation under this Act -

- (a) with any financial institution;
- (b) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992);
- (c) with such other institution approved by the Minister;
- (d) in any shares, securities, stocks, property or commercial enterprise approved by the Minister.

(4) The Commission shall, in accordance with such equitable principles and accounting principles relating to the allocation of administrative expenses as it may determine after consultation with the Auditor-General, recover such expenses from every such fund.

(5) The Commission shall not apply any moneys accruing to a particular fund for the payment of compensation which is payable out of moneys accruing to another fund.

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- (6) For the purposes of this section -
- (a) “administrative expenses” means all expenses incurred in the administration of any fund and includes -
- (i) the payment of remuneration, allowances or fees due to members of the Commission and of any committee, the executive officer and other employees of the Commission and persons contemplated in section 12(7) of the Social Security Act, 1994;
 - (ii) the cost of property acquired and all other expenses incurred which are necessary and incidental to the exercise and performance of the powers, duties and functions of the Commission;
- (b) “financial institution” means -
- (i) any banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965);

[The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998.]

- (ii) any building society registered under section 4 of the Building Societies Act, 1986 (Act 2 of 1986);
- (iii) any insurer registered under section 4 of the Insurance Act, 1943 (Act 27 of 1943).

[The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

[section 20 amended by RSA Proc. 45 of 1990 and substituted by Act 5 of 1995]

Discharge from liability in respect of moneys due to accident fund

21. (1) Subject to subsection (2), no person shall be discharged from liability in respect of any moneys due to the accident fund without the authorization of the Commission.

(2) If the moneys so due exceed the sum of N\$5 000, the Commission shall only authorize such discharge from liability with the prior approval of the Minister.

[section 21 substituted by Act 5 of 1995]

Accounting responsibility

22. (1) The executive officer shall be the accounting officer of the Commission, and as such shall be charged with the responsibility of accounting for all moneys received, the utilization thereof and the use and care of the property of the Commission.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the Commission and the funds established by this Act and to explain the transactions and financial position of the Commission and such fund.

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(3) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Commission and the said funds and shall submit a copy of his or her report on such audit to the Commission.

(4) The Commission shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the Commission and the said funds and shall as soon as practicable after the end of each financial year, submit to the Minister in respect of the financial year concerned, copies of -

- (a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and
- (b) a report by the Commission on its activities during that financial year.

(5) The financial statements and reports submitted to the Minister in terms of subsection (1), shall be tabled in the National Assembly by the Minister within 30 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

[section 22 amended by Act 11 of 1974, Act 29 of 1984 and RSA Proc. 45 of 1990, and substituted by Act 5 of 1995]

Exemption from income tax

23. No tax on income shall be payable by the Commission in respect of any fund established by this Act.

[section 23 substituted by Act 5 of 1995]

Revision of compensation by Commission

24. (1) The Commission may at any time, but only after the person concerned has been notified and granted an opportunity to be heard, review any compensation granted and payable to any person in terms of this Act if -

- (a) upon the request of the Commission, he or she refuses or fails without sufficient cause to submit himself or herself to a medical examination;
- (b) he or she has become -
 - (i) addicted to intoxicating liquor or any dependence-producing substance or uses such liquor or substance excessively;
 - (ii) mentally or physically disabled to such extent that he or she is unable to care for himself or herself;
- (c) (i) he or she refuses or fails without sufficient cause to submit himself or herself to medical or surgical treatment when considered necessary by the Commission; and
 - (ii) in the opinion of the Commission, such refusal or failure is prolonging or aggravating the condition as a result of which the compensation has been granted to such person;

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- (d) such compensation, if payable by way of instalments has, due to altered circumstances become either insufficient or excessive to meet the circumstances of the case;
 - (e) such compensation, due to mistake or misrepresentation, has been incorrectly granted or granted in a wrong amount.
- (2) The proceedings relating to the review of compensation shall be in the form of a formal hearing conducted *mutatis mutandis* in accordance with section 56.
- (3) The Commission may, at the conclusion of the review proceedings -
- (a) confirm the compensation referred to in subsection (1) or increase, decrease, cancel, recover or substitute such compensation;
 - (b) pay the compensation to any other person to administer it on behalf of the person concerned; or
 - (c) take any such other steps as the Commission may deem fit.

[section 24 amended by Act 36 of 1949 and by Act 51 of 1956, and substituted by Act 5 of 1995]

Appeals against decisions of Commission

25. (1) Any person aggrieved by any decision of the Commission taken in the performance of the Commission's functions in terms of this Act may, within a period of 60 days from the date upon which he or she was notified of such decision, appeal by notice in the prescribed form against such decision to the Labour Court established by section 15(1)(a) of the Labour Act, 1992 (Act 6 of 1992).

(2) The Labour Court may, on good cause shown, allow an appeal to be noted in terms of subsection (1) notwithstanding the expiry of the said period of 60 days.

(3) An appeal to the Labour Court in terms of this section shall be subject to the provisions of the Labour Act, 1992, and its regulations and such appeal shall, for the purposes of that Act, be deemed to be an appeal from a district labour court established by section 15(1)(b) of that Act.

[Section 25 is amended by Act 27 of 1945, Act 36 of 1949 and Act 51 of 1956, and substituted by Act 29 of 1984, RSA Proc. 45 of 1990 and Act 5 of 1995.

The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007. Section 16 of Act 11 of 2007 provides that "any reference to a provision of the previous Act must be read as if it were a reference to the corresponding provision of this Act, in so far as possible".]

Commission may state a case for Labour Court

26. (1) (a) The Commission may of its own motion or at the request of an interested party to any proceedings in terms of this Act, state a special case on any question of law in connection with any matter arising in such proceedings, for the decision of the Labour Court established by section 15(1)(a) of the Labour Act, 1992.
- (b) Every interested party shall have the right to appear in person or by counsel at the hearing of such special case.

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- (2) In any case so stated the Commission shall set forth -
- (a) the facts which were established; and
 - (b) the view of the law which it has adopted in relation to those facts.

(3) Whenever the Commission has any doubt as to the correctness of any decision given by the Labour Court on any question of law in connection with this Act, it may submit that decision to the Supreme Court of Namibia and cause the matter to be argued before it, in order that it may determine the said question for future guidance of all courts.

[section 26 amended by Act 29 of 1984, substituted by RSA Proc. 45 of 1990 and amended by Act 5 of 1995 (heading of section substituted without being indicated by amendment markings)]

CHAPTER III

RIGHT TO COMPENSATION

Right of employee to compensation

27. (1) If an accident happens to a employee resulting in his disablement or death, the employee shall be entitled to the benefits under this Act: Provided that -

- (a) no periodical payments shall be made in respect of the first three days of disablement which lasts for less than two weeks;
- (b) if the accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable under this Act, unless the accident results in serious disablement, or the employee dies in consequence thereof leaving a dependant wholly dependent upon him, and the Commission or, if authorized thereto by the Commission, the employer individually liable, may further refuse to pay the cost of medical aid, or such portion thereof as the Commission may determine
- (c) if any monthly pension payable in terms of this Act on or at any time after the date of commencement of the Workmen's Compensation Amendment Act, 1979, ceases in the course of any month, such pension shall be deemed to have ceased on the last day of such month.

[subsection (1) amended by Act 27 of 1945, substituted by Act 36 of 1949, and amended by Act 8 of 1979]

(1)*bis*

[section (1)*bis* inserted by Act 27 of 1945 and deleted by Act 36 of 1949]

(2) For the purposes of this Act, an accident resulting in the serious disablement or death of a employee shall be deemed to arise out of and in the course of his employment, notwithstanding that the employee at the time when the accident happened was acting in contravention of any law applicable to his employment, or of any instructions issued by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the employee for the purposes of, and in connection with, his employer's business.

(3) For the purposes of this Act the conveyance of a employee free of charge to or from his place of work by means of transport controlled and specially provided by his employer

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for the purpose of such conveyance, shall be deemed to take place in the course of such employee's employment.

[subsection (3) inserted by Act 51 of 1956]

Accidents during training for or performance of emergency services

[heading of section 28 substituted by Act 24 of 1981]

28. When an employee meets with an accident -
- (a) while, with the consent of his employer, being trained in organized first aid, ambulance or rescue work, fire-fighting or other emergency service, or engaged in any competition in connection therewith; or
 - (b) in or about his employer's mine, works or premises, while engaged in any organized first aid, ambulance or rescue work, fire-fighting or other emergency service; or
 - (c) while engaged, with the consent of his employer in any organized first aid, ambulance or rescue work, fire-fighting or other emergency service on any mine, works or premises, other than his employer's;

resulting in his disablement or death, such accident shall, for the purposes of this Act, be deemed to arise out of and in the course of his employment.

[section 28 amended by Act 27 of 1945 and by Act 24 of 1981; not all changes of punctuation made by Act 24 of 1981 are indicated by amendment markings]

29.

[Section 29 is amended by Act 27 of 1945, substituted by Act 51 of 1956, amended by Act 7 of 1961 and deleted by Act 98 of 1969. Section 1(2) of Act 98 of 1969 provides the following transitional provision:

"Notwithstanding the repeal of the said section 29 by subsection (1) [referring to section 1(1) of Act 98 of 1969], the provisions of that section shall continue to apply in relation to any workman who was in the employ of the Government (as defined in section 1 of the Government Service Pensions Act, 1965 (Act No. 62 of 1965)), and who -

- (a) was retired or discharged from such employ with effect from any date prior to the first day of April, 1969, in circumstances entitling him to compensation under the said Workmen's Compensation Act, 1941; or
- (b) died, prior to the said day and prior to his retirement or discharge from such employ, in circumstances entitling his dependants to compensation under the last-mentioned Act."

Compensation of employee entitled to pension to which employer contributes

30. If an employee (other than a person who is an employee or officer as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980)), who is entitled to compensation under this Act in respect of an accident, has received or will receive as compensation in respect of the same accident any pension or gratuity payable by the employer, or from a pension, superannuation or provident fund to which the employer has contributed, the Commission may in its discretion, in determining the amount of the compensation to be awarded, have regard to any amount paid by the employer by way of such pension or gratuity or towards such fund in respect of such employee, and where the compensation is payable out of the accident fund the Commission may reduce the assessment payable by the employer.

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[Section 30 is substituted by Act 98 of 1969, and amended by RSA Proc. 45 of 1990 and Act 5 of 1995. The Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

Compensation of employee who has previously received compensation or other benefits

31. (1) Save as is provided in section 30, the Commission may in his discretion, in awarding or revising the award of compensation in respect of permanent disablement or death -

[introductory phrase of subsection (1) substituted by Act 98 of 1969]

- (a) make allowance for -
 - (i) in the case of a employee himself, any compensation and any benefit granted to him under this Act or any other law or by an employer individually liable or by a mutual association before the date of commencement of the Workmen's Compensation Amendment Proclamation, 1990, otherwise than in terms of any law on account of permanent disablement;

[subparagraph (i) amended by Act 27 of 1945, Act 36 of 1949 and RSA Proc. 45 of 1990]

- (ii) in the case of dependants any benefits granted to them under any law on account of the injury, death or ill-health or any physical disablement of the employee and any lump sum awarded to the employee in terms of section 45 or 49;

[subparagraph (ii) substituted by Act 28 of 1977]

- (iii) in case of both a employee and his dependants any benefits which the employee or his dependants may have received from the employer in respect of the accident; and
- (b) where compensation is payable out of the accident fund order that the whole or any portion of the value of any such benefit as is referred to in sub-paragraph (iii) of paragraph (a) of sub-section (1) be refunded to the employer.

(1)*bis* Whenever a employee has received compensation for permanent disablement under this Act and subsequently meets with an accident resulting in further permanent disablement in respect of which compensation is payable under this Act, the Commission may, if the employee shews, to the satisfaction of the Commission, that it would be to his advantage to do so, calculate his compensation in respect of the further permanent disablement on the earnings which he was receiving when he met with any previous accident in respect of which compensation was paid.

[Subsection (1)*bis* is inserted by Act 27 of 1945.
The verb "shews" should be "shows" in modern spelling.]

(2) Save as is provided in section *forty-three* a employee shall not receive compensation in the form of a pension or pensions, in respect of one or more accidents, exceeding in the aggregate the pension payable in respect of one hundred per cent. permanent disablement: Provided that, in determining such compensation, the calculation shall be based upon the earnings most favourable to the employee at the time of any such accident.

Contracting out prohibited

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32. (1) Any provision in a contract existing at the commencement of this Act or thereafter entered into, whereby a employee relinquishes any right to benefits under this Act, shall be null and void.

[subsection (1) amended by Act 51 of 1956 and by Act 29 of 1984]

(2)

[subsection (2) amended by Act 27 of 1945 and deleted by Act 51 of 1956]

Deduction from earnings prohibited

33. (1) Any employer who deducts from the earnings of any of his employees any part of any sum which the employer is or may become liable to pay as compensation under this Act, or who requires or permits any of his employees to contribute towards the cost of any liability which he has incurred or may incur under this Act, shall be guilty of an offence.

(2) Any court convicting an employer under sub-section (1) shall in addition to imposing any lawful criminal penalty upon him or her, order that, within a fixed period and in instalments or otherwise, as determined by the court, he or she pays to an officer of the public service specified by the court any amount in respect of which he or she has been convicted.

