

# The Workmen`s Compensation (ACT)

## THE WORKMEN'S COMPENSATION ACT, 1983(Act No.7 of 1983)

An Act to provide for the compensation and medical treatment of workmen who suffer injury or contract disease in the course of their employment.

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## PART 1: PRELIMINARY

Short title, commencement and application.

1. (1) This Act may be cited as the Workmen's Compensation Act, 1983, and shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

(2) This Act applies to every employer in Swaziland, including the Government and to every workman who is employed in or outside Swaziland by such an employer except a workman who is employed outside Swaziland in employment to which any law of another country applies which provides compensation for employment accidents.

Meaning of 'workman'.

2. (1) In this Act, unless the context otherwise requires – 'workman' means, subject to sub-section (2) of this section, any person who has entered into or works under a contract of service or of apprenticeship or of traineeship whether the contract is express or implied, is oral in writing and whether the remuneration is calculated by time or work done.

(2) The following persons are excluded from the definition of 'workman'–

- a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purpose of any game or recreation and engaged or paid through a club;
- b) an outworker, that is to say a person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished, repaired or adapted for sale on premises not under the control of the employer;
- c) a domestic servant employed as such for wages in or about a private household by the householder;
- d) a member of the employer's family dwelling in his house;
- e) a member of Umbutfo Swaziland Defence Force;
- f) Any class of persons whom the Minister may by notice in the Gazette declares not to be workmen for the purpose of this Act.

(3) If in any claim for the recovery of compensation under this Act it appears to the Labour Commissioner or to the Court that the contract of service or apprenticeship or traineeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the Labour Commissioner or the Court as the case may be, may, if having regard to all the circumstances of the case it is thought proper so to do, deal with the matter as if the injured person had at the time the aforesaid been a person working under a valid contract of service or apprenticeship.

(4) Any reference to a workman who has been injured shall, unless the context otherwise requires, if the workman is dead, include a reference to his legal personal representative or to his dependants or any of them or to such officer as the Minister may appoint to act on behalf of the dependants of the workman.

Interpretation.

3. (1) In this Act, unless the context otherwise requires – "Board" means the Workmen's Compensation Medical Board established under Section 31;

“Compensation” means compensation as provided for by this Act;

“Court” means the Industrial Court established by Section 4 of the Industrial Relations Act 1980;

“dependant” means a member of the family of a workman who was wholly or in part dependant upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent; and if the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grand-parent so dependent upon his earnings, shall include such an illegitimate child or parent or grand-parent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependant partially on contributions from such other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

“Dental practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970;

“Disablement” means, if of a temporary nature, such disablement as temporarily incapacitates a workman for, or temporarily reduces his earning capacity in, any employment which he was cable of undertaking at the time of the accident resulting in such disablement:

Provided that:-

- (i) every injury specified in the Second Schedule shall be deemed to result in permanent disablement to the percentage degree specified against each; and
- (ii) conspicuous disfigurement shall be deemed to result in permanent disablement whether or not accompanied by any actual loss of earning capacity;

“earnings” include wages any allowance in respect of increased cost of living paid to the workman by the employer, the value of any food, fuel or quarters supplied to the workman by the employer, any overtime payments or other special remuneration for work done whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, casual payments of a non-recurrent nature, any ex-gratia payment whether given by the employer or other person, the value of a traveling allowance, the value of any traveling concession, the value of contribution paid by the employer of a workman towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

“employer” includes the Government, the Swazi National Administration, any body of persons corporate or incorporate and the legal personal representative of a deceased employer and, if the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or of apprenticeship or of traineeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for such other person; and in relation to a person employed for a purpose 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 purpose of this Act, be deemed to be the employer;

“Incapacity” means incapacity for work which the workman concerned can reasonably be expected to do;

“Injury” means physical or mental injury and includes the contraction of a disease and the aggravation or acceleration of any pre-existing injury or disease where the employment is a contributory factor to such aggravation or acceleration;

“Labour Commissioner” means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorized in writing by the Labour Commissioner to act on his behalf;

