

CHAPTER 47:03
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Act 23, 1998.

An Act to provide for compensation of workers for injuries suffered or occupational diseases contracted in the course of their employment or for death resulting from such injuries or diseases and for matters incidental and connected to the foregoing.

[Date of Commencement: 28th November, 2001]

PART I

Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Worker's Compensation Act.

2. Interpretation

Unless the context otherwise requires-

"accident" means an accident arising out of and in the course of a worker's employment and resulting in personal injury;

"Commissioner" means the Commissioner for Worker's Compensation appointed under section 4;

"compensation" means compensation determined and payable under this Act;

"dependant" of a worker means-

- (a) a widow or widower who at the time of the accident was married, in accordance with either the customary or statute law, to the worker;
- (b) where there is no widow or widower in terms of paragraph (a), a woman or man with whom the worker was at the time of the accident living as wife or husband;
- (c) a child of the worker or of his spouse and includes a posthumous child, a step child, an adopted child and a child born out of wedlock;
- (d) a parent of the worker or any person who was acting in the place of a parent; and
- (e) a brother or sister, grandparent or grandchild; who was at the time of the accident wholly or partly financially dependent upon the worker;

"earnings" means wages earned, the value of any food given by the employer, fuel or quarters supplied to the worker by the employer and any overtime payments, for overtime work not of an intermittent nature, or other special remuneration for work done, whether by way of bonus or otherwise;

"employer" includes the Government, a local authority, a statutory corporation and any body or association of persons corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of employment or apprenticeship, the latter shall, for the purposes of this Act, be deemed to be the employer of the worker whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

"insurer" means any person carrying on insurance business within the meaning of that expression as defined in the Insurance Industry Act;

"Medical Board" means the Medical Board appointed under section 6;

"partial incapacity" means incapacity of a temporary nature caused by injury or occupational disease contracted, which reduces the earning capacity of a worker in any employment in which he was engaged at the time of the accident;

"permanent partial incapacity" means incapacity of a permanent nature caused by injury or occupational disease contracted, which reduces the earning capacity of a worker in every employment which he was capable of undertaking at that time:

Provided that every injury specified in the First Schedule, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to 100 per cent or more, shall be deemed to result in permanent partial incapacity;

"scheduled disease" means any disease specified in the Second Schedule;

"total incapacity" means such incapacity whether of a temporary or permanent nature, caused by injury or occupational disease contracted, as incapacitates a worker for any employment which he was capable of undertaking at the time of the accident:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the First Schedule where the percentage or aggregate

percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to 100 per cent or more;

"worker" means any person who, either before or after the commencement of this Act, has entered into or works under a contract of employment or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed orally, is in writing or is implied:

Provided that the following persons shall be exempted from the definition of "worker"-

- (a) any person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;
- (b) any person who is given permission to win minerals, receiving a portion of the minerals won by him or the value thereof;
- (c) a person who contracts to carry out works and who engages other persons to perform the work;
- (d) any member of the employer's family living in the employer's house or the cartilage thereof; or
- (e) any member of the class of persons declared in the regulations not to be workers for the purposes of this Act.

3. Application of Act

(1) This Act shall apply to any worker employed by the Government, any local authority or statutory corporation in the same way and to the same extent as if the employer were a private person.

(2) Except for the purposes of section 38 relating to the conclusion of agreements as to the amount of compensation payable, and except where the context otherwise requires, a reference to a worker shall, where the worker is dead, include reference to his dependants, or to any person acting on his behalf under this Act.

(3) The exercise and performance of the powers and duties of a local authority, a statutory corporation or any department of the Government shall, for the purposes of this Act, be treated as the trade or business of such authority, corporation or Government department.

(4) If, in any proceedings for the recovery of compensation, it appears to the Commissioner that the contract of employment or apprenticeship under which the injured person was working at the time of the accident causing the injury was illegal or otherwise unenforceable, he may, if, having regard to all the circumstances of the case, thinks it proper to do so, deal with the matter as if the injured person at the material time had been a person working under a valid contract of service or apprenticeship and thereafter, for the purposes of this Act, the injured person shall be so deemed to be.

PART II

Commissioner of Worker's Compensation and Appointment of Medical Board (ss 4-7)

4. Appointment of Commissioner

Subject to the laws governing the public service the Minister may appoint a public officer to be the Commissioner for Worker's Compensation.

5. Functions of Commissioner

(1) The Commissioner shall, subject to the control of the Minister, be responsible for the administration of this Act.

(2) Without derogating from the generality of subsection (1) the functions and powers of the Commissioner shall be to-

- (a) adjudicate upon claims for compensation and other matters requiring decision under this Act;
- (b) determine whether any person, in terms of the contract of employment, is a worker or employer for the purposes of this Act;

- (c) determine any question relating to the-
 - (i) right of compensation;
 - (ii) computation of the earnings of a worker;
 - (iii) degree of incapacitation of a worker;
 - (iv) amount of compensation payable; and
 - (v) payment, revision, discontinuance or suspension of any compensation;
- (d) determine whether any person is a dependant for the purposes of this Act, and, if so, the degree of dependency, and, where there is more than one dependant entitled to receive compensation, the allocation of compensation between dependants;
- (e) require that money payable as compensation in a fatal case to a widow, widower or to minor children shall be paid in full to the Commissioner who may arrange payments in instalments in such amounts and at such periods as he may determine, or will arrange that such compensation is invested, applied or otherwise dealt with for the benefit of the widow, widower or children concerned;
- (f) require that money payable as compensation to a worker in a case of permanent total incapacity, in circumstances where the Commissioner determines that such money would not be managed to the benefit of the worker and other beneficiaries, shall be paid in full to the Commissioner who may arrange payments in instalments in such amounts and at such periods as he may determine, or will arrange that such compensation is invested, applied or otherwise dealt with for the benefit of the worker and beneficiaries concerned;
- (g) determine any question relating to the necessity for, or the character or sufficiency of any medical aid;
- (h) collect, compile and maintain such statistics, information and records relating to the occurrence or causes of accidents and scheduled diseases, and the award and payment of compensation, as may be necessary or as the Minister may require;
- (i) receive any moneys received from outside Botswana and payable as worker's compensation under the law of any other country to dependants within Botswana, and to determine any question relating to the dependants or the degree of dependency, and to distribute the moneys to the persons entitled to such moneys, in such manner as may be just;
- (j) subject to the provisions of the Exchange Control Act, transfer any moneys payable as compensation to a worker or his dependants outside Botswana, to the persons entitled to such moneys or to a competent authority concerned for payment to the persons so entitled;
- (k) in cases of dispute determine the length of intervals for periodic payments in the case of temporary incapacity;
- (l) perform any other duties or functions in relation to worker's compensation as the Minister may require.