[subsection (2) amended by Act 5 of 1995]

(3) Such officer shall pay any amount received by him in pursuance of any such order to the employee in respect of whom the offence occurred.

(4) Upon the application of the person convicted, the court may at any time, for good cause shown, extend the period within which any such amount must be paid or vary the amounts of the instalments.

(5) An order made under this section shall have the legal effect of, and may be executed as if it were a civil judgment in favour of the Government of Namibia.

[subsection (5) amended by Act 51 of 1956 and by RSA Proc. 45 of 1990]

34.

[section 34 deleted by Act 36 of 1949, inserted by Act 51 of 1956, amended by Act 21 of 1964 and by RSA Proc. 45 of 1990, and deleted by Act 5 of 1995]

Special circumstances in which Commission may refuse award

35. Where under this Act there exists any right to compensation in respect of the death or disablement of any employee as a result of an accident the Commission may in his discretion refuse to award the whole or a portion of such compensation and the Commission, or, if authorized thereto by the Commission, the employer individually liable, may further refuse to pay the whole or any portion of the cost of medical aid -

[The pronoun "his" should be "its" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(a) if such employee has at any time represented to the employer or the Commission that he was not suffering or had not previously suffered from a serious injury or a

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scheduled disease or a serious illness knowing that the representation was false and the accident has been caused by or the death has resulted from or the disablement has resulted from or been aggravated by such injury, disease or illness; or

- (b) if, in the opinion of the Commission, the death was caused or the disablement was caused, continued or aggravated by an unreasonable refusal or wilful neglect of the employee to submit to medical or surgical treatment in respect of any injury, disease or illness, whether caused by the accident or sustained or contracted before the accident..

[Section 35 is amended by Act 27 of 1945 and by Act 36 of 1949. The amendments made by Act 27 of 1945 result in a double full stop at the end.]

When right to periodical payments ceases

36. The right to periodical payments shall *ipso facto* cease -
- (a) upon termination of temporary disablement, or when the employee resumes the work upon which he was employed at the time of the accident, or resumes any work at the same or greater earnings; or
- (b) when the employee is awarded compensation for permanent disablement,.

[Section 36 is amended by Act 27 of 1945. These amendments result in a comma and a full stop at the end of paragraph (b).]

Provided that the Commission may revive the right to periodical payments if -

- (i) the employee suffers further disablement as a result of the same accident; or
- (ii) the employee undergoes further medical, surgical or remedial treatment necessitating further absence from work if, in the opinion of the Commission, the treatment will reduce the disability from which the employee suffers,

and any pension payable to the employee shall be suspended while the employee is in receipt of periodical payments in terms of this proviso.

[section 36 amended by Act 27 of 1945]

CHAPTER IV

LIABILITY FOR COMPENSATION

Liability for compensation

37. Compensation shall be paid to any employee entitled thereto either -
- (a) by the employer individually liable; or
- (b) by the Commission from the accident fund.

[section 37 amended by Act 27 of 1945, Act 36 of 1949 and Act 29 of 1984; Act 29 of 1984 also corrects a misspelling in the heading]

CHAPTER V

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AMOUNT AND METHOD OF COMPENSATION

Amount of compensation for temporary partial or total disablement

38. (1) (a) Compensation for temporary total disablement shall be periodical payments during such temporary disablement at a rate of seventy-five per cent of the monthly earnings of the employee or, as from a date fixed by the Minister by notice in the *Gazette*, such higher percentage of such earnings determined by the Minister in such notice, up to R1 500 of such earnings or, as from a date so fixed, such higher amount of such earnings so determined: Provided that the periodical payment shall not be less than R13 per month or, as from a date so fixed, such higher amount as may be so determined or the rate of the employee's earnings at the time of the accident, whichever is the lesser.

[Paragraph (a) is amended by Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967 and by Act 60 of 1971; and amended by Act 11 of 1974, Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 (not all changes indicated by amendment markings) and Act 35 of 1987.]

- (b) Such periodical payments shall be made during the period of temporary total disablement, but not exceeding a period of twelve months: Provided that, if such disablement continues after the expiration of the said period of twelve months, the Commission may, in his discretion, direct the continuation of such payments for such further period or periods as he may from time to time determine..

[paragraph (b) amended by Act 27 of 1945, resulting in a double full stop at the end]

- (c)

[paragraph (c) deleted by Act 27 of 1945]

- (2)

[subsection (2) deleted by Act 27 of 1945]

- (3) Periodical payments shall be made at such times and at such intervals (but not at intervals of longer than one month) as the Commission may determine.

- (4) In determining the amount of any periodical payments, any excess of any monthly earnings of a employee above R1 500 or, if the Minister has in terms of subsection (1) determined a higher amount of such earnings, any excess of such higher amount shall not be taken into consideration.

[Subsection (4) is amended by Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967 and by Act 60 of 1971; and amended by Act 11 of 1974, Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 and Act 35 of 1987.]

- (5) The compensation in case of temporary partial disablement shall be such portion of the periodical payments referred to in subsection (1) as the Commission may deem equitable.

[subsection (5) substituted by Act 28 of 1977]

- (6) Periodical payments shall not be payable in respect of any period during which the employer, in terms of any law relating to merchant shipping, pays the expenses of maintaining an injured seaman: Provided that notwithstanding such payment, the Commission may, in his discretion, direct that such periodical payments, not exceeding those referred to in sub-section (1), as he may deem equitable be paid.

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(7) Temporary total disablement lasting for more than eighteen months may, in the discretion of the Commission, be presumed to be permanent.

Amount of compensation for permanent disablement

39. (1) Compensation for permanent disablement shall be fixed according to the degree of disablement and in accordance with the following rules -

- (a) Where the degree of disablement is thirty per cent, a lump sum equal to 15 times the monthly earnings of the employee or, as from a date fixed by the Minister by notice in the *Gazette*, a lump sum equal to as many times the monthly earnings of the employee as the Minister may determine in such notice, up to R840 of such earnings or, from a date so fixed, up to such higher amount of such earnings so determined.

[Paragraph (a) is amended by Act 36 of 1949 and by Act 51 of 1956; substituted by Act 7 of 1961, Act 58 of 1967 and Act 60 of 1971; and amended by Act 11 of 1974, Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 and Act 35 of 1987.]

- (b) Where the degree of disablement is under thirty per cent., a lump sum bearing the same proportion to a lump sum calculated in accordance with paragraph (a) as the degree of disablement bears to thirty per cent.

[paragraph (b) amended by Act 7 of 1961]

- (c) Where the degree of disablement is one hundred per cent, a monthly pension equal to seventy-five per cent of the monthly earnings of the employee or, as from a date fixed by the Minister by notice in the *Gazette*, such higher percentage of the monthly earnings as the Minister may determine in such notice, up to R1 500 of such earnings or, as from a date so fixed, such higher amount of such earnings so determined: Provided that the pension payable shall not be less than R13 per month or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount per month as the Minister may determine in such notice or the rate of the employee's earnings at the time of the accident, whichever is the lesser.

[Paragraph (c) is amended by Act 27 of 1945, Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967 and by Act 60 of 1971; and amended by Act 11 of 1974, Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 (not all changes indicated by amendment markings) and Act 35 of 1987.]

- (d) Where the degree of disablement is under one hundred per cent. but more than thirty per cent., a monthly pension bearing the same proportion to a pension calculated in accordance with paragraph (c) as the degree of disablement bears to one hundred per cent.

[paragraph (d) amended by Act 7 of 1961]

(2) In determining the compensation under subsection (1) any excess of the monthly earnings of an employee above R1 500 or, as from a date fixed by the Minister by notice in the *Gazette*, above such higher amount as the Minister may determine in such notice shall not be taken into consideration.

[Subsection (2) is amended by Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967 and by Act 60 of 1971; and amended by Act 11 of 1974, Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 and Act 35 of 1987.]

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(3) Where an employee has sustained an injury specified in the First Schedule to the Act, he shall be regarded, for the purposes of this Act, as being permanently disabled to the extent set out in the second column of the said Schedule: Provided that where the injury is not specified in such Schedule, the Commission shall adopt a percentage of disablement which, in his opinion, is not inconsistent with the provisions of the Schedule: Provided further, that where the injury has unusually serious consequences, having regard to the special nature of the employee's occupation, and the Commission considers that the percentage of disablement which he would otherwise have adopted is clearly inadequate, he may adopt such higher percentage as he deems equitable.

[The pronouns "his" and "he" should be "its" and "it", respectively, to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(4) From any compensation awarded under this section, no deduction shall be made on account of any periodical payments in respect of temporary disablement under section *thirty-eight*.

(5) In this section "monthly pension" means a pension payable monthly during the lifetime of the employee.

- (6) (a) After carrying out such investigation as he deems necessary the Commission may recommend to the Minister that the First Schedule to the Act be amended in accordance with the provisions of this sub-section.

[The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

- (b) The Minister may, by proclamation in the *Gazette*, amend the said Schedule in accordance with any such recommendation: Provided that not less than one month before the publication of the proclamation there has been published in the *Gazette* a notice -

- (i) of the intention to publish the proclamation and of its proposed contents; and
 (ii) inviting any person who objects to the publication of the proclamation to lodge an objection thereto in writing with the Commission.

- (c) Any such proclamation may include amendments whereby the percentage of disablement for any injury or class of injury differs in respect of specified occupations or classes of occupations, or according to specified circumstances.

[subsection (6) inserted by Act 27 of 1945]

Amount of compensation where employee dies

40. (1) Where the employee dies from an injury caused by accident, compensation shall be as follows:-

- (a) If the employee leaves as a dependant, a surviving spouse and no children, a lump sum not exceeding twice the employee's monthly earnings or N\$1 500, whichever is the lesser, or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount as the Minister may determine in such notice, but not exceeding twice the employee's monthly earnings, whichever is the lesser, and a monthly pension equal to 40 per cent of the pension which would have been granted to the employee if totally and permanently disabled, under section 39(1)(c).

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[Paragraph (a) is amended by Act 27 of 1945, Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967; and amended by Act 29 of 1984, Act 35 of 1987 (amendment markings incomplete) and Act 5 of 1995.]

- (b) If the employee leaves as dependants, a surviving spouse and one or more children, compensation to the surviving spouse calculated in terms of paragraph (a) and in respect of the children compensation calculated in terms of paragraph (c): Provided that the pensions payable under this paragraph shall not in all exceed the pension which would have been awarded to the employee, if totally and permanently disabled, under paragraph (c) of sub-section (1) of section 39, and any reduction under this proviso shall be allocated in such manner as the Commission may from time to time determine.

[paragraph (b) amended by Act 5 of 1995]

- (c) If the employee leaves as dependants one or more children, a monthly pension in respect of each child equal to twenty per cent. of the pension which would have been awarded to the employee, if totally and permanently disabled, under paragraph (c) of sub-section (1) of section *thirty-nine*: Provided that -
- (i) the pension payable in respect of a child shall cease when the child attains the age of eighteen years, or dies or marries before reaching that age;
- (ii) the Commission may, in his discretion, direct that the pension awarded in respect of a child shall continue after he attains the age of eighteen years, or that a similar pension be awarded in respect of any son or daughter not being a child as in this Act defined, if he or she is, in the opinion of the Commission, unable by reason of mental or physical disability to earn an income, for so long as it might reasonably have been expected that the deceased employee would have continued to contribute towards his or her support;
- (iii) where an employee does not leave as a dependant a surviving spouse the aggregate amount of the pensions payable in terms of this paragraph may, in the discretion of the Commission, and subject to revision by it from time to time, be increased by an amount not exceeding the pension which would have been payable to a surviving spouse under paragraph (a);
- (iv) where in the circumstances referred to in sub-paragraph (iii) of this proviso, the total maximum amount payable in respect of the pensions awarded, including any increase under that sub-paragraph, but disregarding the provisions of sub-paragraph (ii) of this proviso, will in the opinion of the Commission, be less than two years' earnings of the employee or two thousand five hundred rand, whichever is the less, he may in his discretion, and subject to revision by him from time to time, increase such pensions, but so that the total maximum amount payable does not exceed two years' earnings of the employee or two thousand five hundred rand, whichever is the less;

[The pronouns "he" and "his" should be "it" and "its", respectively, to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

- (v) the pensions payable under this paragraph shall not in all exceed the pension which would have been awarded to the employee, if totally and permanently disabled, under paragraph (c) of sub-section (1) of section *thirty-nine*;

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- (vi) any increase or reduction in pensions made in terms of this proviso shall be allocated in such manner as the Commission may deem equitable, and the amount thereof and the method of allocation may be revised by him from time to time.

[Paragraph (c) is amended by Act 27 of 1945, substituted by Act 36 of 1949, and amended by Act 51 of 1956, Act 7 of 1961, Act 11 of 1974, Act 28 of 1977 and Act 5 of 1995.]

- (d) If the employee leaves no dependants of any class referred to in paragraph (a), (b), or (c), such monthly pension to any dependants wholly dependent upon the employee as the Commission may, in his discretion, award, and for so long as it might reasonably have been expected that the deceased employee would have continued to contribute towards their support, but not exceeding in the aggregate forty per cent. of the pension which would have been awarded to the employee under paragraph (c) of sub-section (1) of section *thirty-nine*, if totally and permanently disabled.