“Medical aid” means any or all of the benefits prescribed in paragraphs (a) to (h) inclusive of Section 30(1);

“Medical practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970:

“Member of the family” means the wife, common law wife, husband, father, mother, grandfather, grandmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister:

“Minister” means the Minister for the time being responsible for Labour;

“month” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding month;

“Occupational disease” means any disease specified in the First Schedule and pneumoconiosis;

“pneumoconiosis” means fibrosis of the lungs to silica dust, asbestos and dust or other dust includes the condition of the lungs known as dust reticulation but does not include byssinosis or bagassosis;

“Serious and willful misconduct” shall include-

- a) drunkenness;
- b) a willful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen;
- c) any other act or omission which the Court, having regard to all the circumstances of an accident, may determine to be serious and willful misconduct;

“Public authority” means the Government or the Swazi National Administration or a local.

(2) The exercise and performance of the powers and duties of a public authority shall, for the purposes of this Act, be deemed to be the trade or business of such public authority.

Definition of employment accident.

4. For the purposes of this Act, employment accident means an occurrence which causes personal injury to a workman by accident arising out of and in the course of his employment and shall be deemed to include personal injury by accident happening-

- (a) while traveling by any reasonable means and any reasonable route between a workman’s place of residence for the time being and his place of work;
- (b) notwithstanding that the workman is at the time acting in contravention of any statutory or other regulations applicable to his employment or of any orders given to him by or on behalf of his employer or that he is acting without instructions from his employer, if the act is done for the purposes of and in connection with his employer’s trade or business;
- (c) in or about premises at which the workman is for the time being employed for the purposes of his employer’s trade or business if the accident happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or the thought to be, or possibly to be, injured or imperilled, or to avert or minimize serious damage to property;
- (d) in the course of a workman’s employment which is caused by another person’s misconduct, skylarking or negligence or by the behaviour or presence of an animal (including a bird, fish or insect) or is caused by or consist in the workman being struck by any object or lightning if the workman did not directly or indirectly induce or contribute to the accident by his conduct outside the employment or by any act not incidental to the employment:

Provided that an accident arising in the course of a workman’s employment shall be deemed to have arisen out of that employment in the absence of evidence to the contrary.

#### PART 11-COMPENSATION FOR INJURY

Employer’s liability for compensation for death or injury resulting from employment accident.

5. (1) If in any employment personal injury is caused to a workman by accident and that accident is an employment accident his employer shall be liable to pay compensation in accordance with this Act.

(2) Notwithstanding sub-section (1) the employer shall not be liable to pay compensation under this Act-

(a) in respecting of any injury, expect an injury causing death, which does not incapacitate the workman for at least three days from earning full wages at the work at which he was employed;

(b) if it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, unless the accident results in death or serious permanent disablement, in which case the Labour Commissioner or the Court, as the case may be, on consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as is thought fit.

(3) No compensation shall be payable under this Act in respect of any incapacity, disablement or death resulting from an employment accident or occupational disease if the workman has at any time represented in writing to the employer that he was not suffering and had not previously suffered from a similar serious incapacity or disablement knowing that the representation was false.

(4)When an employment accident happens to a workman to whom this Act applies, while he is temporarily employed by his employer outside Swaziland, the workman shall be entitled to compensation in the same manner as if the accident had happened in Swaziland.

Compensation in case of death.

6. If death results from injury-

- (a) if the workman leaves any dependants wholly dependent on his earning, the amount of the compensation shall be a

sum equal to forty eight months earnings, subject to the provisions of section 10 (1) (a). but if in respect of the same accident compensation has been paid under section 7, there shall be deducted from the sum payable under this paragraph any sum to pay:

Provided that notwithstanding any deduction made under this paragraph, the minimum amount of compensation payable to the dependants of the workman shall not be less than 48 times the amount stated in section 10 (1) (b);

(b) if the workman does not leave any dependants wholly dependent on his earnings but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the Labour Commissioner in accordance with rules made under this Act to be reasonable and proportionate to the injury to such dependants;

(c) in addition to any sums payable under paragraphs (a) or (b) of this Section, the reasonable expenses of the burial of the deceased workman not exceeding three hundred Emalangeneni shall be paid by the employer to the person responsible for paying the cost of the burial.