(3) In relation to proceedings conducted by the Commissioner under this Act, the Commissioner shall have all the powers of a magistrate to summon witnesses, to enforce attendance of witnesses, and to call for, require and to hear evidence and shall otherwise proceed according to any rules of procedure prescribed by the Minister.

(4) Proceedings before the Commissioner shall not be open to the public and the Commissioner may exclude any persons who are not interested parties.

(5) The Commissioner may delegate or assign any of his powers and functions under this section to labour officers appointed as such under section 4 of the Employment Act.

(6) An appeal shall lie to the Commissioner against a decision of a labour officer in respect of any power or function delegated under subsection (5).

(7) An appeal shall lie to the Minister in respect of any determination made by the Commissioner in relation to compensation under this Act.

6. Appointment of the Medical Board

The Minister may, following consultations with the Minister responsible for health, by Order, appoint a Medical Board consisting of-

- (i) three medical doctors one of whom shall be appointed as Chairperson by the Minister;
- (ii) one attorney; and
- (iii) one person qualified and experienced in a labour related profession.

7. Function of the Medical Board

The primary function of the Medical Board shall be to determine medical disputes on degrees of incapacity and such other medical questions arising in relation to any claim for compensation.

PART III

Administrative Requirements (ss 8-10)

8. Requirements as to notice of accident

(1) Proceedings under this Act for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given by or on behalf of the worker as soon as practicable after it has been incurred and before the worker has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such injury has been made within 12 months from the date it was incurred or, in the case of death, within 12 months from the time of death:

Provided that-

- (i) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the injury from any other source at or about the time it was incurred, or if it is found in the proceedings for settling the claim that the employer is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;
- (ii) the notice may be given, and the application may be made under, this section by a labour officer or such other officer as may be so empowered by the Commissioner on behalf of the worker;
- (iii) the failure to give notice or to make an application within the periods above specified shall not be a bar to the maintenance of such proceedings if it is proved that the failure was occasioned by mistake or other reasonable cause, including the error or mistake of any person advising or assisting the worker under this Act; or
- (iv) the failure to give notice or to make application within the periods above specified shall not be a bar to the maintenance of such proceedings, if it is proved that the employer has failed to comply with section 9(1).

(2) Notice under this section may be given either orally or in writing to the employer, or, if there is more than one employer, to one of such employers, or to any foreman or other person under whose supervision the worker is employed, or to any person designated for the purpose by the employer, and shall specify the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date on which and the place at which the accident occurred.

9. Employers to report injuries and occupational diseases

(1) Every injury and disease arising out of and in the course of employment which-

- (a) results in the death of a worker;
- (b) results in, or is likely to result in, some degree of permanent incapacity to a worker; or
- (c) results in incapacitating a worker from following his normal employment for more than

three days;
shall, within 17 days of the date when the injury is incurred or the disease diagnosed, be reported by the employer in the prescribed form and accompanied by the prescribed particulars to such officer as may be designated by the Commissioner for such purpose.

(2) Any employer who fails without reasonable cause to comply with the requirements of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2000.

(3) Failure by an employer to comply with the requirements of subsection (1) shall not be a bar to the institution or maintenance of proceedings by the worker concerned for compensation under this Act.

10. Medical examination and treatment

(1) Where a worker has given notice of an injury and the employer offers, within ten days of the giving of such notice, to have him examined free of charge by a medical practitioner named by the employer, the worker shall submit himself for such examination, and any worker who is in receipt of periodical payments under section 17 shall, if so required, submit himself for such examination from time to time.

(2) The worker shall, when required, attend upon that medical practitioner at the time and place notified to the worker by the employer or that medical practitioner, provided such time and place are reasonable.

(3) In the event of the worker being, in the opinion of any medical practitioner, unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the medical practitioner so named shall fix a reasonable time and place for a personal examination of the worker and shall notify him accordingly.

(4) If the worker fails to submit himself for such examination his right to compensation shall be suspended until such examination has taken place; and if such failure extends for a period of 15 days from the date when the worker was required to submit himself for examination no compensation shall be payable unless the commissioner is satisfied on a consideration of all the circumstances that compensation or such part of it as he thinks fit shall be payable.

(5) The worker shall be entitled, at his own expense, to have his own medical practitioner present at such examination.

(6) Where the worker is not attended by a medical practitioner he shall, if so required by the employer, submit himself for treatment by a medical practitioner without expense to the worker.

(7) If the worker fails to submit himself for treatment by a medical practitioner when so required under subsection (6), or having submitted himself for such treatment has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly:

Provided that where aggravation of the injury has resulted in death, the amount of compensation shall be the amount payable under this subsection or the amount payable under section 13, whichever is the lesser.

(8) Where there is evidence of continued aggravation of an injury or disease which had already been examined and for which the degree of incapacity had been determined, re-examination of the injury or disease for the purpose of determining the correct degree of incapacity shall be made at the expense of the employer.

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

PART IV

Eligibility for Compensation (ss 11-12)

11. Employer's liability for compensation for death or incapacity

(1) Subject to subsection (2) an employer whose worker suffers personal injury or an occupational disease arising out of and in the cause of the worker's employment shall be liable to pay compensation in accordance with the provisions of this Act.

(2) An employer shall not be liable to pay compensation for any injury or occupational disease-

- (a) which does not incapacitate the worker to an extent that he is unable to work and earn full wages for any length of time;
- (b) that has been deliberately self inflicted;
- (c) that is proved to have been caused by the worker's wilful misconduct such as-
 - (i) being under the influence of intoxicating or narcotic drink, drugs or other substance;
 - (ii) deliberate contravention of any law, regulation or order, whether statutory or otherwise, expressly made to safeguard the health and well being of workers;
 - (iii) the wilful removal or disregard of any safety measures or other device which the worker knew to have been provided for the purpose of securing the safety of workers; or
 - (iv) any other act or omission deliberately done contrary to given instructions; or
- (d) that can be proved to have been caused due to a health problem the worker has had and known about, but has not disclosed to the employer.