[paragraph (d) amended by Act 36 of 1949]

- (e) If the employee leaves no dependant of any class referred to in paragraph (a), (b), (c), or (d), to the dependants partly dependent upon the employee, at the discretion of the Commission, a lump sum not exceeding a sum which bears the same proportion to two years' earnings or two thousand five hundred rand, whichever is the less, as the degree of dependency bears to total dependency.

[paragraph (e) amended by Act 51 of 1956, Act 7 of 1961 and Act 28 of 1977]

(2) The Commission may, in his discretion pay out of the accident fund or direct the employer individually liable, as the case may be, to pay an allowance not exceeding R900 or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount as the Minister may determine in such notice towards the necessary burial expenses of the employee.

[Subsection (2) is amended by Act 36 of 1949, Act 51 of 1956 and Act 7 of 1961; substituted by Act 58 of 1967; and amended by Act 28 of 1977, Act 24 of 1981, Act 29 of 1984 and Act 35 of 1987.]

(3) Save as provided in section *thirty-one*, no deduction shall be made from the compensation awarded under this section to a dependant, in respect of any compensation awarded to the employee himself for the same accident.

- (4) (a) The pension payable to a surviving spouse under this section shall cease if she or he dies.
- (b) The provisions of sub-paragraphs (iii), (iv), (v) and (vi) of the proviso to paragraph (c) of subsection (1) shall *mutatis mutandis* apply in the case of the death of a surviving spouse.
- (c)

[subsection (4) substituted by Act 27 of 1945 and by Act 36 of 1949, and amended by Act 58 of 1967, Act 28 of 1977 and Act 5 of 1995]

(5) In this section "surviving spouse" includes a person referred to in paragraph (b) of sub-section (1) of section 4.

[subsection (5) amended by Act 5 of 1995]

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(6) If the employee leaves two or more dependants of the classes referred to in paragraphs (a), (b) or (c) of sub-section (1), and the total monthly pensions payable to them in terms of this section do not at least equal the rate of the employee's earnings, or thirteen rand per month, whichever is the less, the Commission may, notwithstanding the proviso to paragraph (b) of sub-section (1), increase the pensions to the said amount when in his opinion the said dependants would be unable to maintain themselves on the pensions otherwise payable. The increase shall be allocated in such manner as the Commission may deem equitable, and the amount thereof and the method of allocation may be revised by him from time to time.

[subsection (6) substituted by Act 27 of 1945 and amended by Act 7 of 1961]

Method of calculating earnings

41. (1) For the purpose of determining the compensation payable, the Commission shall compute the earnings of the employee in such manner as, in his opinion, is best calculated to give the monthly rate at which the employee was being remunerated by his employer at the time of the accident including -

- (a) the value of any food or quarters supplied by the employer save for the purpose of determining the amount of any periodical payment payable in respect of any period of temporary disablement during which the employee receives both food and quarters to the satisfaction of the Commission from his employer, or as part of the medical aid to which he is entitled;

[paragraph (a) amended by Act 27 of 1945]

- (b) any overtime payments or other special remuneration of a constant character or for work habitually performed,

but excluding remuneration for intermittent overtime and casual payments of a non-recurrent nature, sums paid by an employer to an employee to cover any special expense entailed on the employee by the nature of the work, or any *ex gratia* payment to the employee, whether given by the employer or any other person.

(2) Where the employee's remuneration is fixed at a rate calculated upon work performed, his earnings shall be taken to be his remuneration for similar work upon the same terms of remuneration for as long a period as possible prior to the accident but not exceeding twelve months. Where by reason of the shortness of time during which the employee has been in the employment of the employer it is impracticable to compute his earnings in such employment, the earnings shall be computed if possible upon the basis of the amount which the employee earned at similar work at the same terms of remuneration with another employer during the twelve months immediately preceding the accident, or upon the basis of the amount which during the twelve months immediately preceding the accident has been earned by other employees with the first-mentioned employer at similar employment on the same terms of remuneration, or would have been earned by the employee during such preceding twelve months had he been so employed.

(3) Where the employee has entered into concurrent contracts of service with two or more employers, and has worked under those contracts at one time for one employer and at another time for another employer, his earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(3)*bis*

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[subsection (3)*bis* inserted by Act 27 of 1945, amended by Act 21 of 1964 and deleted by Act 29 of 1984]

(3)*ter* In any case where in the opinion of the Commission it is not practicable to compute the employee's earnings in accordance with the preceding provisions, the Commission may determine such earnings in such other manner as he deems equitable, but with due regard to the principles laid down in those provisions.

[subsection (3)*ter* inserted by Act 36 of 1949]

(4) Nothing in this section shall prevent the computation of earnings on a weekly basis. Where the earnings are so computed the monthly earnings shall be calculated as equal to four and one-third times the amount of such weekly earnings.

Compensation for permanent disablement where employee is under twenty-six

42. Where a employee who has suffered permanent disablement was at the date of the accident under twenty-six years of age, or was employed under a contract of apprenticeship, improvership, or learnership, the amount of his compensation shall be based on the earnings which had he not met with the accident he would in the opinion of the Commission, probably have been receiving upon the twenty-sixth anniversary of his birthday or at the end of five years after the accident, or upon completion of his apprenticeship, improvership, or learnership, whichever calculation is more favourable to the employee.

[section 42 amended by Act 36 of 1949]

Compensation may be increased when accident due to employer's negligence

43. (1) Notwithstanding anything to the contrary in this Act contained, if a employee meets with an accident which is due:

- (a) to the negligence -
 - (i) of his employer; or
 - (ii) of a person entrusted by such employer with the management, or in charge of the business or any branch or department thereof; or
 - (iii) of a person having the right to engage or discharge employees on behalf of the employer; or
 - (iv) of a certificated engineer appointed to be in general charge of machinery, or a person appointed to assist such certificated engineer in terms of any regulation made under the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968 of Namibia); or

[The Mines, Works and Minerals Ordinance 20 of 1968 was repealed by the Minerals (Prospecting and Mining) Act 33 of 1992.]

- (v) of a person appointed to be in charge of machinery in terms of any regulations made under the Factories, Machinery and Building Work Ordinance, 1952 (Ordinance No. 34 of 1952 of Namibia); or

[The Factories, Machinery and Building Work Ordinance 34 of 1952 was repealed by the Labour Act 6 of 1992, which has been replaced by the Labour Act 11 of 2007.]

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- (b) to a patent defect in the condition of the premises, works, plant material or machinery used in such business, which defect the employer or any such person has knowingly or negligently caused or failed to remedy,

the employee may apply to the Commission for increased compensation in addition to the compensation ordinarily payable under this Act.

[subsection (1) amended by Act 27 of 1945, Act 36 of 1949, Act 51 of 1956, Act 29 of 1984 and RSA Proc. 45 of 1990]

- (2) (a) An application for increased compensation under this section shall be lodged with the Commission in the prescribed manner within a period of six months of the date of the accident and shall contain the prescribed particulars: Provided that the Commission may extend the said period by a further period not exceeding eighteen months if he is satisfied that the employee had good reason for not making the application within the said period, and that neither the accident fund nor the employer will be seriously prejudiced by the extension of the said period.
- (b) As soon as practicable after receipt of such an application, the Commission shall transmit a copy thereof to the person who employed the employee at the time of the accident.
- (c) Subject to any rules which the Commission may prescribe for the purpose of facilitating the consideration of applications under this section, the provisions of Part (C) of Chapter VI shall *mutatis mutandis* apply in respect of any such application.

[subsection (2) substituted by Act 36 of 1949 and amended by Act 8 of 1979]

(3) If the Commission is satisfied that the accident was due to any such negligence or defect as is referred to in sub-section (1), he shall award the applicant such additional compensation as he deems equitable: Provided that the amount of such additional compensation, together with any other compensation awarded under this Act, shall not exceed the amount of the pecuniary loss which, in the opinion of the Commission, the applicant has suffered or may reasonably be expected to suffer as a direct result of the said accident.

[subsection (3) amended by Act 36 of 1949]

(3)*bis*

[subsection (3)*bis* inserted by Act 36 of 1949, substituted by Act 29 of 1984 and by RSA Proc. 45 of 1990, and deleted by Act 5 of 1995]

(4)

[subsection (4) amended by Act 29 of 1984 and deleted by Act 5 of 1995]

(5) If increased compensation has been awarded under the preceding provisions of this section, the Commission may, in his discretion during such period as he thinks fit, apply the provisions of sub-section (4) of section *seventy-one* against the employer of the employee in question.

(6) The provisions of this section may *mutatis mutandis* be applied by the Commission at any time before the expiration of a period of twelve months after the date on which the accident has been reported to the Commission by the employer, in any case where, notwithstanding the fact that no application has been made under subsection (1), the Commission considers that

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there is *prima facie* proof that the employee is entitled to additional compensation in terms of this section.

[subsection (6) inserted by Act 27 of 1945 and substituted by Act 9 of 1970]

Increase of compensation awarded before a certain date

43bis. (1) All monthly pensions payable under section 39 or 40 at the commencement of the Workmen's Compensation Amendment Act, 1987, or awarded subsequently, in respect of accidents which happened before the commencement of the Workmen's Compensation Amendment Act, 1981 (Act No. 24 of 1981), shall with effect from the commencement of the Workmen's Compensation Amendment Act, 1987, be increased by twenty-five per cent or, as from a date fixed by the Minister by notice in the *Gazette*, by such percentage as the Minister may so determine.

[Subsection (1) is substituted by Act 9 of 1970 and by Act 11 of 1974, and amended by Act 8 of 1979, Act 24 of 1981, Act 29 of 1984 (amendment markings incomplete) and Act 35 of 1987.]

(2) All monthly pensions payable under section 39 or 40 at the commencement of the Workmen's Compensation Amendment Act, 1987, or awarded subsequently, in respect of accidents which happened on or after the commencement of the Workmen's Compensation Amendment Act, 1981 (Act No. 24 of 1981), but before the commencement of the Workmen's Compensation Amendment Act, 1987, shall from the commencement of the Workmen's Compensation Amendment Act, 1987, be increased by ten per cent or, as from a date fixed by the Minister by notice in the *Gazette*, by such percentage of such earnings as the Minister may determine in such notice.

[subsection (2) deleted by Act 24 of 1981 and inserted by Act 35 of 1987]

(3)

[subsection (3) deleted by Act 9 of 1970]

[section 43bis inserted by Act 51 of 1956]

Where employee requires constant attendance

44. Where the injury in respect of which compensation is payable causes disablement of such a nature that the employee is unable to perform the essential actions of life, without the constant help of another person, the Commission may in his discretion in addition to any other benefits under this Act grant an allowance towards the cost of such help as may be required from time to time.

Pensioner resident outside Namibia

45. If a employee who is entitled to a pension under this Act resides outside Namibia or is absent from Namibia for a period or periods totalling more than six months, the Commission may, after due notice to the employee and after having considered any representations made by the employee within a period fixed by the Commission, award such employee a lump sum in lieu of such pension, and after payment of such lump sum the pension shall cease: Provided that such lump sum, together with any compensation paid in accordance with the provisions of section *thirty-nine* and any lump sum paid in lieu of a portion of a pension in terms of section *forty-nine* or together with any compensation paid in accordance with the provisions of section *forty*, as the case may be, shall be not less than two thousand rand or the capitalized value of the pension, as determined by the Commission, whichever is the less.

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[section 45 substituted by Act 36 of 1949, and amended by Act 51 of 1956 and by Act 7 of 1961]

Control of payment of compensation

46. (1) Any compensation payable to or in respect of any person under this Act may, in the discretion of the Commission and for reasons deemed by him to be sufficient, be -

- (a) paid to the employee or dependant entitled thereto or to any other person on behalf of such employee or dependant, in instalments or in such other manner as the Commission may direct;

[paragraph (a) substituted by Act 36 of 1949]

- (b) invested or applied from time to time as the Commission may deem to the advantage of the employee, or those dependent on him for maintenance;
- (c) paid to the Master of the High Court of Namibia, a trustee, or other person to be used subject to such conditions as may be imposed by the Commission;

[paragraph (c) amended by Act 5 of 1995]

- (d) applied partly in one and partly in another of the methods mentioned in paragraphs (a), (b) and (c), as the Commission may determine.

(2) Notwithstanding any other provision of this Act, where compensation is payable by an employer individually liable, the Commission may direct the said employer to pay the whole or any portion of the compensation on or as from a specified date to the Commission to be dealt with as in sub-section (1) provided.

(3) On the death of a employee the unpaid balance of any accrued compensation shall be paid to such dependants as the Commission may determine, and shall not form part of the estate of the deceased employee: Provided that where no dependants exist the Commission may, in his discretion, pay such balance or part thereof to any creditor of the estate of the deceased employee.

[The pronoun "his" should be "its" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

Advances against compensation

47. In anticipation of the award of compensation, the Commission may, where in his opinion the interest or pressing need of the employee warrants it, make or order an advance not exceeding R500 in all to be made to or on behalf of the employee on such conditions as the Commission may think fit.