#### Compensation in case of permanent disablement.

7.(1) If at the termination of a period for which compensation is payable under section 8 or section 9 the workman is permanently disabled as a result of the injury the amount of compensation shall, subject to the following provisions of this section and of section 10(1), be-

(a) in the case of an injury specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is specified in that Schedule as being the percentage of disablement caused by that injury;

(b) in the case of an injury not specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused by that injury.

(2) If two or more injuries are caused to the workman by the same accident the percentage to be used in calculating the amount of compensation as in sub-section (1) shall, in the case of injuries specified in the Second Schedule, be the aggregate of the percentages for each sum injury specified in the Second Schedule or such greater amount as the medical practitioner may deem appropriate and in any other case such percentage as the medical practitioner may determine:

Provided that in no case shall the percentage exceed one hundred per cent.

(3) If the injury results in total permanent disablement of such a nature that the workman must have the constant help of another person additional compensation amounting to one quarter of the compensation otherwise payable under this section shall be paid.

#### Compensation in case of temporary disablement.

7. (1) If at the termination of a period for which compensation is payable under section 9 a workman is temporarily partially disabled as a result of the injury the amount of compensation shall, subject to the provisions of section 10(1) (a), be such percentage of the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused to the workman by the injury, multiplied by the number of months the temporary disablement is, in the opinion of the medical practitioner, likely to persist:

Provided that no assessment of temporary partial disablement shall be made for a period exceeding 12 months and where one such assessment is followed by a further assessment or assessments of temporary partial disablement the combined total of the periods covered by such assessments shall not exceed 24 months.

(2) At the termination of a period of temporary partial disablement the workman shall be re-examined by a medical practitioner and the percentage of disablement, if any, then persisting shall be assessed and, subject to the provisions of sub-section (1), certified as temporary or permanent according to the opinion of the medical practitioner:

Provided that where the disablement has been certified as temporary for periods totaling 24 months any disablement still persisting at the end of the said 24 months shall be deemed to be permanent and compensation therefore shall be payable under section 7.

#### Compensation in case of temporary incapacity.

8. (1) If temporary incapacity results from the injury the compensation shall be equal to seventy five percent of the earnings which the workman would have earned for the period during which he is temporarily incapable of work, subject to section 10(1) (a) and to the following provisions of this section.

(2) Compensation provided under sub-section (1) shall, subject to sub-section (3), be payable for a maximum of six months from the date of the accident.

(3) If at the end of six months from the date of the accident the workman remains incapable, as a result of the injury, of any work which is suitable in his case and in the opinion of a medical practitioner is likely to remain so incapable for a further period-

(a) Not exceeding twelve months, compensation under this section shall continue to be payable for such further period so long as the incapacity continues;

(b) Exceeding twelve months, he shall be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(4) If a workman who is entitled to compensation under sub-section (3)(a) remains incapable of work at the end of the period of twelve months referred to in that sub-section, he shall be then deemed to be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(5) No deduction shall be made from compensation payable under section 6 or section 7 on account of compensation payable under this section or under section 8.

Method of calculating earnings.

9. (1) Subject to section 45(1), for the purpose of calculating the compensation payable under this Act-

(a) Any earnings of a workman in excess of five hundred Emalangeni a month shall be disregarded;

(b) In the case of compensation payable on account of permanent disablement in the rate per month at which the workman was being remunerated at the time of the accident shall be deemed to be not less than seventy five Emalangeni a month.

(2) For the purpose of this Act the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the accident.

(3) If, by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the earnings in the manner required by sub-section(2) regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, uninterrupted by absence from work due to illness or any other unavoidable cause, or, if there is no person so employed, by a person in the same grade employed in the same class of employment.

(4) For the purposes of assessing compensation payable in the case of permanent disablement-

(a) if the workman was under the apparent age of eighteen years at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of eighteen years or at the end of a period of five years after the accident, whichever calculation is more favourable to the workman; and

(b) if the workman was employed under a contract of apprenticeship or traineeship at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon completion of his apprenticeship or traineeship.