(3) Notwithstanding subsection (2) where the injury results in death or permanent incapacity the Minister may, on consideration of all the circumstances, award compensation to such extent as he considers appropriate.

12. Special cases

(1) Where the usual place of employment of a worker is in Botswana and he suffers injury while he is temporarily employed outside Botswana by the same employer, the worker shall be entitled to compensation from the employer in the same manner as if the injury was incurred during employment in Botswana.

(2) Where the usual place of employment of a worker is outside Botswana, and he suffers injury while he is temporarily employed in Botswana, he shall be entitled to compensation from the employer in the same manner as if he were ordinarily employed in Botswana:

Provided that where such worker is so employed in Botswana for a continuous period exceeding 12 months he shall be deemed to be ordinarily employed by the employer in Botswana.

(3) Where a worker is engaged in Botswana for the purpose of service in another country and he suffers injury whilst on his way to commence employment in such country or whilst being repatriated to his place of engagement in Botswana, such worker shall be entitled to compensation from the employer in the same manner as if the injury was incurred during employment in Botswana.

PART V

Compensation (ss 13-17)

13. Compensation in fatal cases

Where death results from injury or from an occupational disease to a worker in circumstances in which compensation is payable the compensation to be paid shall be equal to such number of monthly earnings as may be prescribed by the Minister in terms of subsection (2).

(2) The Minister may prescribe the compensation payable in terms of subsection (1) in the case-

- (a) where a worker leaves dependants that are wholly dependant upon his earnings;
- (b) where a worker leaves dependants only partially dependant upon his earnings; and

- (c) of reasonable expenses for the burial of the deceased worker:

Provided that, where in respect of the same accident giving rise to the injury or occupational disease compensation has been paid for permanent total or permanent partial incapacity, such compensation shall be deducted from the sum payable as compensation for the death of the worker:

Provided further that compensation payable under paragraph (b) shall not exceed that which is payable under paragraph (a).

14. Compensation in case where worker is presumed dead

(1) Subject to subsection (2), but notwithstanding anything to the contrary contained in any other law, a worker who disappears without trace in circumstances arising out of and in the course of his employment shall be presumed dead after a period of 36 months from the date of the disappearance, and compensation shall be payable to his dependants, in accordance with the provisions of section 13.

(2) Where it has been ascertained to the satisfaction of the Commissioner that the circumstances of the worker's disappearance are such as to lead to the conclusion that there is no doubt of the demise of the worker, a presumption of death may be made at such earlier period after the disappearance of the worker as the Commissioner may determine.

(3) The Commissioner may require that compensation payable under this section shall be paid in full to him at such period as he may determine after the disappearance of the worker, and he shall hold such compensation in trust until such time as he may determine to pay such compensation to the dependants of such worker in accordance with the provisions of either subsection (1) or (2).

15. Compensation in case of permanent total incapacity

(1) Where permanent total incapacity results from injury to a worker in circumstances in which compensation is payable, the amount of compensation payable shall be such number of monthly earnings as may be prescribed by the Minister.

(2) Where the permanent total incapacity is of such a nature that the injured worker must have the constant help of another person, compensation additional to that provided under subsection (1) shall be payable at the discretion of the Minister, up to a maximum of one-quarter of the amount which is payable under subsection (1).

16. Compensation in case of permanent partial incapacity

(1) Where permanent partial incapacity results from injury to a worker in circumstances in which compensation is payable, the compensation payable shall be such amount, computed as the Minister, following consultations with the Medical Board, may prescribe, both for injuries specified and not specified in the First Schedule.

(2) Where a worker incurs more than one injury, the amount of compensation payable shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

17. Compensation in case of temporary incapacity

(1) Where temporary incapacity, whether total or partial, results from injury to a worker the compensation payable shall be-

- (a) such amount of periodical payments as the Commissioner may determine as payable at such intervals as may be agreed upon or as the Commissioner may in the rules prescribe; or
- (b) a lump sum calculated accordingly having regard to the probable duration, and probable changes in the degree of the incapacity.

(2) Periodical payments referred to in subsection (1) shall be, or shall be at the rate proportionate to, a monthly payment of two-thirds of the difference between the monthly earnings which the worker was earning at the time of the accident and the monthly earnings which he is earning or is capable of earning in some suitable employment or business after the accident:

Provided that the duration of periodical payment shall not in the first place exceed six months, though the Commissioner may from time to time, after review of all the circumstances, extend the duration of periodical payments for periods of up to three months at a time, so, however, that in no case shall the total duration of periodical payments exceed 24 months.

(3) In fixing the amount of periodical payments the Commissioner shall have regard to any payment, allowance or benefit, including the value of any food, fuel and quarters which the worker may receive from the employer during the incapacity.

(4) On the ceasing of the incapacity before the date on which any periodical payments falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

(5) Where a worker in receipt of periodical payments under this section intends to leave the neighbourhood in which he was employed, for the purpose of residing elsewhere, he shall give notice of such intention to the employer who may agree with the worker for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments; if the employer and worker are unable to agree, either party may apply to the Commissioner who may order such redemption and determine the amount to be paid or order the continuance of the periodical payments:

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the worker shall not in any case exceed the total sum which would be payable if the periodical payments had continued for the maximum period allowed under subsection (2).

(6) If a worker in receipt of periodical payments under this section leaves the neighbourhood in which he was employed, for the purpose of residing elsewhere, without giving notice as provided in subsection (5), or, having given such notice, leaves the neighbourhood as aforesaid without having come to an agreement with his employer for the redemption or continuance of such periodical payments, or without having made an application to the Commissioner under subsection (5), the Commissioner may, after consideration of all the circumstances, direct that the worker shall not be entitled to any benefits under this Act during or in respect of the period of his absence, or if the period of such absence exceeds six months that the worker shall cease to be entitled to any benefits under this Act.