[section 47 amended by Act 51 of 1956, Act 7 of 1961 and Act 29 of 1984]

Payment of compensation by employers individually liable

48. (1) Where a pension is payable by an employer individually liable,, the payments referred to in section *thirty-nine* or *forty* shall be made -

- (a) by such employer, or

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- (b) on agreement with the Commission, by the Commission from funds furnished by the employer for this purpose:

Provided that, in either event, the employer shall, if the Commission so directs, deposit with the Commission such funds or furnish to the Commission such security as the Commission may consider sufficient to ensure payment of the pension.

[subsection (1) amended by Act 36 of 1949, resulting in a double comma in the introductory phrase]

(2)

[subsection (2) deleted by Act 36 of 1949]

(3) When an employer has deposited with the Commission funds or securities in terms of this section, and thereafter -

- (a) his estate is sequestrated or assigned under the law relating to insolvency, or
- (b) if such employer is a company, it is wound up under the law relating to companies, or
- (c) such employer enters into any compromise with his creditors, whereunder he is released from any part of his liabilities, otherwise than by payment in full,

then, notwithstanding anything to the contrary in any other law, any unused part of the funds or securities so deposited shall vest in the accident fund, which shall thereupon become liable for the payment of the compensation, medical aid or other benefit in respect of which such funds or securities were deposited.

Payment of lump sum in lieu of pension

49. (1) When a pension under section 39 or 40 does not exceed a prescribed amount, the Commission may, in his discretion, pay or order the payment of a lump sum in lieu of a portion or the whole of such pension

[subsection (1) substituted by Act 28 of 1977]

(2) When such pension exceeds the prescribed amount, the Commission may, in his discretion, in lieu of a portion of such pension, pay or order the payment of a lump sum not exceeding the maximum sum which, in the opinion of the Commission, would have been payable under subsection (1) had the pension not exceeded the prescribed amount: Provided that if the balance of the pension payable is less than ten rand per month, the Commission may pay or order the payment of a lump sum in lieu of the whole of such pension.

[Subsection (2) is amended by Act 27 of 1945, Act 36 of 1949 and Act 7 of 1961, and substituted by Act 28 of 1977. The pronoun "his" should be "its" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(3) Any lump sum under this section shall be calculated on a basis determined by the Commission and payment thereof shall be subject to the control of the Commission as provided in section *forty-six*.

CHAPTER VI

RECOVERY OF COMPENSATION

Employees' Compensation Act 30 of 1941 (SA)

*(A) Notice of Accidents***Notice of accident by the employee**

50. (1) In order that compensation may be obtained under this Act, written notice of the accident, in the prescribed manner, shall be given by or on behalf of the employee to the employer as soon as is reasonably possible after the accident: Provided that -

- (a) failure to give such notice shall not bar the right to compensation if it be proved that the employer had knowledge of the accident from any other source at or about the time of the accident; and
- (b) failure to give such notice or any defect or inaccuracy therein shall not bar the right to compensation if in the opinion of the Commission -
 - (i) the accident fund or the employer is not, or would not, if notice or an amended notice were then given, be seriously prejudiced by such failure, defect or inaccuracy; or

[subparagraph (i) amended by Act 27 of 1945]

- (ii) such failure, defect or inaccuracy was occasioned by mistake, absence from Namibia, or other reasonable cause.
- (2) Notwithstanding the provisions of sub-section (1) -
- (a) in the case of an accident to a seaman the master or other person in command of the ship shall be deemed to have received notice of the accident although no notice in terms of sub-section (1) has actually been given to him and for the purposes of this section the master or such other person shall be deemed to be the employer; and
 - (b) in the case of an accident happening outside Namibia to a employee employed on any aircraft the owner or person in command of the aircraft shall be deemed to have received notice of the accident although no notice in terms of sub-section (1) has actually been given to him, and for the purposes of this section such owner or person in command shall be deemed to be the employer.

[paragraph (b) amended by Act 27 of 1945]

Employer to give notice of accident to Commission

51. (1) Every employer shall forthwith, after having been notified or having gained knowledge of the happening of an accident to a employee, report the accident to the Commission in the manner prescribed. Any employer who fails to comply with the provisions of this sub-section shall be guilty of an offence.

(2) Notwithstanding the provisions of sub-section (1) an employer individually liable may, if specially authorized by the Commission, report such accidents at such intervals and in such manner as may be approved by the Commission.

(3) For the purpose of this section, "accident" includes any personal injury sustained by a employee and reported by him to his employer, if in making the report the employee alleges that such injury arose out of and in the course of his employment.

Employees' Compensation Act 30 of 1941 (SA)**[subsection (3) inserted by Act 36 of 1949]**

(4) An employer other than an employer individually liable who fails to report the happening of an accident to a employee in his employ in the prescribed manner and within thirty days after having been notified or having gained knowledge thereof, shall, in addition to any other penalty, pay to the Commission a penalty as determined by the Commission, but not exceeding the full amount of the compensation payable in respect of such an accident: Provided that the Commission, if satisfied that the default was due to inadvertence or to some cause over which the employer had no control, or that the payment of the full amount of the capitalized value as determined in terms of subsection (5), would be likely to result in the insolvency or assignment of the estate of such employer or, where the employer is a company, the winding-up thereof, may waive the provisions of this subsection in whole or in part or accept payment in instalments or otherwise as the Commission may determine.

[subsection (4) inserted by Act 11 of 1974]

(5) For the purpose of subsection (4) "compensation" includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the Commission, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[subsection (5) inserted by Act 11 of 1974 and substituted by Act 28 of 1977]**Additional information by employee and employer**

52. (1) The employee shall supply such further particulars of the accident and the injury as his employer or the Commission may require.

(2) The employer shall supply such further particulars as the Commission may require of the accident to the employee, his injuries, his earnings, and such other matters as are within his knowledge.

(3) A employee or employer who fails to comply with the provisions of this section shall be guilty of an offence.

Procedure upon information of accident

53. Whenever an accident is reported to the Commission, or whenever it shall come to the notice of the Commission by other means that an accident has happened which might result in a claim under this Act, the Commission shall -

- (a) make or cause to be made such inquiry and take such other steps as he may deem necessary to enable him to decide upon any claim or question of liability under this Act;

[The pronouns "he" and "his" should be "it" and "its", respectively, to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

- (b) at the request of an injured employee or of his employer, furnish such information as the Commission deems necessary to enable such employee or employer to comply with any requirements of this Act.

(B) Lodging of Claims

Employees' Compensation Act 30 of 1941 (SA)**Claim for compensation**

54. (1) Save as provided in sub-sections (2) and (3) of this section no claim for compensation under this Act shall be entertained unless it is lodged by or on behalf of the claimant in the prescribed manner with the Commission or the employer concerned within six months after the date of the accident, or in the case of death, within six months after the death.

[subsection (1) amended by Act 36 of 1949]

(2) If an accident happens to a seaman or airman then a claim for compensation may, except when the seaman or airman is the person in command of the ship or aircraft, be presented to the person in command of the ship or aircraft as if he were the employer, or to the employer himself, and for the purpose of any claim for compensation the person in command or the employer shall, at the option of the claimant, be deemed to be the employer and shall carry out the obligations of an employer under this Act. If the accident happened to any such seaman or airman outside Namibia resulting in death a claim for compensation shall be made within six months after news of the death has been received by any dependant claiming compensation.

(3) The provisions of section *fifty* shall *mutatis mutandis* apply in respect of any failure to make a claim or in respect of any defect or inaccuracy in any claim made under sub-section (1) or (2) of this section: Provided that the right to benefits under this Act shall lapse if the accident does not come to the notice of the employer or of the Commission within 12 months of the date of the accident.

[Subsection (3) is amended by Act 36 of 1949 to add the proviso (with a colon being added accordingly), amended by Act 29 of 1984 (not all changes indicated by amendment markings) and amended by RSA Proc. 45 of 1990.]

Particulars in support of claim

55. (1) A employee claiming compensation shall, with his claim, or thereafter at the request of the Commission, submit such information and documents as may be prescribed or as the Commission may direct.

(2) An employer, unless specially authorized in terms of section *sixty-three*, shall forthwith upon receipt of a claim submitted to him under section *fifty-four* transmit the claim and any information or document furnished under sub-section (1) of this section to the Commission.

*(C) Procedure for Determination of Claims***Formal hearing**

56. (1) Upon receipt of an claim under section 54, the Commission shall, after making such enquiries as it may deem necessary, consider and determine such claim in the prescribed manner: Provided that if the Commission considers a formal hearing necessary, it shall conduct such hearing in terms of the provisions of this section.

(2) The proceedings at such hearing shall, in so far as is practicable, be minuted verbatim and the minutes of such hearing shall be certified by the members of the Commission present at such meeting as being a true and accurate account of the evidence given at such hearing, the exhibits presented and the decision of the Commission.

(3) The minutes referred to in subsection (2) shall be kept for a period of at least five years in safe-custody by the executive officer and shall for the purposes of an appeal in terms of

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section 25 be *prima facie* proof of the proceedings at such hearing and the decisions taken by the Commission as a result of such hearing.

(4) Any person in respect of whom a hearing is to be held shall be notified in writing of such hearing at least 21 days before the date of commencement of such hearing by the delivery to such person of a notice in the prescribed form informing such person of the intended formal hearing and the subject-matter thereof and obtaining from him or her an acknowledgement stating the place, date and time of receipt of the notice.

(5) Service of a notice in terms of subsection (4) shall be performed by -

- (a) any person designated for such purpose by the executive officer; or
- (b) any member of the Namibian Police Force designated for that purpose by the Inspector-General of the Namibian Police Force.

(6) In the event of the person designated in terms of subsection (5) certifying that the person upon whom the notice is to be served -

- (a) cannot be traced;
- (b) refuses to accept such notice; or
- (c) refuses to sign the required acknowledgement of receipt,

the executive officer may send such notice by registered letter to such person at his or her address as it appears in the records of the Commission.

(7) A notice sent by registered post shall be sent not less than 14 days prior to the date of the intended formal hearing.

(8) If the person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6) is not present at the commencement of the formal hearing, the Commission may conduct such hearing in the absence of such person.

(9) For the purpose of a formal hearing the Commission may summon witnesses to appear at the specified place, date and time to give evidence before and to submit to the Commission any document, book, record or thing relevant to such hearing.

(10) A summons contemplated in subsection (9) shall be substantially in the prescribed form and signed by the executive officer and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.

(11) Any person who, having been duly summoned -

- (a) refuses, or without sufficient cause fails, to attend the formal hearing in question at the place, date and time specified in the summons;
- (b) refuses to take the prescribed oath or to make an affirmation when required to do so by the person presiding at such hearing;
- (c) leaves such hearing without the permission of the person presiding at such hearing, whether or not such person has given evidence;

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- (d) refuses to give evidence at the enquiry or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any document, book, record or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(12) Every person summoned in terms of subsection (9) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(13) Any member, person or employer referred to in subsection (1) and who has been notified of a formal hearing shall, if he or she is present at such hearing, have the right, by himself or herself or through a representative referred to in section 59, to be heard at such hearing, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine any witness testifying against him or her.

(14) The Commission may appoint a person with adequate experience in the practice of law to be present at any formal hearing and to advise the Commission on matters of law, procedure or evidence.

(15) For the purpose of the computation of any period referred to in subsections (4) and (7), no Saturday, Sunday or public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991), shall be regarded as a day contemplated in those subsections.

(16) Any person notified or summoned to appear before the Commission may, if the Commission is satisfied that he or she has by reason of such appearance suffered pecuniary loss or been put to any expense, be paid out of the fund concerned the prescribed allowances, or the amount of such loss and expense, whichever is the lesser.

(17) The person in respect of whom a formal hearing was held shall, within 30 days after the completion of such hearing, be notified of the Commission's finding in the matter and of the steps (if any) which the Commission intends to take.

(18) Any person who gives false evidence under oath or affirmation at a formal hearing in terms of this section knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.

[section 56 substituted by Act 5 of 1995]

57.

[section 57 deleted by Act 5 of 1995]

58.

[section 58 deleted by Act 5 of 1995]

Representation

59. (1) Every party to a formal hearing shall be entitled to appear before the Commission in person and to represent himself or herself or to be represented by -

- (a) any member of his or her family;
- (b) any person in his or her regular employ;
- (c) a legal practitioner;
- (d) if such person is an employee, an officer of the trade union of which he or she is a member;
- (e) if such person is an employer, an officer of the employers' organization of which he or she is a member;
- (f) any other prescribed person; or
- (g) with the written approval of the Commission, any other person.

(2) No person other than a legal practitioner may, subject to subsection (3), recover from any person any fees or disbursements in respect of a representation in terms of subsection (1).

(3) Notwithstanding subsection (2), any person representing any other person before the Commission other than a legal practitioner may, with the approval of the Commission, recover from the person on whose behalf he or she so appears, the reasonable expenses incurred by such person relating to such representation.

(4) The fees and disbursement which may be recovered in terms of subsection (2) or (3) and the taxation of such fees and expenses by the Commission, shall be as may be prescribed.

(5) No person shall recover or attempt to recover any fees or expenses from any other person unless such fees or expenses have been taxed by the Commission.

(6) Any person who contravenes or fails to comply with subsection (5) shall be guilty of an offence.