(5) If the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, 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 accident, provided that the earnings under the other contract or contracts were disclosed to that employer or employers, whichever occurred last.

(6) The employer liable to pay compensation shall, if so required by the workman or his dependants, furnish in writing particulars of the earnings upon which the amount of the monthly earnings has been calculated for the purposes of this section.

Persons entitled to compensation.

11.(1) The compensation shall be payable to or for the benefit of the workman or, where death results from the injury, to

or for the benefit of his dependants as provided by this Act.

(2) If there are both total and partial dependants, nothing in this Act shall be construed as preventing compensation being allotted partly to the total and partly to the total and partly to the partial dependants.

(3) If a dependant dies before a claim for compensation in respect of the death of a workman is made 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 the claim for compensation shall be dealt with as if that dependant had died before the workman.

Distribution of compensation.

12.(1) Compensation payable if the death of a workman has resulted from the injury shall be apportioned by the Labour Commissioner among the dependants of the deceased workman in accordance with rules set out in regulations made under this Act.

(2) The Labour Commissioner shall direct that the sum allotted to any one dependant under sub-section(1) or the sum payable to an injured workman under section 7 or section 8 shall be paid to the person entitled to receive it or to such other person or authority as may be specified in the aforementioned rules for the purpose of investing, applying or otherwise dealing with the sum for the benefit of the workman or of the person in respect of whom it is paid as the Labour Commissioner thinks fit.

(3) Compensation payable to an injured workman under section 9 shall be paid to him at the intervals and times at which the workman would ordinarily receive his earnings or, where payment as aforesaid is not practicable, at such other intervals and times as the workman and the employer may agree;

Provided that where a workman ordinarily received his earnings at intervals of less than a week the employer shall not be required to pay compensation at intervals or less than one week.

(3) Any decision or direction of the Labour Commissioner given under sub-section (1) or (2) as to the apportionment or payment of compensation may, on application to the Court be made an order of the Court.

(4) An appeal shall lie to the court against any decision or direction of the Labour Commissioner given under this section.

(5) Where it appears to the Labour Commissioner that, on account of variation of the circumstances of the various dependants or for any other sufficient cause, an apportionment or direction as to payment of any sum so apportioned made under sub-section (1) or (2) ought to be varied, he may direct that the apportionment or direction shall be varied in such a manner as in the circumstances of the case he may think just, provided that where the former apportionment or direction has been made an order of the Court the power to make such variation shall devolve upon the Court.

(6) Subject to sub-section (6), any order or direction of the Court under this section shall be final.

Agreement as to compensation payable to workman.

13.(1) Subject to the approval of the Labour Commissioner as to the terms, the employer and the workman may agree in writing as to the compensation to be paid by the employer; such an agreement shall be in triplicate, the original of which shall be retained by the Labour Commissioner, one copy shall be kept by the employer and one copy shall be kept by the workman.

(2) An agreement made under sub-section(1)-

(a) Shall not provide for a lesser amount of compensation than is payable under this Act;

(b) Shall not be binding against the workman unless it is endorsed by a certificate of an authorized officer that he has read over and explained to the workman the terms therefore and that the workman appeared fully to understand and approve the agreement;

(c) May, on application to the Court, be made an order of the Court;

(d) Shall not be subject to any stamp duty.

(3) The Court may, notwithstanding that an agreement made under sub-section (1) has been made an order of the Court, on application by any party to the agreement within three months 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 it may think just, if it is proved-

(a) That the sum paid was or is not in accordance with sub-section(1) or sub-section(2)(a);or

(b) That the agreement was entered into by mistake or in ignorance as to the true nature of the injury; or

(c) That the agreement was obtained by fraud, undue influence, misrepresentation or other improper grounds for avoiding it.

(4) Any order or direction of the Court under this section shall be final.

(5) In this section "authorized officer" means the Labour Commissioner, or the District Commissioner of the district in which the accident occurred, and any other person the Labour Commissioner may designate or appoint in writing to be an officer for the purpose of this section.