(7) In the event of death or permanent disability following after temporary incapacity to a worker, no deduction shall be made to the amount of compensation payable under sections 13, 14, 15, and 16 by reason of any payments having been made under this section.

PART VI

Calculation and Distribution of Compensation (ss 18-20)

18. Method of calculating earnings

(1) For the purposes of this Act, the monthly earnings of a worker shall, subject to subsection (4) and (5), be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated during the previous 12 months if he has been employed by the same employer for that period of time, but, if not, then for any less period during which he has been in the employment of the same employer:

Provided that-

- (i) where by reason of the shortness of the time during which the worker has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average monthly amount which, during the 12 months previous to the injury, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same district; and
- (ii) in no case may monthly earnings be computed to be less, in the case of a worker working six days a week, than 26 times, and, in the case of a worker working five days

a week, 22 times, the minimum daily wage for adults prevailing in the area in which the worker was employed at the time of the injury.

(2) For the purposes of subsection (1), employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or any other unavoidable cause.

(3) Where the worker has entered into concurrent contracts of employment with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his monthly 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 injury:

Provided that the earnings of the worker under the concurrent contract shall be taken into account only so far as the worker is incapacitated from performing the concurrent contract.

(4) Where a worker was, at the date of the accident, under the age of 18 years his earnings shall, for the purposes of assessing compensation payable in the case of permanent incapacity, be deemed to be such amounts as, if the accident had not occurred, he would probably have received upon attaining the age of 18 years, or at the end of a period of five years after the accident, whichever calculation is more favourable to the worker.

(5) Where a worker was, at the date of the accident, employed under a contract of apprenticeship, his earnings shall, for the purposes of assessing compensation payable in the case of permanent incapacity, be deemed to be such amount as, if the accident had not occurred, he would probably have received upon the completion of his contract of apprenticeship.

(6) Upon the request of the worker or any duly authorised person acting on his behalf under this Act made to an employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the monthly earnings may be calculated for the purposes of this section, and any employer who, without reasonable cause, fails to furnish such list upon request, or who furnishes or causes to be furnished any such list which he knows or has reason to believe is false in any material particular, shall be guilty of an offence and liable to a fine not exceeding P1000.

19. Persons entitled to compensation

(1) The compensation shall be payable to or for the benefit of the worker, or, where death results from the injury or occupational disease, to or for the benefit of his dependants as provided by this Act.

(2) Where a dependant dies before a claim in respect of death is made under this Act, or, if a claim has been made, before an order for the payment of compensation has been made, the legal personal representative of the dependant shall have no right to payment of compensation, and claim for compensation shall be dealt with as if the dependant has died before the worker.

20. Distribution of compensation

(1) Compensation payable where the death of a worker has resulted from an injury or occupational disease shall be paid to the Commissioner, and the Commissioner may order any sum so paid to be apportioned among the dependants of the deceased worker or any of them in such proportion as the Commissioner thinks fit, or, in the discretion of the Commissioner, to be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the Commissioner thinks fit.

(2) Where, on application being made in accordance with regulations made under this Act, it appears to the Commissioner that, on account of the variations of the circumstances of the various dependants, or for any other sufficient cause, an order made under this subsection ought to be varied, the Commissioner may make such order for the variation of the former order

as in the circumstances of the case the Commissioner may think just.

(3) Subject to section 38, compensation payable under sections 13, 14, 15 or 16 and the total sum payable under section 17 shall be paid to the Commissioner, and any sum so paid shall be paid to any person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the Commissioner thinks fit.

(4) Nothing in this section shall prevent an employer from making any payment to a worker pending the settlement or determination of the claim and the Commissioner may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to such worker under this section.

(5) Any other compensation payable under this Act may be paid to the worker or to the Commissioner and if paid to the Commissioner, the Commissioner shall pay it to any person entitled thereto.

(6) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount paid to the Commissioner under this Act.

PART VII

Occupational Diseases (ss 21-27)

21. Compensation in respect of diseases

(1) A worker suffering from a scheduled disease or his dependants may obtain from a medical practitioner a certificate certifying that-

- (a) the worker is suffering from a scheduled disease causing incapacity or that the death of the worker was caused by a scheduled disease; and
- (b) that such disease was due to the nature of the workers's employment and was contracted within such period preceding the date of incapacity or death as may be prescribed in respect of that disease.

(2) Where the Commissioner is satisfied on the evidence that the allegations contained in the certificate are correct, the worker, or if he is dead his dependants, shall be entitled to compensation under this Act as if such incapacity or death had been caused by an injury arising out of and in the course of his employment, and the provisions of this Act shall apply with any necessary modifications.

(3) In any case of any incapacity or death arising from a scheduled disease, if the worker has at any time represented in writing to the employer that he was not suffering or had not previously suffered from that or a similar scheduled disease, knowing that the representation was false, then the Commissioner, after a consideration of all the circumstances, may forfeit the compensation provided for under this Act or such part thereof as he thinks fit.

22. Liability to pay compensation

(1) Compensation payable under section 21 shall be paid by the employer who last employed the worker during the period referred to in section 21, unless that employer proves that the disease was not contracted while the worker was employed by him.

(2) The worker or his dependants if so required shall furnish to the employer from whom compensation is claimed such information as he or they possess as to the names and address of all other employers who during the prescribed period employed the worker in the occupation to the nature of which the disease is due.

(3) Where the employer alleges that the disease was in fact contracted while the worker was employed by some other employer and not while employed by him, he may join such other employer as a party to the proceedings in such manner as may be prescribed, and, if the allegation is proved, that employer shall be the employer from whom the compensation shall be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the prescribed period, employed the worker in the occupation to the nature of which the disease is due, may be required by the Commissioner to make to the employer from whom compensation is recoverable such contributions as in default of agreement

may seem to him to be appropriate.

23. Special provisions relating to scheduled diseases

(1) In the application of this Act to incapacity or death caused by a scheduled disease, references to the date of the injury shall be construed as meaning-

- (a) in the case of a disease causing incapacity, the date of the certificate referred to in section 21; and
- (b) in the case of death from a disease, the date of the death of the worker.