(7) Subsection (5) shall not be so construed as to prohibit a legal practitioner who is an attorney to receive from or on behalf of any person which he or she, or a legal practitioner who is an advocate instructed by him or her, has to represent, an amount of money being an estimate of the fees and disbursements to be incurred relating to such representation, and to retain such money in trust pending the taxation of the fees and expenses actually incurred.

(8) For the purposes of this section "legal practitioner" means any person enrolled as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964), or admitted to practise as an attorney in terms of the Attorneys Act, 1979 (Act 53 of 1979).

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[Section 59 is amended by Act 27 of 1945, Act 42 of 1964, AG 3 of 1979 and RSA Proc. 45 of 1990, and substituted by Act 5 of 1995. The past tense of both "enrol" and "enroll" is usually spelt "enrolled". The Admission of Advocates Act 74 of 1964 and the Attorneys' Act 53 of 1979 have been replaced by the Legal Practitioners Act 15 of 1995.]

Employee to submit to medical examination

60. A employee who claims compensation or to whom compensation has been paid or is payable shall when so required by his employer or the Commission, and after reasonable notice, submit himself for examination by a medical practitioner nominated by the employer or the Commission as the case may be, at the time and place notified, provided such time and place are reasonable. Any necessary expenses incurred by the employee in complying with the provisions of this section as determined by the Commission, shall be paid by the employer or by the Commission, as the case may be. In the event of the employee being, in the opinion of any medical practitioner not in a fit state to attend on the medical practitioner named in the notice, the employee or some person on his behalf shall notify the employer or the Commission as the case may be of that fact, and may require the medical practitioner so named to attend on the employee at a reasonable time and place to be agreed upon. The employee shall be entitled at his own expense to have a medical practitioner nominated by himself present at such examination.

61.

[section 61 deleted by Act 7 of 1961]

Recovery of compensation or other benefit

62. Whenever any compensation or other pecuniary benefit must, in terms of any provision of this Act, be paid to a employee by some person other than the Commission, the Commission may make an order in the prescribed form, and such order shall upon being filed with the clerk of the magistrate's court of the area in which the person liable to pay such compensation or benefit resides or has his place of business, have all the effects of, and may be executed as if it were, a civil judgment lawfully given in that court in favour of the Commission. Any amount recovered by the Commission in terms of any order so executed shall be paid into the accident fund, and the provisions of section *forty-six* shall, *mutatis mutandis*, apply in respect of such amount.

Agreements as to compensation

63. (1) Notwithstanding anything to the contrary in this Act, the Commission may authorise any employer individually liable, subject to such conditions as he may determine, to make provisional settlements of claims for compensation with his employees including provisional settlements in respect of lump sums payable under section 45 or 49 in lieu of pensions: Provided that such employer shall report such provisional settlements to the Commission with such particulars and at such intervals as the Commission may determine, and the Commission shall either make an award confirming any such provisional settlement or shall deal with such claim in the manner provided in section 56 as if such provisional settlement had not been made.

[Subsection (1) is substituted by Act 28 of 1977 and by RSA Proc. 45 of 1990. The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

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(2) Notwithstanding anything to the contrary in this Act, the Commission may, subject to such conditions as he may determine, approve of any scheme for the settlement of claims for compensation in respect of accidents to employees or any specified group of employees in the employment of any employer individually liable: Provided that the Commission is satisfied that the benefits under such scheme are more favourable to the employee concerned than the benefits under this Act.

[Subsection (2) is amended by RSA Proc. 45 of 1990 and by Act 5 of 1995; not all changes of punctuation made by Act 5 of 1995 are indicated by amendment markings. The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

CHAPTER VII

THE ACCIDENT AND RESERVE FUNDS

(A) *Establishment of Funds***Establishment of accident fund**

64. (1) On the date of commencement of the Workmen's Compensation Amendment Proclamation, 1990, a fund, to be known as the accident fund, shall be established which shall consist of -

- (a) the assessments paid by employers under this Act;
 - (b) any moneys paid by employers to the Commission under this Act;
 - (c) any moneys paid as penalties imposed under this Act other than by a court of law;
 - (d) any interest from investments of the accident fund and the reserve fund;
 - (e) any sums transferred from the reserve fund in terms of section *sixty-six*;
 - (f) any advances made in terms of section *nineteen*;
 - (g) any payments made to the Commission in terms of section *seventy-four*; and
 - (h) any other sums to which the fund may become entitled.
- (2) The Fund shall be a juristic person.

[section 64 amended by RSA Proc. 45 of 1990 and by Act 5 of 1995]

Application of accident fund

65. (1) The accident fund shall, subject to the provisions of this Act, be under the control of the Commission and its funds shall be applied by the Commission to -

- (a) the payment of compensation, medical aid or other pecuniary benefit to or on behalf of or in respect of employees under this Act wherever no other person is made liable for such payment;
- (aA) the payment of expenses referred to in section 20(6);

[paragraph (aA) inserted by Act 5 of 1995]

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- (b) the creation and maintenance of a reserve fund and accident pension fund in cash or investments, or both;

[paragraph (b) amended by Act 5 of 1995]

- (c) any expenses incurred in or in connection with the exercise of his powers under sub-section (2) of section *fourteen*;

[paragraph (c) substituted by Act 5 of 1951]

- (d) the repayment of advances made to the accident fund in terms of section *nineteen*;

- (e)

[paragraph (e) deleted by Act 5 of 1995]

- (f)

[paragraph (f) deleted by Act 5 of 1995]

- (g) any charges necessary for or in connection with the medical examination of employees;

- (h) the payment of witness fees as provided in sub-section (7) of section *sixteen*; and

- (i) the payment of any other expenditure incurred by the Commission in carrying out his functions under this Act.

[The pronoun "his" should be "its" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(2) At the discretion of the Commission any surplus in the accident fund may be applied to the reduction of future annual assessments made under section *sixty-nine* or may be transferred to the reserve fund, or may be allowed to remain in the accident fund, and any deficiency in the accident fund may be made good by an increase in the amount of any future assessment on employers in terms of section *sixty-nine* or by a transfer from the reserve fund.

Establishment of accident pension fund

65bis. (1) On the date of commencement of the Employees' Compensation Amendment Act, 1994, a fund, to be known as the accident pension fund, shall be established.

- (2) The Fund shall be a juristic person.

(3) The Fund shall consist of moneys transferred from the accident fund, being the capitalized value of any pension payable in terms of sections 39 and 40 as determined from time to time by the Commission on the advice of an actuary appointed by the Commission.

(4) The Fund shall be applied by the Commission for the payment of any pension referred to in subsection (3).

[section 65bis inserted by Act 5 of 1995]

Establishment of reserve fund

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66. (1) There shall be established a fund to be known as the reserve fund, the amount of which shall be in the discretion of the Commission, as a provision against unforeseen demands upon the accident fund and for the purpose of stabilizing from year to year as far as practicable the rates of assessments fixed under section *sixty-nine*, and for such other purposes as the Commission considers advisable.

(2) The reserve fund shall consist of appropriations from the accident fund made from time to time at the discretion of the Commission, and shall be applied by transferring to the accident fund such moneys as may from time to time be deemed necessary by the Commission to fulfil the purposes set forth in sub-section (1).

(3) The Fund shall be a juristic person.

[subsection (3) inserted by Act 5 of 1995]

Valuation of funds

67. The assets of the accident fund shall be valued and its liabilities determined -

- (a) during the first three financial years after the commencement of the Employees' Compensation Amendment Act, 1994, once in every such financial year;
- (b) thereafter, at such times as may be considered necessary by the Commission but not less than once every three years,

by an actuary appointed by the Minister in order to determine the sufficiency of such fund.

[section 67 substituted by Act 5 of 1995]

(B) *Rendering of Wage Returns by Employers*

Wage-statements to be furnished by employers

68. (1) Every employer liable to assessment shall between the first and thirty-first day of March in each year, or if he becomes liable to be assessed after the last mentioned date, within one month after having become so liable, transmit to the Commission a statement in the prescribed form, certified by him as true, showing -

- (a) the amount of wages paid to his employees during the period with effect from the first day of March of the immediately preceding year up to and including the last day of February of the following year;
- (b)

[paragraph (b) deleted by Act 7 of 1961]

- (c) such other information as may be prescribed or as the Commission may require from him.

[subsection (1) amended by Act 7 of 1961 and by Act 9 of 1970]

(1)*bis* Notwithstanding the provisions of subsection (1), the Commission may exempt any class of employers from the provisions of this section.

[subsection (1)*bis* inserted by Act 5 of 1995]

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(2) Where an employer carries on business in more than one place or carries on more than one class of business the Commission may require from him a separate statement in respect of each place or class.

(3) If in any statement transmitted to the Commission in terms of sub-section (1) the amount of the wages alleged to have been paid during any period is less than the amount actually paid, the employer who transmitted such statement may be required to pay to the Commission as a penalty such proportion of the difference between the amount stated and the correct amount, not exceeding ten per cent., as the Commission may determine.

(4) If in any such statement the estimate of the wages which the employer expects to pay during any period is, in the opinion of the Commission, too low or if the employer has failed to transmit such statement the Commission may himself estimate the wages which the employer will probably pay during that period.

(5) An employer who fails to comply with the provisions of sub-section (1), or with any requirement of the Commission under sub-section (2) or (3) shall be guilty of an offence.

(C) Levying and Recovery of Assessments and other Charges.

Assessments on employers

69. (1) The Commission shall as soon as practicable after the thirty-first day of March in every year or in the case of an employer becoming liable to be assessed after that date, as soon as practicable after receipt of the statement referred to in section 68, assess every employer other than an employer exempted from payment of assessments in terms of section 70 on the basis of such percentage of the annual wages of his employees as the Commission deems necessary for the requirements of the accident fund for the year of assessment: Provided that the Commission may and, in the case of an employer exempted in terms of section 68(1)*bis*, shall -

- (i) in respect of any employer or class of employees adopt such alternative method of assessment as it may deem necessary; or
- (ii) levy a minimum assessment on any employer.

[subsection (1) amended by Act 27 of 1945, Act 9 of 1970 and Act 5 of 1995]

(2) Save as otherwise provided in this Act, the rates of assessment of any employer shall be fixed by the Commission from time to time in his discretion according to the estimated risk and cost of accidents.

(3) In estimating the rates of assessments deemed to be necessary for the requirements of the accident fund, the Commission shall make provision for the capitalized value of pensions to be transferred to the accident pension fund in terms of section 65*bis*(3), and any other liabilities due or likely to become due in respect of accidents during the year of assessment.

[subsection (3) amended by Act 5 of 1995]

(4) For the purposes of assessment, wages shall be determined in such manner as may from time to time be prescribed.

(5) When the wages actually paid by an employer during any period have been ascertained, his assessment in respect of that period shall be adjusted accordingly.

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(6) If the annual assessment is less than the adjusted assessment, the employer shall pay the difference and if the annual assessment is more than the adjusted assessment, the Commission shall refund the difference to the employer or credit him therewith in respect of his following annual assessment.

(7) If an employer has failed to transmit within the prescribed time a statement in terms of section *sixty-eight* in respect of any period, the Commission may -

- (a) assess him and such assessment shall be final and not subject to adjustment under sub-section (5) or (6); and
- (b) in his discretion, impose upon and recover from the employer, a penalty, to be determined by him, not exceeding ten per cent. of the amount so assessed, or one rand, whichever is the greater:

[The pronouns "his" and "him" should be "its" and "it", respectively, to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

Provided that if it is subsequently ascertained that the amount assessed under paragraph (a) would have been greater had the employer transmitted the required statement within the prescribed time, the employer shall pay to the Commission the difference between the amount assessed and the amount which would have been assessed had the statement been available.

[subsection (7) substituted by Act 27 of 1945 and amended by Act 7 of 1961]

(8) Every assessment of an employer shall be paid at such times and places and in such manner as the Commission may determine, with interest on any amounts overdue at such rate not exceeding ten per cent. per annum as the Commission may fix.

(9) If an employer liable to assessment who in respect of any period, has transmitted to the Commission the statement referred to in sub-section (1) of section *sixty-eight*, has not been assessed in respect of that period, he shall nevertheless be liable at any time thereafter to be assessed.

State exemption from assessment

70. No assessment for the benefit of the accident fund shall be payable by the State in respect of employees in the employ of the public service.

[Section 70 is amended by Act 7 of 1961, Act 27 of 1970, Act 11 of 1974 (except for the references to a legislative assembly in that amendment, which were not brought into force along with the rest of the amendment), AG 3 of 1979, Act 9 of 1982, RSA Proc. 45 of 1990 and Act 5 of 1995 (changes of punctuation not indicated by amendment markings). Act 29 of 1984 purports to amend subsection (1A) of the previous version of section 70, but that subsection had already been deleted by Act 9 of 1982.]

Variation of rate of assessment

71. (1) When in the opinion of the Commission, the business of an employer is designed, equipped, organized or conducted in a manner which is specially calculated to prevent the occurrence of accidents to employees and the number or cost of accidents in consequence thereof is or is likely to be considerably less than those usually obtaining in other businesses of that class, the Commission may, in his discretion, use a lower percentage of annual wages in calculating the annual assessment of such employer than is used in the assessment of other employers in that business.