#### Assessment of claims in event of disagreement.

14.(1) If an employer in whom a claim for compensation has been served under the provisions of section 18 does not, within twenty-one days after the receipt of the claim, agree in writing with the workman as to the amount of compensation to be paid under section (9) or within twenty-one days of the termination of the period for which compensation under section 9 is payable, agree in writing with the workman as to the amount of compensation to be paid under section 7 or section 8, as the case may be, or if, in connection with a claim for compensation, any question arises as to the liability to pay compensation or as to the amount or the duration of compensation, the employer or the workman shall apply to the Labour Commissioner for the determination of any such question and for an assessment to be made of the claim.

(2) The Labour Commissioner may make such determination and assessment himself or he may refer the matter to the Court for determination and assessment.

(3) Where the question arising involves any matter which falls to be determined by a medical practitioner, the Labour Commissioner shall, prior to taking action in accordance with sub-section(2), refer to the Workmen's Compensation Medical Board for a decision on that matter as provided in section 32.

(4) An appeal against an assessment by the Labour Commissioner made under this section, or any matter arising therefrom (other than a dispute concerning the assessment of incapacity or disablement which falls to be dealt with under section 32), shall lie to the Court.

(5) The Labour Commissioner or the Court, as the case may be, may, for the purpose of making an assessment or hearing an appeal, call upon any competent person to give evidence if of the opinion that such person is, by virtue of his expert knowledge, able to assist the Labour Commissioner or the Court.

#### Payment pending settlement of a claim.

15. Nothing in section 12 of this Act shall prevent an employer from making any payment to a workman or to a dependant pending the settlement of a claim and the Labour Commissioner or the Court, as the case may be, may order that the whole or any part of such payment shall be deducted from the amount of compensation payable under the Act.

#### Review of periodical payments.

16.(1) Any periodical payment payable under this Act either under agreement between the parties or under an order of the Court may be reviewed by the Court on the application either of the workman.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended.

(3) If application is made by an employer under this section for any periodical payment to be ended or diminished, the employer may pay into Court the periodical payment or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on review under this section.

(4) In making a review under this section the Court shall have regard only to the capacity for work of the workman as affected by the accident.

#### Limitation of power of employer to end decrease periodical payment.

17. Except as provided in section 9, section 16(4), an employer shall not be entitled, otherwise than in pursuance of an agreement made under section 13 or an order of the Court, to end or decrease periodical payments except where a workman is certified by a medical practitioner as fit to resume work, or becomes entitled to compensation for temporary or permanent disablement, or dies.

#### Requirements as to notice of accident and claim for compensation.

18. (1) A claim for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given, either orally or in writing, to the employer or to any foreman or other official under whose supervision the worker is employed, by or on behalf of the workman as soon as practicable after the happening of the accident and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death.



(2) Notwithstanding anything contained in this section-

- (a) The want of a notice of accident or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such a claim if the employer is proved to have had knowledge of the accident from any other source at or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by that want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;
- (b) The failure to make a claim for compensation within the period specified in sub-section (1) shall not be a bar to the maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation should be maintainable unless it is made within a period of three years from the date of the accident or the date of death as the case may be.

(3) The notice referred to in sub-section(1) shall give the name and address of the person injured and state in ordinary language the cause of the injury and the date on which it happened.

(4) To facilitate the giving of notice of accidents a book in the prescribed form shall be kept readily accessible at every work place where workmen are ordinarily employed, in which the particulars specified in the preceding sub-section may be entered by the injured workman or some other person acting on his behalf and an entry in such book shall, if made as soon as practicable after the happening of an accident, be sufficient notice of the accident for the purposes of the Act.

Duty of employer to report accident.

19. (1) If an accident occurs which results in the death of a workman or in any injury which would entitle him to compensation under this Act, a report in the prescribed form shall be given to the Labour Commissioner by the employer within seven days of receiving notice of the accident or of the first day of absence from work if later.

(2) In the event of a workman occurring after a report of accident to such workman has been given under sub-section(1), the Labour Commissioner shall be informed by the employer in writing of the death and of the date and of the date thereof.