(2) The provisions of this Act relating to the giving of notice of an injury and the making of a claim for compensation shall apply in respect of the recovery of compensation under this Part as they apply in respect of the recovery of compensation for an injury arising out of and in the course of employment.

(3) Compensation payable under this Part shall be calculated with reference to the earnings of the worker under the employer from whom compensation is recoverable, and the monthly earnings of the worker shall be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated during the 12 months preceding the date of the certificate referred to in section 21, or, if the worker was not then so employed the earnings shall be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated during the period when he was employed by the employer from whom the compensation is recoverable, and for this purpose section 18 shall, with necessary modifications, apply.

24. Presumption as to cause of death

If a worker who becomes incapacitated or who dies as a result of any scheduled disease was, within the prescribed period preceding the incapacity or death, employed in any occupation prescribed in respect of that disease, it shall be presumed, unless the contrary is proved, that the disease was due to the nature of such employment.

25. Right of worker against previous employer

Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the worker during the prescribed period referred to in section 21, if the employer who last employed the worker during that period proves that the disease was not contracted while the worker was employed by him, in which case section 22 (3) shall apply.

26. Compensation to include medical aid

For the purposes of this Part a reference to compensation includes a reference to medical aid within the meaning of Part VIII.

27. Power of Minister to amend Second Schedule

The Minister may, following consultation with the Labour Advisory Board appointed under the Employment Act, by Order, delete from the Second Schedule any disease scheduled therein, and may in like manner insert any disease in that Schedule:

Provided that the intention to issue such an Order shall be published by notice in the *Gazette* at least one month before the issue thereof, and any person wishing to do so may make his objections in writing to the Minister.

PART VIII

Medical Aid (ss 28-30)

28. Medical expenses

(1) The employer shall, in addition to any compensation payable under this Act, defray the reasonable expenses incurred by a worker within Botswana, or with the approval of the Commissioner, outside Botswana, as a result of any injury or occupational disease which would entitle the worker to compensation under this Act-

- (a) in respect of medical, surgical, dental and hospital treatment, skilled nursing services and the supply of medicines to such amount as may be prescribed;
- (b) in respect of the supply, fitting, maintenance, repair and normal renewal of any artificial appliance, limb, apparatus or mechanical aid to such amount as may be prescribed;

- and
- (c) in respect of reasonable transport charges to such amount as may be prescribed, incurred in transporting the worker to and from a place where facilities for examination and treatment or assessment are available, if such transport is certified to be necessary by the medical practitioner in charge of the case.

(2) In determining any dispute in respect of compensation or upon the application of any interested person, the Commissioner may order the payment of any of the expenses referred to in subsection (1) to the person entitled to receive it, and if such expenses exceed the amount provided in that subsection the Commissioner may apportion the amount available in such manner as he considers expedient.

29. Decisions of Commissioner in regard to medical aid

(1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided under this Part shall be determined by the Commissioner.

(2) In determining any question under subsection (1) the Commissioner may call for such evidence as he considers desirable or necessary.

(3) Any party to the proceedings under this section dissatisfied by the decision of the Commissioner may appeal such decision to the Medical Board.

30. Fees for medical aid to be prescribed

(1) The medical aid fees and charges for workers within Botswana shall be in accordance with such scale as may be prescribed, and no claim for an amount in excess of a fee or charge in accordance with this scale shall lie against any worker or his employer in respect of any such medical aid.

(2) Where medical aid for any worker is not obtainable in Botswana, the fees and charges for such medical aid obtained outside Botswana shall be in such amount as the Commissioner, following consultations with the Medical Board, may, in each case, determine.

PART IX

Compulsory Insurance (ss 31-37)

31. Employer to insure against liability under this Act

(1) Subject to subsections (2) and (3), every employer shall insure and keep himself insured with such insurers as may be approved by the Commissioner in respect of any liability which he may incur under this Act to any worker employed by him.

(2) This section shall not apply to the Government.

(3) Any employer required to insure under this section may, instead, in such manner as may be prescribed, deposit with the Commissioner such sum of money or furnish such other security as the Commissioner may approve and such money or other security shall be used to pay compensation to that employer's worker as occasion may arise.

(4) Any employer who fails to insure or keep himself insured as required by this section shall be guilty of an offence and be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three years, or to both.

(5) An employer convicted under subsection (4) shall be liable to compensate any worker employed by him who is entitled to compensation under the provisions of this Act, and any such compensation payable shall be a debt to the worker so entitled.

32. Certificate of insurance

Whenever an employer insures himself pursuant to section 31 (1), the insurer shall, at the time of the acceptance of the risk, issue and deliver to the employer a certificate of insurance in the prescribed form.

33. Certain conditions in policy to be ineffective

(1) Where a policy of insurance is issued to an employer pursuant to his obligation under section 31, any condition in such policy providing that no liability shall arise thereunder, or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, in respect

of such liabilities as are required to be covered by such policy, be of no effect.

(2) Nothing in this section shall be construed to render void any provision in a policy requiring the employer insured to pay to the insurer any sum which the employer is liable to pay under the policy and which has been applied to the satisfaction of any claims of workers employed by the employer.

34. Duty to surrender certificate of insurance on cancellation of policy

(1) Where a policy issued pursuant to this Act, is cancelled by mutual consent or by virtue of any provision in the policy, the employer to whom the certificate of insurance was issued under section 31 shall, within 14 days beginning with the day when such cancellation became effective, surrender the certificate of insurance to the insurer, or, if it has been lost or destroyed, make a statutory declaration to that effect and deliver the same to the insurer.

(2) Any employer who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P1 500.

35. Duty of insurer to satisfy determination against employer

(1) If an employer to whom section 31 applies is duly insured as required by that section and an order or determination in respect of any liability required to be covered by such insurance is obtained by a worker against such employer, then, notwithstanding that the insurer may be entitled to avoid or cancel, or have avoided or cancelled, the policy of insurance, the insurer shall, subject to this section, pay to the worker entitled to the benefit of the order or determination any sum payable thereunder in respect of the liability including any amount payable in respect of costs and interest.