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(2) Where the cost or number of accidents which have occurred or, in the opinion of the Commission, are likely to occur, is greater than the Commission considers would have occurred had the business of the employer been designed, equipped, organized or conducted in a manner which is specially calculated to prevent the occurrence of accidents, the Commission may, in his discretion, assess such employer on the bases of a higher percentage of the annual wages of his employees than other employers in a similar class of business.

(3) If, during any period, the accident experience of an employer is, in the opinion of the Commission, more favourable than the average accident experience of employers in his class of business, the Commission may, in his discretion, award such employer a special rebate on any assessments payable or paid by him.

[subsection (3) amended by Act 36 of 1949]

(4) If, during any period, the accident experience of an employer is, in the opinion of the Commission, less favourable than the average accident experience for employers in his class of business, the Commission may, in his discretion, assess such employer for a higher percentage of the annual wages of his employees in respect of any subsequent period.

Assessments to be paid by employers to the Commission

72. (1) The amount of any assessment shall be paid by an employer to the Commission within thirty days after the date specified in the notice of assessment, unless the Commission has, on the application of the employer, agreed to accept payment by instalments on such conditions as he may specify, and where payment is made by instalments, the said instalments shall be paid at the times specified by the Commission.

[The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(2) The notice of assessment may be sent to the employer by post either in a registered or an unregistered letter.

(3) Notwithstanding the provisions of subsection (1), the Commission may in respect of any class of employers adopt such alternative method of payment of assessments as it may deem necessary.

[subsection (3) inserted by Act 5 of 1995]

Failure to pay assessment or other moneys

73. (1) If an assessment or any instalment thereof is not paid by an employer at the time when it becomes payable, the defaulting employer shall be liable to pay as a penalty for his default such percentage (not exceeding ten per cent.) of the amount unpaid as the Commission may determine.

(2) Any employer who fails to pay his assessment or to render within the prescribed period the returns referred to in section *sixty-eight* shall, in addition to any other penalty, pay to the Commission a penalty as determined by the Commission not exceeding the full amount of the compensation payable in respect of any accident to a employee in his employment during the period of such default: Provided that the Commission, if satisfied that the default was due to inadvertence or to some cause over which the employer had no control, or that the payment of the full amount of the capitalized value would be likely to result in the insolvency or assignment of the estate of such employer or where the employer is a company, the winding up thereof, may waive the provisions of this sub-section in whole or in part or accept payment in instalments or otherwise as the Commission may determine.

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[subsection (2) amended by Act 27 of 1945]

(3) Any employer who contravenes or fails to comply with any provision of this Act in regard to the payment of assessments or penalties, or any other moneys payable to the Commission under this Act, shall be guilty of an offence.

(4) Whenever an employer fails to pay to the Commission any money due the Commission may make an order in the prescribed form, and such order shall, on being filed with the clerk of the magistrate's court of the area in which the employer concerned resides or has his place of business, have all the effects of, and may be executed as if it were a civil judgment lawfully given in that court in favour of the Commission.

(5) For the purpose of this section "compensation" includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the Commission from time to time on the advice of an actuary appointed by it, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[subsection (5) inserted by Act 27 of 1945, substituted by Act 28 of 1977 and amended by Act 5 of 1995]**Contributions by employers individually liable**

74. (1) Notwithstanding anything to the contrary in this Act, an employer individually liable shall pay annually to the Commission, in such manner and at such times as he may determine, such proportion of the expenses incurred by the Commission in the administration of this Act as he may deem equitable.

[subsection (1) amended by RSA Proc. 45 of 1990]

(2) The Commission shall, as soon as possible after the close of each financial year estimate the loss incurred during that year as a result of compensation becoming payable out of the accident fund in respect of employees for whom their employers have failed to pay assessments. The loss shall consist of the difference between such compensation, as estimated by the Commission, together with any expenses incurred or likely to be incurred in connection therewith and any amounts recovered or likely to be recovered from such employers, whether by way of compensation, penalty or otherwise. The loss for any financial year may be revised by the Commission in subsequent years according to the amounts actually paid or recovered. An employer individually liable shall pay to the Commission, in such manner and at such times as he may determine, such proportion of the said loss as he may deem equitable.

[Subsection (2) is amended by Act 27 of 1945, with this amendment deemed to have come into force on 1 January 1944 (section 28(2) of Act 27 of 1945), and by RSA Proc. 45 of 1990.]

(3)

[subsection (3) deleted by RSA Proc. 45 of 1990]

(4) For the purpose of this section "compensation" includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the Commission from time to time on the advice of an actuary referred to in section 73(5), of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in

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terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.

[subsection (4) substituted by Act 27 of 1945 and by Act 28 of 1977, and amended by Act 5 of 1995]

CHAPTER VIII

MEDICAL AID

First Aid

75. (1) An employer shall furnish and maintain such appliances and services for the rendering of first aid to his employees in case of an accident to them as may be prescribed in respect of the class of business in which he is engaged: Provided that the provisions of this section shall not apply to an employer who in compliance with any requirement of the Factories, Machinery and Building Work Ordinance, 1952 (Ordinance No, 34 of 1952 of Namibia) or the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968 of Namibia), maintains appliances and services for rendering first aid to his employees in case of an accident or has under any such Act been granted exemption from such requirements.

[Subsection (1) is amended by Act 51 of 1956, Act 29 of 1984 and RSA Proc. 45 of 1990. The Factories, Machinery and Building Work Ordinance 34 of 1952 was repealed by the Labour Act 6 of 1992, which has been replaced by the Labour Act 11 of 2007. The Mines, Works and Minerals Ordinance 20 of 1968 was repealed by the Minerals (Prospecting and Mining) Act 33 of 1992.]

(2) Failure to comply with the provisions of this section shall be an offence.

Conveyance of injured employees

76. (1) In the event of an accident happening to a employee which necessitates his removal to a hospital or his residence the employer of such employee shall forthwith provide the necessary conveyance therefor.

(2) The Commission or the employer individually liable, as the case may be, shall defray the reasonable expenses (as determined by the Commission) incurred by the employer or any other person in respect of such removal.

(3) Any employer who fails to comply with the provisions of sub-section (1) shall be guilty of an offence.

Medical expenses

77. (1) The Commission or the employer individually liable, as the case may be, shall for a period not exceeding two years from the date of the accident defray the reasonable expenses incurred by or on behalf of a employee in respect of medical aid necessitated by an accident.

[subsection (1) amended by Act 36 of 1949 and substituted by Act 51 of 1956]

(2) Where, in the opinion of the Commission, further or special medical aid in addition to that referred to in sub-section (1), will reduce the disablement from which the employee suffers, he may defray or direct the employer individually liable to defray, as the case may be, the expenses incurred in respect of such medical aid.

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[Subsection (2) is amended by Act 27 of 1945 and by Act 36 of 1949, and substituted by Act 51 of 1956. The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(3)

[subsection (3) deleted by Act 27 of 1945]

(4) For the purpose of further or special medical aid under sub-section (2), the Commission may place the employee under the treatment of a medical practitioner nominated by him and may give such other directions in regard to the treatment of the employee as he deems expedient.

[The pronouns "him" and "he" should both be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(5) Any employer who fails to make any payment in respect of medical aid which under this section he is required to make shall be guilty of an offence.

(6) The Commission may -

- (a) notwithstanding anything to the contrary in this section contained, from time to time after consultation with the Medical Board established by section 2 of the Medical and Dental Professions Act, 1993 (Act 21 of 1993), by notice in the *Gazette* issue instructions whereby it shall, in such cases and in such circumstances as may be specified in the instructions, be obligatory that medical aid referred to in this section shall be received in an institution to be determined in accordance with such directions and which is controlled by the Commission or by or under any body, organization or scheme referred to in section 14(2), to which the Commission grants or granted financial assistance;

[The Medical and Dental Professions Act 21 of 1993 has been replaced by the Medical and Dental Act 10 of 2004.]

- (b) at any time by like notice cancel or after the said consultation amend the said instructions.

[subsection (6) inserted by Act 9 of 1970 and amended by Act 5 of 1995]

(7) The instructions referred to in subsection (6) may differ in respect of different classes of medical aid, areas or employees.

[subsection (7) inserted by Act 9 of 1970]

(8) Notwithstanding anything to the contrary in this section contained, the Commission or an employer with the consent of the Commission, may refuse to pay any expenses incurred in respect of medical aid referred to in this section, if the medical aid has been received contrary to instructions issued under subsection (6).

[subsection (8) inserted by Act 9 of 1970]

Dispute as to treatment and medical report

78. (1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided in terms of this chapter shall be determined by the Commission.

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(2) The Minister may after consultation with the Commission and the Medical Board referred to in section 77(6), make regulations for the submission to the Commission, without additional charge, of reports from time to time by medical practitioners who have attended or been consulted in respect of employees injured by accident or who contracted a scheduled disease in the course of their employment.

[subsection (2) amended by Act 36 of 1949 and by Act 5 of 1995]

Fees for medical aid to be prescribed

79. Payment for medical aid shall be in accordance with the scale prescribed from time to time by the Commission, and no claim in excess of the charges fixed by that scale or, if no charge has been so fixed, in excess of the charges deemed by the Commission to be reasonable, shall lie against the Commission, or any employee or his employer in respect of any such medical aid: Provided that the tariff of fees for medical aid affecting the Medical Board referred to in section 77(6) and the Dental Board established by section 2 of the Medical and Dental Professions Act, 1993, respectively, shall be fixed after consultation with those Boards.

[section 79 amended by Act 27 of 1945, Act 36 of 1949, Act 29 of 1984 and Act 5 of 1995 (amendment markings incomplete)]

Contributions from employee towards cost of medical aid forbidden

80. (1) No employer shall receive from a employee any contribution towards the expense of medical aid rendered or to be rendered to such employee in terms of this Act.

(2) Any employer acting in contravention of this section shall be guilty of an offence and shall, in addition, be ordered by the Commission to refund any sum so received. Such order shall, on being filed in the manner prescribed in section *sixty-two* be enforceable as in that section prescribed. Any amount recovered by the Commission under any such order shall be paid by him to the employee concerned.

[The pronoun "him" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

When employer supplies medical aid

81. If any employer makes an arrangement for furnishing medical aid to his employees injured by accident which in the opinion of the Commission is not less favourable to the employees than that provided for in this chapter, the Commission may approve such an arrangement, and unless and until such approval is withdrawn the medical aid under such arrangement may be substituted for the medical aid referred to in this chapter and -

- (a) in the case of an employer individually liable he shall not be required to provide or pay for medical aid otherwise than in accordance with such arrangement; and
- (b) in the case of an employer not individually liable, the Commission shall re-imburse him out of the accident fund or reduce his assessment to such extent as he deems equitable.

[In paragraph (b), the pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

Consultation with Medical Board and Dental Board

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81bis. The Commission may from time to time consult the Medical Board referred to in section 77(6) and the Dental Board referred to in the proviso to section 79 on questions connected with or arising out of the administration of the provisions of this Act relating to medical aid, and may for that purpose communicate to the said Boards any information in the Commission's possession relating to any matter in respect of which the views of those Boards are required.

[section 81bis inserted by Act 36 of 1949 and substituted by Act 5 of 1995]

CHAPTER IX

COMPENSATION FOR BLACKS

[The chapter heading is amended by Act 42 of 1964 and by AG 3 of 1979. All remaining portions of Chapter IX (only sections 83, 86 and 88 by that time) were deleted by RSA Proc. 45 of 1990.]

82.

[Section 82 is amended by Act 42 of 1964 and by AG 3 of 1979, and deleted by Act 29 of 1984.]

83.

[Section 83 is amended by Act 36 of 1949, substituted by Act 21 of 1964, amended by Act 42 of 1964, AG 3 of 1979 and Act 29 of 1984, and deleted by RSA Proc. 45 of 1990.]

84.

[Section 84 is amended by Act 27 of 1945, Act 51 of 1956, Act 7 of 1961, Act 42 of 1964, Act 58 of 1967, Act 60 of 1971 and Act 11 of 1974, and deleted by Act 28 of 1977.]

85.

[Section 85 is amended by Act 36 of 1949, Act 51 of 1956, Act 7 of 1961 and Act 42 of 1964, substituted by Act 58 of 1967, amended by Act 60 of 1971 and by Act 11 of 1974, and deleted by Act 28 of 1977.]

86.

[Section 86 is amended by Act 36 of 1949, Act 5 of 1951, Act 51 of 1956 and Act 42 of 1964, substituted by Act 58 of 1967 and by Act 28 of 1977, and deleted by RSA Proc. 45 of 1990.]

87.

[Section 87 is amended by Act 27 of 1945 and deleted by Act 51 of 1956.]

88.

[Section 88 is amended by Act 42 of 1964 and by AG 3 of 1979, and deleted by RSA Proc. 45 of 1990.]

CHAPTER X

INDUSTRIAL DISEASES

Compensation in respect of scheduled industrial diseases

89. Where it is proved to the satisfaction of the Commission in such manner as he may determine that a employee is suffering from a scheduled disease due to the nature of his occupation and is thereby disabled for employment, or that the death of the employee was caused by such disease, the employee shall be entitled to compensation as if such disablement or death had been caused by an accident, and the provisions of this Act shall, subject to the provisions of this Chapter, *mutatis mutandis* apply unless at the time of entering into the employment, the employee wilfully and falsely represented to the employer that he had not previously suffered from the disease: Provided that where the employee was not, at the date of the disablement or death, employed in the occupation to the nature of which the disease is due, the earnings of the employee shall be calculated on the basis of his earnings when he was last employed in such occupation.