(3) On the receipt of a report under sub-section (1) the Labour Commissioner may make such investigations as he may think fit and if, in the case of the death of a workman, it appears to him that a claim of compensation may lie under this Act in respect of such death, he shall take steps-

- (a) To ascertain whether there are any dependants of the deceased workman and if so the degree of their dependency, and
- (b) To inform such dependants, if any, of the reported cause and circumstances of the death of the workman and to ascertain whether such dependants intend to make a claim for compensation or wish a claim to be made on their behalf.

(4) Nothing contained in this section shall prevent any person from making a claim for compensation under this Act.

Jurisdiction of Court and right of appeal.

20. (1) Save as is provided in this Act, the Court shall, upon or in connection with any question to be investigated or determined under the Act, have all the powers and jurisdiction exercisable by the Court under the Industrial Relations Act 1980, and a decision of the Court shall be appealable to the extent provided under that Act.

(2) If a request is received from a court in another country for an investigation of any matter arising out of proceedings for compensation instituted in that court under a law relating to workmen's compensation, the Court shall have jurisdiction to deal with the matter as if it had arisen under this Act, provided that where the matter concerns the dependency of any person it shall be investigated in accordance with regulations under this Act.

Representation of parties.

21. Subject to any rules made under section 48, any party to any matter brought before the Court under this Act may be represented before the Court by a legal practitioner or any other person authorized by such party.

22. (1) If any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contract with any other person (which other person is 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, and that contractor fails to discharge his liabilities and obligations under this Act the principal shall be liable to pay any workman employed in execution of the work any compensation under this Act which he would have been liable to pay if such workman 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 workman under the employer by whom he is immediately employed.

(2) If the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) If 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 workman from recovering 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.

Remedies against both employer and stranger.

23. If the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof –

(a) The workman may take proceedings both against such person to recover damages and against any person liable to pay compensation under this Act for such compensation but shall not be entitled to recover both damages and compensation; and

(b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called onto pay an indemnity under section 22 relating to liability in the case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay such damages and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act 1904.

Proceedings independently of Act.

24. (1) If the injury was caused by the personal negligence, breach of statutory duty or wrongful act or omission 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 in a civil court independently of this Act.

(2) Any damages awarded in any such proceedings shall be reduced by the value, as decided by the Court, of any compensation which has been paid or is payable under this Act workman for that injury.

(3) If, in proceedings independently of this Act or on appeal, it is determined that the employer is not liable under this Act, the Court may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation to payable.

Obligation of employer to insure.

25. (1) Every employer other than the Government who employs a workman or workmen shall insure and keep himself insured in respect of all liability which he may incur under this Act with such insurers as the Minister may approve in regulations.

(2) The Ministry may by certificate under his hand exempt any employer from the provisions of sub-section (1) on any condition as to the provision of a security or otherwise as he may determine, provided that the Minister shall not be bound of a security or otherwise as he may determine, provided that the Minister shall not be bound to disclose his reasons for refusing to grant such exemption.

(3) For the purpose of sub-section (2) a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under this Act to any workman employed by him.

Insolvency of employer.

26. (1) If any employer has entered into a contract with insurers in respect of any liability to any workman under this Act, then, in the event of the employer becoming an insolvent, or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the commencement of winding-up proceedings in respect of such company, or of the appointment of a receiver or judicial manager of the company's business or undertaking, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to insolvency and the winding-up of companies for the time being in force, be transferred to and vest in the workman, 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:

Provided that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included amongst the debts which under section 100 of the Insolvency Act 1955 are, in the distribution of the property or assets of an insolvent, to be paid in priority to all other debts, and under section 81 of the Companies Act 1912 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 accrued before the following dates, that is to say-

- (a) In the first case, the date of the sequestration order; and
- (b) In the second case, the date of commencement of the winding-up of the company.

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

(5) If the insolvent or company in liquidation has entered into such contract with insurers as if referred to in sub-section (1), sub-section (3), and (4) shall not apply in respect of the liability of the employer to the workman or that part thereof which is met by the insurers.

Prohibition against contracting out.

27. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right to compensation from an employer for injury arising out of an employment accident shall be null and void in as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Compensation not to be assigned, charged or attached.

28. 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.

### PART III MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD Medical examination and treatment.

29. (1) If a workman has given notice of an accident, the employer shall, as soon as reasonably possible thereafter, arrange to have him medically examined by a medical practitioner named by the employer and agreed to by workman (so however, that such agreement shall not be unreasonably withheld) and any workman who is in receipt of periodical payments under section 9 shall submit himself for medical examination from time to time as may be required by the employer or by the medical practitioner in charge of the case.

(2) The workman shall, when required, attend upon the medical practitioner at such reasonable time and place as shall be notified to the workman by the employer or the medical practitioner.

(3) If, in the opinion of any medical practitioner, the workman is unable or not in a fit state to attend on the medical practitioner for examination, the fact shall be notified to the employer, and the medical practitioner conducting the examination required by sub-section (1) shall fix a reasonable time and place for the examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for medical examination as required by this section, his right to compensation shall be suspended until such examination has taken place, and if the failure extends for the period of fifteen days from the date when the workman was required to submit himself for examination the workman shall forfeit his right to compensation unless it is proved, to the satisfaction of the Labour Commissioner, that there was reasonable cause for such failure.

(5) During the period of temporary incapacity, the employer shall arrange to submit the workman for medical treatment prescribed by a medical practitioner and such medical treatment shall include any special treatment which the medical practitioner may advise the workman to undergo.

(6) If the workman has failed to submit himself for treatment when so required under sub-section (5) or having submitted himself for such treatment has disregarded the instructions of the medical practitioner, then, if it is proved that the failure

or disregard was unreasonable 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 workman had submitted himself for treatment and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

(7) A workman may, at his own expense, have his own medical practitioner present at any medical examination carried out by a practitioner nominated by the employer.

(8) A workman may, if he objects to the medical practitioner nominated by the employer, apply to the Labour Commissioner for leave to be examined and treated by his own practitioner, provided that he bears any additional expenses thereby incurred; and the decision of the Labour Commissioner on such application shall be final.

(9) No compensation shall be payable in respect of the death of a workman who unreasonably fails to submit himself for examination and treatment when required to do so in accordance with this section or unreasonably disregards the instructions of a medical practitioner if it is proved that the death of the workman was caused by such failure or disregard.

Medical expenses.

30. (1) Subject to this Act and any regulations made thereunder, the employer shall defray the expenses reasonably and necessarily incurred by or in respect of a workman as a result of an employment accident for-

- (a) General practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) Dental care;
- (c) Nursing care at home or in a hospital or other medical institution;
- (d) Maintenance in a hospital or other medical institution;
- (e) Dental, pharmaceutical and other medical or surgical supplies, including eye glasses;
- (f) Emergency and first-aid treatment;
- (g) Transportation to and from a place for the purpose of treatment certified as necessary by the medical practitioner in charge;
- (h) The supply, maintenance, repair and renewal of artificial limbs and apparatus necessitated by the accident.

(2) Subject to section 45(2), the liability of an employer under sub-section (1) shall be limited to an amount not exceeding five thousand five hundred Emalangeni.

(3) Except in the case of an accident to which section 5(40) applies, an employer shall only be liable to defray the expenses in connection with medical treatment in a place outside Swaziland if the journey and the treatment has been approved by the Director of Medical Services.

(4) All disputes as to the necessity for or character or sufficiency of any medical aid provided or proposed to be provided under this section shall be determined by the Workmen's Compensation Medical Board whose decision shall be final.

Workmen's Compensation Medical Board.

31. (1) There shall be a Board to be known as the Workmen's Compensation Medical Board, referred to hereafter as "the Board".

- (2) The Board shall consist of three members appointed in writing by the Minister, of whom-
  - (a) One, who shall be chairman, shall be a medical practitioner employed by the Government;
  - (b) One shall be a medical practitioner nominated by the Federation of Swaziland Employers; and
  - (c) One shall be a medical practitioner appointed to represent workman.