(2) No sum shall be payable by an insurer under subsection (1)-

- (a) in respect of any order or determination unless, before or within 21 days after the commencement of the proceedings in which the order or determination was given, the insurer had notice of the bringing of the proceedings;
- (b) in respect of any order or determination, so long as execution thereon is stayed pending an appeal;
- (c) in connection with any liability, if, before the occurrence giving rise to the liability, the policy of insurance was cancelled by mutual consent or by virtue of any provision contained therein and either before the occurrence but before the expiration of 14 days beginning with the day when such cancellation of the policy became effective-
 - (i) the certificate of insurance was surrendered to the insurer;
 - (ii) the employer to whom the certificate of insurance was issued made a statutory declaration stating that the certificate of insurance has been lost or destroyed; or
 - (iii) the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate of insurance; or
- (d) if, in an action commenced before or within three months after the commencement of the proceedings in which the order or determination was given, the insurer has obtained a declaration from the court that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that the employer obtained the insurance by the non-disclosure of material fact or a representation of fact which was false in some material particular, or, if the insurer has avoided the contract of insurance on that ground, that he was entitled to do so apart from any provision of such contract:

Provided that an insurer who has obtained such a declaration in an action shall not be entitled to the benefit of this paragraph in respect of any order or determination obtained before the commencement of such action unless, before or within 14 days after the commencement of such action, he has given notice to the worker who is the claimant in the proceedings stating that he intends to rely on this paragraph and specifying the non disclosure of false representation on which he proposes to rely, and a worker to whom such notice is so given shall be entitled, if he thinks fit, to be made a party thereto.

(3) If the amount which an insurer becomes liable to pay under this section in respect of the liability of an employer insured by a policy exceeds the amount for which he would, apart from this section, be liable under the policy of insurance in respect of that liability, he is entitled to recover the excess from that employer.

(4) Where, pursuant to this section, an insurer becomes liable to satisfy an order or determination against an employer, such insurer may appeal to the High Court under section 47 as if he were the employer.

(5) For the purposes of this section "order or determination" means an order or determination made by the Commissioner under this Act.

36. Penalty for false statement and wilful avoidance of policy

Any employer who, for the purpose of obtaining a policy of insurance as required by section 31, makes any false statement in consequence whereof the policy is liable to be avoided, or wilfully does any act which disentitles him to claim under the policy, shall be guilty of an offence and liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

37. Employers against whom claims are made to give information as to insurance

(1) An employer against whom a claim is made in respect of any liability required to be covered by insurance under section 31 shall, on demand being made by the Commissioner or any person authorized by him in that behalf, or by or on behalf of any worker making a claim, state whether he is insured in respect of that liability and shall give such particulars concerning the policy of insurance as the person making the demand may require and shall produce for inspection by such person the certificate of insurance.

(2) Any employer who-

- (a) without reasonable excuse fails to comply with this section; or
 - (b) wilfully makes any false statement in reply to any such demand,
- shall be guilty of an offence and liable to a fine not exceeding P1 000.

PART X

Alternative Remedies (ss 38-45)

38. Agreement as to compensation

(1) The employer and worker may, after the injury or occupational disease in respect of which the claim to compensation has arisen, agree in writing as to the compensation to be paid by the employer.

(2) Such agreement shall be in triplicate, one copy to be kept by the employer, one copy to be kept by the worker and one copy to be kept by the Commissioner:

Provided that-

- (i) the compensation agreed upon shall not be less than the amount payable under this Act; and
- (ii) where the worker is unable to read and understand writing in the language in which the agreement is expressed, the agreement shall not be binding against him unless it is endorsed by a certificate of the Commissioner, a magistrate or a labour officer, to the effect that he read over and explained to the worker the terms thereof and that the worker appeared fully to understand and approve of the agreement.

(3) Any agreement made under subsection (1) may on application be certified by the Commissioner, and when so certified shall be enforceable as if it were a determination of the Commissioner.

(4) Where compensation has been agreed and notwithstanding that the agreement has been certified by the Commissioner under subsection (3) the Commissioner may, on application by any party within three years after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the Commissioner may think just, if it is shown to his satisfaction that-

- (a) the sum paid or to be paid was or is not in accordance with subsections (1) and (2);
- (b) the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury;
- (c) subsequent and serious medical complications have arisen which are directly related to the injury; or
- (d) the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.

39. Procedure in fatal cases

(1) Section 38 shall not apply in fatal cases and any compensation payable in such cases shall be paid in full to the Commissioner who shall arrange payment to the dependants.

(2) Where, in any proceedings on a claim for compensation in respect of the death of a worker, the Commissioner is satisfied that other or sufficient evidence as to the dependency on the deceased worker or a person claiming to be a dependant, or as to the degree of dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to dependency and as to the degree of dependency of the claimant signed by a District Commissioner or commissioner of oaths in the district in which the claimant resides, whether within Botswana or outside Botswana, shall be *prima facie* proof and the facts stated therein.

(3) The signature of the District Commissioner or commissioner of oaths shall be admitted without further proof unless the Commissioner has reason to doubt the genuineness thereof.

(4) Where, in a fatal case, on application being made in accordance with regulations made under this Act, it appears to the Commissioner that, on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, such a course is necessary or just, he may vary any previous order or determination in respect of the payment of compensation.

(5) In a fatal case, where there are both total and partial dependants of the deceased worker, nothing in this Act shall be construed as preventing the compensation payable being allotted partly to the total and partly to the partial dependants.

40. Remedies against both employer and stranger

(1) Where the injury in respect of which compensation is payable was caused in circumstances creating a legal liability in some other person than the employer (in this section referred to as "the third party") to pay damages to the worker in respect thereof-

- (a) the worker may both claim compensation under this Act and take proceedings against the third party in court 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 paragraph (b), has or is likely to become payable to the employer by the third party; and

- (b) 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 as a result of the accident, and may exercise such right either by joining in an action begun by the worker against the third party or by instituting separate proceedings:

Provided that the amount recoverable under this paragraph shall not exceed the amount of damages, if any, which, in the opinion of the court, would have been awarded to the worker but for this Act.

(2) A worker shall, before instituting proceedings for damages under subsection (1), notify, in writing, the employer of his intention to do so and shall likewise notify 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 employer may require, and no proceedings in the court to recover damages against a third party may be instituted by a worker until he has so notified the employer of his intention to institute such

proceedings and unless he had lodged a claim for compensation.