[Section 89 is amended by Act 5 of 1951 and by Act 7 of 1961, and substituted by Act 21 of 1964. The first use of the pronoun "he" in section 89 should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

Liability to pay compensation

90. In the case of an employer individually liable compensation shall be paid by the employer who last employed the employee in the occupation to the nature of which the disease is due: Provided that if the Commission is satisfied that the employee contracted the disease while in the employment of any previous employer or that the disease was partly attributable to such employment, he may, after due notice to that employer, direct that the compensation, or such part thereof as he deems equitable, shall be paid by such employer if he is individually liable, or out of the accident fund as the case may be.

[The first two uses of the pronoun "he" in section 90 should both be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

Notice of disablement and claim for compensation

91. (1) The Commission may, in relation to any employee, fix a date which shall be regarded for the purposes of this chapter as the date of the commencement of the disablement of such employee, and for the purposes of this Act as the date of the accident.

(2) Notice that a employee has contracted or died of a scheduled disease, and any claim for compensation arising therefrom, shall be given or made by or on behalf of the employee to his employer and to the employer who last employed him in the occupation to which the disease is alleged to be due, and such notice or claim shall be deemed to be a notice under section 50 or a claim under section 54, as the case may be.

[Subsection (2) is amended by Act 21 of 1964, Act 42 of 1964, AG 3 of 1979 and Act 29 of 1984 (not all changes indicated by amendment markings).]

Employees' Compensation Act 30 of 1941 (SA)**Presumption as to cause of disease**

92. (1) If an employee who becomes disabled by, or dies of a scheduled disease, other than fibrosis of the lungs caused by mineral dust, was within twenty-four months immediately preceding the disablement or death employed in any occupation mentioned in the Second Schedule in respect of such disease, it shall be presumed, unless the contrary is proved, that the disease was due to such occupation.

(2) If an employee who becomes disabled by or dies of any fibrosis of the lungs caused by mineral dust, was employed in any occupation mentioned in the Second Schedule in respect of such fibrosis, it shall be presumed, unless the contrary is proved, that the fibrosis was due to such occupation.

[section 92 amended by Act 7 of 1961]

Compensation for other than scheduled disease

[The word "scheduled" in the heading is misspelt in the *Government Gazette*, as reproduced above.]

93. Nothing in this chapter shall affect the right of an employee to compensation in respect of a disease other than a scheduled disease if the contracting of that disease entitles him to compensation under any other provision of this Act.

Additions to scheduled diseases

94. (1) After carrying out such investigation as he deems necessary the Commission may recommend to the Minister the addition to or deletion from the second schedule of any disease or occupation: Provided that the Commission may recommend that any such addition be of retrospective effect from a specified date.

[Subsection (1) is amended by Act 7 of 1961 to insert the proviso; a colon has been added accordingly. The pronoun "he" should be "it" to accord with the global substitution of "Commission" for "commissioner" by Act 5 of 1995.]

(2) The Minister may, by notice in the *Gazette*, amend the said Schedule in accordance with any such recommendation: Provided that not less than three months before the publication of such notice there has been published in the *Gazette* a notice -

- (a) of the intention to publish the said notice and of its proposed contents; and
- (b) inviting any person who objects to the publication of the said notice to lodge an objection thereto in writing with the Commission,

[subsection (2) amended by Act 97 of 1986]

CHAPTER XI

MISCELLANEOUS

95.

[section 95 amended by Act 24 of 1981 and deleted by RSA Proc. 45 of 1990]

Employees' Compensation Act 30 of 1941 (SA)**Employers to notify Commission**

96. (1) Every employer carrying on business in Namibia shall, within fourteen days of the date of commencement of this Act, or of the date on which he commences business, whichever date is the later, in the prescribed manner furnish the Commission with the prescribed particulars of his business, and thereafter, within the period fixed by the Commission, with such additional particulars as the Commission may from time to time require. Such particulars shall be furnished separately in respect of each business conducted by the employer. Every such employer shall forthwith inform the Commission of any change in the particulars so furnished.

[subsection (1) amended by Act 36 of 1949 and by RSA Proc. 45 of 1990]

(2)

[subsection (2) amended by Act 29 of 1984 and deleted by RSA Proc. 45 of 1990]

(3) Every person not resident in Namibia who, and every corporate body not registered in Namibia under the law relating to companies or closed corporations, as the case may be, which, carries on business in Namibia or engages, in, on or above the continental shelf, in activities in connection with surveys, research, prospecting or exploitation of natural resources and in connection therewith employs an employee, shall notify the Commission of the address of his or her or its chief office and of the name of his or her or its chief officer in Namibia, and such officer shall be authorized and required to perform the duties of an employer as provided by this Act, and shall accept service of any document issued under this Act which affects such person or body.

[Subsection (3) is substituted by Act 9 of 1970 and amended by Act 5 of 1995. The amendment markings in Act 5 of 1995 are incorrect, ignoring the global substitutions made by RSA Proc. 45 of 1990.]

(4) Any person who fails to comply with the provisions of this section shall be guilty of an offence.

Employer to keep records

97. (1) Every employer shall in respect of all his employees keep records of wages paid, time worked and payment made for piece-work and overtime, and of any other particulars prescribed and he shall at all reasonable times produce such records or a microfilm or other microform reproduction thereof, on demand, to any person authorized under section 17 for his inspection.

(2) Every employer shall retain the records or reproduction thereof referred to in subsection (1) for a period of not less than three years after the date on which such records are made

(3) An employer who fails to comply with any provision of this section shall be guilty of an offence.

[section 97 amended by Act 24 of 1981; not all changes indicated by amendment markings]

Threats and compulsion

98. Any person who, by threats or in any other manner whatever, compels or attempts to compel any employee to do or to omit to do any act the doing or omission of which deprives

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or is intended to deprive him of any right to compensation shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or, in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

[section 98 amended by Act 7 of 1961]

False statements

98bis. Any person who in a claim for compensation under this Act, or in any notice, report or statement required to be given, made or furnished under the provisions of this Act, knowingly makes or causes to be made a statement which is false in a material particular, shall be guilty of an offence.

[section 98bis inserted by Act 27 of 1945]

99.

[section 99 amended by Act 27 of 1945 and by Act 51 of 1956,
and deleted by Act 6 of 1972]

Compensation not to form part of deceased employee's estate

100. Compensation under this Act in respect of the death of a employee shall not form part of his estate.

Certain documents exempt from stamp duty

101. Notwithstanding anything to the contrary in any law in force relating to stamp duty, any affidavit, certificate, receipt or other document required or issued under any provision of this Act shall be exempt from stamp duty.

Restrictions in respect of compensation payable in terms of Act

102. (1) Notwithstanding the provisions of any other law, but subject to the Maintenance Act, 1963 (Act 23 of 1963), and the Income Tax Act, 1981 (Act 24 of 1981), no compensation payable in terms of this Act, or any right to such compensation, shall be capable of being assigned, transferred, ceded, pledged or hypothecated, or be liable to attachment or any form of execution under any judgement or order of any court of law.

[The Maintenance Act 23 of 1963 has been replaced by the Maintenance Act 9 of 2003.]

(2) If a person who is entitled to compensation in terms of this Act, assigns, transfers, cedes, pledges or hypothecates such benefit or any right to such benefit; or attempts to do so, the Commission may withhold, suspend or cancel payment of such compensation.

(3) No compensation payable to or received by any person in terms of this Act shall -

- (a) in any civil proceedings against him or her be included in his or her income or means;
- (b) in the event of the sequestration of his or her estate, form part of the assets of his or her insolvent estate.

[section 102 amended by Act 36 of 1949 and substituted by Act 5 of 1995]

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103.

[section 103 amended by Act 51 of 1956 and deleted by RSA Proc. 45 of 1990]

Evidence

104. (1) Every record of a decision or award made by the Commission and every copy or reproduction (whether obtained by microfilming or any other process) of, or extract from, an entry in any book or record kept by the Commission, and of any document filed with the Commission, purporting to be certified by the executive officer to be a true copy or reproduction or extract shall upon production be received in any court as *prima facie* evidence of the matters so certified without proof of the executive officer's signature.

[subsection (1) amended by Act 24 of 1981 (not all changes of punctuation indicated by amendment markings) and by Act 5 of 1995]

(2) In any proceedings under this Act or in any court, an affidavit purporting to be made by the executive officer, or by a person authorized under subsection (2) of section 17 in respect of any matter investigated by him or her in terms of such authorization, in which it is stated -

- (a) that any person or body of persons is an employer, principal, contractor, employee or dependant under this Act; or
- (b) that any person is or has been lawfully required under this Act to pay any amount to the Commission, or to an employee or other person named in the affidavit; or
- (c) that any amount referred to in paragraph (b), or any portion thereof had or had not been paid on a date specified in the affidavit,

and an affidavit purporting to be made by the executive officer or a person to whom powers have been delegated under section 108, and in which it is stated that any decision has been taken by the Commission or has been taken by such person in pursuance of the powers so delegated to him or her, as the case may be shall on its mere production in those proceedings by any persons, but subject to the provisions of sub-section (3) be *prima facie* proof of the facts stated therein.

[subsection (2) amended by Act 36 of 1949 and by Act 5 of 1995]

(3) The person presiding over the proceedings in which any document referred to in subsection (1) or affidavit referred to in subsection (2) is adduced in evidence, may cause the executive officer or the person making the affidavit as the case may be to be subpoenaed to give oral evidence, or may cause written interrogatories to be submitted to him or her for reply and such interrogatories and any reply on oath purporting to be a reply from such person shall in like manner be admissible as evidence in such proceedings.

[subsection (3) amended by Act 5 of 1995]

Penalties

105. Any person found guilty of an offence under this Act shall, unless otherwise provided, on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

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[section 105 amended by Act 7 of 1961 and substituted by Act 29 of 1984 and by Act 5 of 1995]

Reciprocal arrangements for the administration of compensation

106. For the purpose of giving effect to any convention with a foreign State providing for reciprocity in matters relating to compensation to employees for accidents causing disablement or death, the Minister may make rules by notice in the *Gazette* including rules -

- (a) for determining in any case where a employee is entitled to compensation both under this Act and under the law of any such country with which the convention is made, under the law of which party to the convention such employee or his dependants shall be entitled to recover compensation;
- (b) for conferring on the Commission, powers for the admission of evidence taken in any such country, and the procuring and taking of evidence for use in any such country or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the respective laws of any such country;
- (c) whereby compensation awarded in the territory of any such country to persons resident or becoming resident in the territory, may be transferred to and administered by the Commission, and whereby compensation awarded under this Act to persons resident or becoming resident in the territory of any such country may be transferred to and administered by a competent authority in that territory.

[Section 106 is amended by Act 36 of 1949, Act 29 of 1984, Act 97 of 1986 and Act 5 of 1995. Act 5 of 1995 excludes section 106(c) from the global substitution of "Namibia" for the territory", but the second use of "the territory" should be changed to "Namibia" for this provision to make sense. The provision was probably intended to read as follows:

- “(c) whereby compensation awarded in the territory of any such country to persons resident or becoming resident in Namibia, may be transferred to and administered by the Commission, and whereby compensation awarded under this Act to persons resident or becoming resident in the territory of any such country may be transferred to and administered by a competent authority in that territory.”]

Regulations

107. (1) The Minister may make regulations as to -

[introductory phrase of subsection (1) amended by Act 97 of 1986]

- (a) the place of meeting and the procedure to be followed at any meeting of the Commission, or at any investigation under this Act;

[paragraph (a) amended by Act 5 of 1995]

- (b) the procedure to be followed in connection with notices of accidents and claims for compensation and the form of, and particulars to be submitted with, such notices and claims;
- (c) the forms to be used in connection with such procedure or to be used for any other matters dealt with by this Act;
- (d) subject to the provisions of section *seventy-nine* the fees payable to medical practitioners for services rendered in connection with any matter under this Act;

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- (e) the fees payable to advocates and attorneys for services rendered in connection with any matter under this Act;
- (f) the procedure to be followed in paying assessments and penalties to the Commission;
- (g) the persons to whom, the places at which, and the method by which payments of assessments under this Act shall be made;
- (h)

[paragraph (h) substituted by Act 51 of 1956 and deleted by Act 5 of 1995]

- (i) the disposal of moneys payable to any person (other than the Commission) under this Act and not claimed by the person entitled thereto within a prescribed period;

[paragraph (i) amended by Act 51 of 1956 and by RSA Proc. 45 of 1990]

- (j) all other matters which by this Act are required or permitted to be prescribed.

[The full stop at the end of paragraph (j) should have been changed to a semicolon when paragraph (k) was inserted.]

- (k) any matter which he may deem necessary or expedient to prescribe in order to further the objects of this Act.

[paragraph (k) inserted by Act 29 of 1984]

(2) Different regulations may be made under sub-section (1) in respect of different classes of employers and employees and of different areas, and in making such regulations the Minister may apply such method of discrimination or differentiation as he may deem advisable.

[subsection (2) amended by Act 97 of 1986]

(3) Any regulations made under sub-section (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R200 or imprisonment for a period of six months.