(3) Notwithstanding anything to the contrary contained in any written law, where written notice of intention to institute proceedings under subsection (1)(b) has been given by an employer to the third party within 12 months of the receipt by the employer of due notice of the accident concerned, no such proceedings shall lapse, or be barred, under any written law relating to the limitation of actions until after the expiration of a period of three months from the date upon which a claim to compensation in respect of such injury has been settled or finally determined by a court.

41. Proceeding independently of this Act

Where the injury was caused by the personal negligence or wilful act or default of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer by civil suit independently of this Act:

Provided that-

- (i) any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury; and
- (ii) any compensation paid under this Act shall take into account any damages previously paid in respect of the same injury.

42. Where employer not liable in damages

If, in any proceedings by civil suit independently of this Act or on appeal, it is determined that the employer is not liable in damages, the court or appellate court in which such proceedings are taken may refer the case to the Commissioner with or without such costs to either party as the court or appeal court thinks fit and the Commissioner shall then proceed to determine whether compensation is payable and shall assess the amount of any such compensation.

43. Principals and contractors

(1) Where any person (in this section referred to as "the principal"), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as "the contractor") for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(2) Nothing in this section shall or shall be deemed to affect any right of the principal to claim indemnity from any other person who would be liable to pay compensation to the worker independently of this section.

(3) Where a claim or application for compensation is made under this section against a principal, the principal shall give notice thereof to the contractor who shall thereupon be entitled to intervene in any application made against the principal.

(4) Nothing in this section shall be construed as preventing a worker receiving compensation under this Act from the contractor instead of the principal.

(5) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

44. Provisions in case of bankruptcy of employer

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any worker, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the

event of the company having commenced to be wound up either voluntarily or compulsorily or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as regards that liability shall, notwithstanding anything in any written law relating to bankruptcy and the winding-up of companies, be transferred to and vest in the worker, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the worker than they would have been under to the employer.

(2) If the liability of the insurers to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may take steps to recover the balance from the receiver or manager.

(3) There shall be included among the debts which-

- (a) under the Insolvency Act are in the distribution of the property or assets of a bankrupt; and
- (b) under any written law relating to companies are, in the winding-up of a company, to be paid in priority to all other debts;

the amount due in respect of any compensation or liability for compensation before the following dates, that is to say-

- (i) in the circumstances of paragraph (a), the date of the receiving order, and
- (ii) in the circumstances of paragraph (b), the date of the winding-up order, or the date of commencement of the winding-up of the company, whichever is appropriate.

(4) Where the compensation is a periodical payment, the amount due in respect thereof shall be taken, for the purposes of this section, to be the amount of the lump sum of which the periodical payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Act.

(5) Where the bankrupt company or company in liquidation has entered into such a contract with insurers referred to in subsection (1), subsections (3) and (4) shall not apply in respect of the liability of the employer to the worker or that part thereof which is met by the insurers.

45. Contracting out

Any contract or agreement, whether made before or after the commencement of this Act, whereby a worker relinquished any right of compensation from an employer for injury arising out of and in the course of his employment, shall be null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act:

Provided that a worker, who has obtained compensation in respect of permanent partial or permanent total incapacity, may enter into a contract reducing or giving up his right to compensation under this Act in respect of any future personal injury by accident if such is certified to be fair and reasonable by the Commissioner.

PART XI

Miscellaneous (ss 46-57)

46. Power of Minister to submit questions of law

The Minister may, if he thinks fit, submit any question of law arising under this Act for a decision of the High Court; such submission shall be in the form of a special case in accordance with regulations made under this Act.

47. Appeals to the High Court

Subject to the conditions set out hereunder, an appeal shall lie to the High Court from any order or determination under this Act where-

- (a) a question of law is involved; or
- (b) the order or determination is one which could not reasonably have been made in view

of the evidence:

Provided that-

- (i) no appeal shall lie in respect of orders or determinations under section 50;
- (ii) unless some substantial question of law is involved, no appeal shall lie except with the leave of the Minister or of the High Court if the amount in dispute in the case is less than P4 000;
- (iii) no appeal shall lie in any case in which the parties have agreed to abide by the determination of the Commissioner, or in which the order of the Commissioner gives effect to an agreement concluded between the parties; or
- (iv) no appeal shall lie after the expiration of 30 days from the order or determination of the Commissioner unless the High Court, after consideration of all the circumstances of any particular case, considers it just or proper to extend the time for appealing under this provision.

48. Limitation of power of employer to end or decrease periodical payments

Subject to the limitations referred to in sections 10 (4) and 17 (1), an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the Commissioner-

- (a) to end periodical payments in respect of temporary incapacity except-
 - (i) where a worker resumes work and his earnings are not less than the earnings which he was obtaining before the injury, or
 - (ii) where a worker dies;
- (b) to diminish periodical payments in respect of temporary incapacity except-
 - (i) where a worker in receipt of such periodical payments in respect of total incapacity has actually returned to work, or
 - (ii) where the earnings of a worker in receipt of such periodical payments in respect of partial incapacity have actually been increased.

49. Payment of compensation by instalment

A worker may, in writing to the Commissioner, require that any compensation payable to him shall be paid by instalments at such times and in such amounts as he may specify, and in such event the full amount of the compensation shall be paid in a lump sum by the employer to the Commissioner who shall arrange instalment payments to the worker according to his written instructions.

50. Application to the Commissioner

(1) Any interested party or any duly authorized person acting on behalf of a worker under this Act may apply to the Commissioner for a determination or order if-

- (a) any question or matter to be determined under this Act has arisen and requires determination; or
- (b) an employer and worker have not, within 30 days after an injury to the worker giving rise to a claim for compensation, agreed in writing as to the amount of compensation to be paid.

(2) Applications to the Commissioner shall be in writing in the prescribed form.

(3) Pending the outcome of an application to the Commissioner, the employer may make an interim payment to the worker concerned, and the Commissioner may order that the whole, or any part of such payment, shall be deducted from the amount of compensation payable under this Act.

51. Enforcement of determinations

Determinations or orders of the Commissioner under this Act may be enforced as if they were determinations or orders of a magistrate in civil cases, irrespective of the amounts involved.