[subsection (3) amended by Act 7 of 1961 and by Act 29 of 1984 (amendment markings incomplete)]

Delegation

108. (1) The Minister may, on such conditions as he or she considers appropriate, delegate in writing to the Commission or to the Permanent Secretary: Labour and Human Resources Development, any power conferred upon him or her, excluding the powers conferred by sections 78(2) and 107.

(2) The said Permanent Secretary may, on such conditions as he or she considers appropriate and with the approval of the Minister, delegate to any officer in the Ministry of Labour and Human Resources Development any power conferred upon or delegated to him or her.

(3) The Commission may, on such conditions as it considers appropriate, delegate to any committee established in terms of section 11 of the Social Security Act, 1994, the executive officer or any other employee of the Commission or any authorised person referred to in section 17, if he or she is not such an employee, any power conferred upon or delegated to it.

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(4) The executive officer may, on such conditions as he or she considers appropriate and with the approval of the Commission, delegate to any employee of the Commission, any power conferred upon or delegated to the executive officer.

(5) No delegation shall prevent the exercise of the relevant power by the Minister, Permanent Secretary Commission or executive officer, as the case may be.

[section 108 deleted by Act 39 of 1960 and inserted by Act 5 of 1995; (amendment markings incomplete)]

Repeal of laws

109. The Workmen's Compensation Act, 1934 (Act No. 59 of 1934) and the Workmen's Compensation Amendment Act, 1936 (Act No. 38 of 1936) are hereby repealed with effect from the fixed date: Provided that any claim for compensation under those Acts, in respect of an accident which happened or a scheduled disease which was contracted prior to the fixed date shall, save in so far as hereinbefore is otherwise provided, be dealt with thereunder as if this Act had not been passed.

[Section 31 of Act 51 of 1956, which made Act 30 of 1941 applicable to South West Africa, provides for additional repeals in respect of South West Africa:

"The laws of the territory of South-West Africa set out in the Schedule to this Act are hereby repealed to the extent set out in the third column of the Schedule with effect from the date fixed by proclamation in terms of the second proviso to section *thirty-two* of this Act: Provided that any claim for compensation under the said laws in respect of an accident which happened or a disease which was contracted prior to the date so fixed shall, save in so far as is otherwise provided in the principal Act as applied to the said territory by this Act, be dealt with thereunder as if this Act had not been passed."

The Schedule referred to is the following:

Schedule

No. and year.	Title or Description of Law.	Extent of Repeal.
Proclamation No. 3 of 1917.	Proclamation for the control and treatment of natives employed on mines and works, 1917.	Section <i>sixteen</i> .
Proclamation No. 27 of 1924.	The Workmen's Compensation (Accidents and Industrial Diseases) Proclamation, 1924.	The whole.
Ordinance No. 14 of 1930.	The Workmen's Compensation (Accidents and Industrial Diseases) Proclamation, 1924 Amendment Ordinance, 1930.	The whole.
Proclamation No. 7 of 1931.	Workmen's Compensation (Government Employees) Proclamation, 1931.	The whole.
Proclamation No. 29 of 1939.	Workmen's Compensation Amendment Proclamation, 1939.	The whole.
Proclamation No. 11 of 1945.	Workmen's Compensation Amendment Proclamation, 1945.	The whole.

Application of Act to territory of South-West Africa

109bis. (1) This Act shall apply also in Namibia including the Eastern Caprivi Zipfel referred to in section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and in relation to all persons in the portion of Namibia known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of Namibia.

[subsection (1) amended by Act 21 of 1964 and by RSA Proc. 45 of 1990]

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(2) Any proclamation or notice issued under this Act prior to the date of commencement of the Workmen's Compensation Amendment Act, 1956, and in force after that date, the operation of which is not expressly limited to any area within Namibia (excluding Namibia) shall apply also in Namibia with effect from the date of publication thereof in Namibia.

[Section 109bis is inserted by Act 51 of 1956. Proc. 45 of 1990 directs that the word "territory" be substituted for the word "Republic" throughout the Act, and Act 5 of 1995 directs that "Namibia" be substituted for "the territory". This results in some confusion in subsection (2). Since this provision is only of historical relevance, it should probably have been excluded from these global substitutions, leaving it to read as follows:

"(2) Any proclamation or notice issued under this Act prior to the date of commencement of the Workmen's Compensation Amendment Act, 1956, and in force after that date, the operation of which is not expressly limited to any area within the Republic (excluding the territory) shall apply also in the territory with effect from the date of publication thereof in the territory."

Short title

110. This Act shall be called the Employees' Compensation Act, 1941.

[section 110 substituted by Act 5 of 1995]

[Transitional provisions regarding the impact of amendments on accidents and diseases which occurred prior to the amendments in question, and on the effect of amendments on pensions ceased or lump sums awarded prior to the date of the amendments in question have not been recorded here where the amendments in question occurred prior to 1990.

RSA Proc. 45 of 1990 provides the following transitional provision in section 35:

"Anything done before the commencement of this Part **[the Part of the Proclamation which amended Act 30 of 1941 as it applied in South West Africa]** under a provision of the Act, shall, except in so far as it is obviously inappropriate and subject to the provisions of section 46, be deemed to have been done under that provision as amended by any provision of this Part."

RSA Proc. 45 of 1990 provides the following savings provisions in section 46:

"In the application of the Act in the territory -

- (a) the provisions thereof as amended by this Proclamation shall apply only in relation to accidents which happened or scheduled diseases contracted on or after the date of commencement of this Proclamation;
- (b) in relation to accidents which happened or scheduled diseases contracted before the said date, the provisions of the Act shall continue to apply as if this Proclamation had not been promulgated and anything which in terms of any provision of the Act must or can be done or has been commenced with in relation to an accident or scheduled disease referred to in this paragraph, shall or can be done or shall be continued in accordance with that provision as applicable in terms of this paragraph;
- (c) the amendments effected by this Proclamation shall not affect any existing privilege, right, obligation or liability acquired, accrued or incurred in terms of the Act before the commencement of this Proclamation, and any such privilege or right can be exercised or obligation shall be discharged or liability shall continue to exist as if this Proclamation had not been promulgated.
- (d) paragraph 1(d) of Government Notice 1291 of 23 June 1989 shall, notwithstanding the provisions of section 43bis, be deemed not to be applicable in respect of any monthly pension which was payable by the State, including a Representative Authority as defined in section 1 of Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), in terms of section 39 or 40 of the Act immediately before 1 July 1989 in connection with the disablement or death of a workman in the service of a department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980)."

Act 5 of 1995 provides the following transitional provisions in section 58:

(1) The Minister may, on or after the date of commencement of this Act, and in consultation with the Minister of Finance, transfer any assets, liabilities, rights and obligations of the State which were used in relation to or in connection with the Directorate: Social Security of the Ministry of Labour and Human Resources Development, to the Commission.

(2) The registrar of deeds shall, in the case of -

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- (a) any asset referred to in subsection (1) consisting of immovable property which vests by virtue of that subsection in the Commission;
- (b) any immovable property being held before the date of commencement of this Act by the Workmen's Compensation Commissioner in trust for the accident fund,

upon production to him or her of the deed of any such immovable property, endorse such deed to the effect that the immovable property described therein so vests in the Commission or is so being held by the Commission in trust, as the case may be, and shall make the necessary entries in his or her registers, and thereupon that deed shall serve and avail for all purposes as proof of the title of the Commission.

(3) No transfer duty, stamp duty or any other fee or charge shall be payable in respect of any endorsement or entry referred to in subsection (2).

(4) Every officer or employee in the said Directorate: Social Security, shall have the right to enter, in terms of the provisions of section 12 of the said Social Security Act, 1994, and within a period of 30 days from the date of commencement of this Act, into the employment of the Commission on conditions of employment as determined by the Commission which are not less favourable than the conditions of employment which applied to such person before the date on which he or she so enters into employment.

(5) A person referred to in subsection (4) shall, until he or she exercises the right contemplated in that section or the said period of 30 days expires, whichever is the earlier, be deemed to be seconded to the Commission in terms of section 13(6) of the Public Service Act, 1980 (Act 2 of 1980).

- (6) (a) The Minister may, until such time as the Commission has been properly constituted under section 4 of the said Social Security Act, 1994, exercise any power and perform any duty or function conferred or imposed in terms of the principal Act or any other law upon the Commission.
- (b) Any power exercised or any duty or function performed by the Minister by virtue of the provisions of this subsection, shall be deemed to have been so exercised or performed by the Commission.

(7) Anything done before the commencement of this Act under any provision of the Workmen's Compensation Act, 1941, shall, except in so far as it is obviously inappropriate, be deemed to have been done under that provision as amended by any provision of this Act.]"

First Schedule

[The First Schedule is substituted by Act 7 of 1961.]

Injury.	Percentage of Disablement.
Loss of two limbs	} 100
Loss of both hands, or of all fingers and both thumbs.. .. .	
Total loss of sight	
Total paralysis	
Injuries resulting in being permanently bedridden	
Any other injury causing permanent total disablement	
Loss of arm—	} 65
at shoulder	
between elbow and shoulder	} 55
at elbow	
between wrist and elbow	} 50
Loss of hand at wrist	
Loss of four fingers and thumb of one hand	} 40
Loss of four fingers	
Loss of thumb—both phalanges	} 25
one phalanx	
Loss of index finger—three phalanges	} 10
two phalanges	
one phalanx	
Loss of middle finger—three phalanges	} 8
two phalanges	
one phalanx	
Loss of ring finger—three phalanges	} 6
two phalanges	
one phalanx	
Loss of little finger—three phalanges	} 4
two phalanges	
one phalanx	

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two phalanges	3
one phalanx	2
Loss of metacarpals—first or second or third (additional)	4
fourth or fifth (additional)	2
Loss of leg—	
at hip	70
between knee and hip	45 to 70
below knee	35 to 45
Loss of toes—	
all	15
great—both phalanges	7
one phalanx	3
other than great—four toes	7
three toes	5
two toes	3
one toe	1
Eye: loss of—whole eye	} 30
sight of	
sight of, except perception of light	
Loss of hearing—both ears	50
one ear	7

Total permanent loss of use of member shall be treated as loss of member.
 An injury to the left arm or hand and, in the case of a left-handed employee, to the right arm or hand, may in the discretion of the commissioner be rated at ninety per cent. of the above percentage.
 Where there are two or more injuries the sum of the percentages for such injuries may be increased, in the discretion of the commissioner.”.

Second Schedule

[The Second Schedule is amended by SA Proc. 147 of 1951, SA Proc. 63 of 1952, SA Proc. 170 of 1959, RSA Proc. R.90 of 1962, RSA Proc. R.98 of 1973, RSA Proc. 233 of 1979 and AG 3 of 1979.]

Description of Disease.	Description of Occupation.
Ankylostomiasis (Hookworm) in employees other than Asiatics or Blacks	Mining carried on underground.
Anthrax	The handling of wool, hair, bristles, hides and skins. Work in connection with animals infected with anthrax. Loading, unloading or transport of goods.
Arsenical poisoning	Any work involving the use of arsenic or its preparations or compounds.
Byssinosis [The Government Gazette puts this word in all caps.]	Any occupation in which a employee is exposed to the inhalation of cotton or linen dust.
Poisoning by benzene or its homologues and their nitro and amino derivatives and its sequelae	Any work involving the production or use of or contact with benzene or its homologues or their nitro and amino derivatives.
Cyanide rash	The handling of cyanide or any work involving the use of cyanide.

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Dermatitis due to dust, liquids or other external agents present in the specific process or processes of the employee's occupation.	—
Halogen derivatives of Hydrocarbons, poisoning by the	Any work involving the manufacture or use of or contact with the halogen derivatives of hydrocarbons.
Lead poisoning or its sequelae	The handling of lead or its preparations or compounds or any work involving the use of lead or its preparations or compounds.
Manganese Poisoning	Any work involving the use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of or substance containing manganese.
Mercury poisoning or its sequelae	Any work involving the use of mercury or its preparations or compounds.
Mesothelioma [The Government Gazette puts this word in all caps.]	Any work which involves the handling or use of asbestos or exposing the employee to asbestos dust caused by the use of asbestos in connection with the employer's business.
Pathological manifestations due to radium and other radioactive substances or X-rays	Any work involving the use or exposure to the action of radium or other radioactive substances or X-rays.
Phosphorus poisoning	Any work involving the use of phosphorus or its preparations or compounds.
Primary epitheliomatous cancer of the skin	Any work involving the handling or use of tar, pitch, bitumen, mineral oil or paraffin.
Silicosis, asbestosis or other fibrosis of the lungs caused by mineral dust	Any occupation (other than in a "dusty asmosphere" as defined in the Pneumoconiosis Act, 1956), in which employees are exposed to the inhalation of silica dust, asbestos dust or other mineral dust. [The word "atmosphere" is misspelt in the Government Gazette. The Pneumoconiosis Act 57 of 1956, which was not applicable to South West Africa, was repealed by the Pneumoconiosis Compensation Act 64 of 1962, which was repealed in turn by the Occupational Diseases in Mines and Works Act 78 of 1973. Act 78 of 1973 was applicable to South West Africa but was repealed by the Labour Act 6 of 1992, which was the predecessor to the Labour Act 11 of 2007.]