52. Compensation not to be assigned, charged or attached

Compensation payable under this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set

off against such compensation.

53. Regulations

The Minister may make regulations providing for any matter which under this Act is to be provided for by regulations or for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may make provision for-

- (a) prescribing procedures, forms and fees;
- (b) prescribing anything which is to be or may be prescribed under this Act;
- (c) requiring employers to keep such records and to make such periodic and other returns as to such matters as he thinks fit, and prescribing a time limit for the making of such returns.

54. Offences

(1) Any person required to keep a record or to make a return by virtue of any regulation made under section 53 who fails to keep such record or to make such return within the time in which he is required to make the return, or who makes or causes to be made a record or return which is false in any particular, or in being so required fails to give any information or explanation respecting the record or return which it is in his power to give, shall be guilty of an offence and liable to a fine not exceeding P1000, and if the contravention in respect of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P100 for each day on which the contravention continued.

(2) Any person who fails to pay compensation duly computed in accordance with the provisions of this Act and the Regulations made thereunder, shall be guilty of an offence and be liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 10 years or to both.

55. Other laws

(1) Except where otherwise expressly provided, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law.

(2) The Prescriptions Act shall not apply in relation to claims for compensation.

56. Savings

All subsidiary legislation made under the repealed Act [the Workmen's Compensation Act], and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation may not be inconsistent with the provisions of this Act, continue in force as if made under this Act.

57. Transitional provisions

Notwithstanding the repeal [of the Workmen's Compensation Act] any-

- (a) claim, application or other process commenced; or
- (b) determination, order or other ruling made;

under the repealed Act, immediately before the commencement of this Act, shall be deemed to have been made under this Act.

FIRST SCHEDULE SCHEDULE OF PERCENTAGE INCAPACITIES

(section 16)

<i>Injury</i>	<i>Percentage of incapacity</i>
Loss of two limbs	}
Loss of both hands or of all fingers and thumbs	}
Loss of both feet	}
Total loss of sight	} 100
Total paralysis	}
Injuries resulting in being permanently bedridden	}

Any other injury causing permanent total disablement			
Loss of arm at shoulder	.....		70
Loss of arm between elbow and shoulder	.....		60
Loss of arm at elbow	.....		55
Loss of arm between wrist and elbow	.....		50
Loss of hand at wrist	.....		50
Loss of four fingers and thumb on one hand	.....		50
Loss of four fingers	.....		35
Loss of thumb	both phalanges	.....	35
	one phalange	.....	10
Loss of index finger	- three phalanges	.....	10
	- two phalanges	.....	8
	- one phalange	.....	4
Loss of middle finger	- three phalanges	.....	6
	- two phalanges	.....	4
	- one phalange	.....	2
Loss of ring finger	- three phalanges	.....	5
	- two phalanges	.....	4
	- one phalange	.....	2
Loss of little finger	- three phalanges	.....	4
	- two phalanges	.....	3
	- one phalange	.....	2
Loss of metacarpals	- first or second (additional)	.....	3
	- third, fourth or fifth	.....	2
Loss of leg	- at or above knee	.....	70
	- below knee	.....	60
Loss of foot			
Loss of toes	- all of one foot	.....	40
	- great, both phalanges	.....	15
	- great, one phalange	.....	5
	- other than great, if more than one toe lost-each	.....	1
Loss of sight of one eye	.....		30
Loss of hearing in one ear	.....		10
Total loss of hearing	.....		50

Scars from injuries or burns which result in disfigurement shall be treated as resulting in from 0 to 50 per cent permanent incapacity according to their size and location.

Total permanent loss of the use of a member shall be treated as loss of such member.

The loss of a sexual organ or other internal organ shall be treated as resulting in from 0 to 75 per cent permanent incapacity depending on the location and effects of such loss.

The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 per cent of the incapacity for loss of the part of that joint, according to whether the joint is ankylosed in a favourable or unfavourable position.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the loss of the whole hand.

Injuries which result in permanent incapacity but which are not included in this Schedule shall be assessed in relation to the percentages of incapacity specified in this Schedule,

wherever possible.

SECOND SCHEDULE OCCUPATIONAL DISEASES

(section 27)

Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
Bronchopulmonary diseases by hard-metal dust.	"
Bronchopulmonary diseases caused by cotton dust (byssinosis), or flax, hemp or sisal dust.	"
Occupational asthma caused by sensitising agents or irritants both recognised in this regard and inherent in the work process.	"
Extrinsic allergic alveolitis and its sequelae caused by the inhalation of organic dusts, as prescribed by any written law.	"
Diseases caused by beryllium or its toxic compounds.	"
Diseases caused by cadmium or its toxic compounds.	"
Diseases caused by phosphorus or its toxic compounds.	"
Diseases caused by chromium or its toxic compounds.	"
Diseases caused by manganese or its toxic compounds.	"
Diseases caused by arsenic or its toxic compounds.	"
Diseases caused by mercury or its toxic compounds.	"
Diseases caused by lead or its toxic compounds.	"
Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
Diseases caused by carbon disulfide.	"
Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydro-carbons.	"
Diseases caused by benzene or its toxic homologues.	"
Diseases caused by toxic nitro-amino-derivatives of benzene or its homologues.	"
Diseases caused by nitroglycerin or other nitric acid esters.	"
Diseases caused by alcohols, glycols or ketones.	"
Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulfide.	"
Hearing impairment caused by noise.	"
Diseases caused by vibration (disorder of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	"
Diseases caused by work in compressed air.	"
Diseases caused by ionising radiations.	All work involving exposure to the action of ionising radiations.
Skin diseases caused by physical, chemical or biological agents not included under other items.	All work involving exposure to the risk concerned.
Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	
Lung cancer or mesotheliomas caused by asbestos.	
Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) Health or laboratory work. (b) Veterinary works, animal. (c) Work handling animal carcasses, parts or such carcasses, or merchandise

Aniline poisoning
Begassosis
Tobaccosis
Toxic anaemia
Loss of Memory

which may have been
contaminated by animals,
animal carcasses, or parts of
such carcasses.
(d) Other work carrying a
particular risk of contamination.