(3) The Board may, at the request of any party or of its own volition, invite any person to attend a meeting of the Board and give evidence on any matter before the Board concerning which he is competent.

(4) A member of the Board shall hold office for such period as the Minister may determine.

(5) A member of the Board who is not in full time employment of the Government and any person invited as in sub-section(3) to attend a meeting of the Board shall be paid out of the public revenue such fees and allowances as the Minister may direct.

(6) For a sitting of the Board two members shall constitute a quorum but, if agreement is not reached on a question, it shall be deferred for decision to a full meeting of the Board.

(7) The secretary of the Board shall be a public officer appointed by the Labour Commissioner.

#### Functions of Board.

32. (1) The Labour Commissioner shall refer to the Board any dispute or matter with regard to-

- (a) The degree and duration of incapacity or disablement under sections 7,8 and 9; or
- (b) The medical examination and treatment of a workman.

(2) The Board shall give a decision in writing to the Labour Commissioner on any matter or dispute referred to the Board by him and that decision shall be final and binding on the Labour Commissioner and on the parties concerned.

#### Power of Court and Labour Commissioner.

33. The Court or Labour Commissioner may, when determining any dispute or other matter in respect of compensation, or upon the application of any interested person, order the payment of any of the medical expenses referred to in section 30 to the persons entitled to receive such payment, and if such expenses exceed the amount provided for section 30 the Court or the Labour Commissioner as the case may be, may apportion such amount in a manner deemed just.

#### Prescription of fees for medical aid.

34. The fees which may be charged by a medical or dental practitioner or a medical or dental establishment in Swaziland for medical aid provided to a workman under this Act shall not exceed those set out in a scale prescribed under this Act.

#### Employer not to require contribution from workman.

35. An employer shall not require a workman to make any contribution towards the cost of any medical aid for which the employer is liable to defray the cost under this Act and no employer shall accept any such contribution.

### PART IV-OCCUPATIONAL DISEASES

#### Compensation for occupational diseases.

36. (1) Where-

- (a) A medical practitioner certifies that a workman is suffering from a disease set out in the first column of the First Schedule and is thereby rendered incapable of work; or
- (b) The death of a workman is caused by any such disease;

And the disease is due to the nature of any employment in which the workman was engaged as a workman at any time prior to the date of development of the disease, he or his dependants, as the case may be, shall be entitled to compensation under this Act as if the disease were due to an employment accident, subject to the modifications set out in this Part of the Act.

(2) Certification of the diseases set out in paragraphs 16,19 and 20 in the First Schedule shall be made by the Medical Board set up by the Minister under the powers conferred on him by section 42 and in the case of the disease set out in paragraph 16 (bagassosis) or paragraph 20 (byssinosis), compensation under this Act shall only be payable if that Board certifies that the workman is permanently disabled by the disease.

#### Date of development of the disease.

37. The date of development of the disease shall be deemed to be the date of the accident and shall be-

- (a) In the case of a claim for compensation under section 7.8 or 9, the first day on which the workman is incapable of work as a result of the disease;
- (b) In the case of a claim for compensation under section 6-
  - i. The date determined under sub-section (a); or
  - ii. The date of death if no incapacity preceded death.

#### Employer liable to pay compensation.

38. (1) The compensation shall, subject to the further provisions of this section, be payable by the last employer who employed the workman in the employment to the nature of which the disease is due unless that employer establishes that the disease was not contracted while the workman was in his employ.

(2) The workman or his dependants if so required shall furnish to that employer such information as they possess as to the names and addresses of all employers who employed the workman in that employment in the twelve months preceding the date of development of the disease and if that employer alleges that the disease was contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may cause such other employer to be joined as a party to claim and, if the allegation is proved, that other employer shall be the employer by whom the compensation is payable.

(3) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the work to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such contribution as, in default of agreement, may be determined by the Court.

(4) The notice of accident and claim for compensation required to be given under section 18 shall be made to the employer who last employed the workman in the occupation to the nature of which the disease was due and that employer shall, notwithstanding any dispute as to liability, report the accident to the Labour Commissioner as required under section 19.

(5) No employer shall be liable to pay compensation in respect of an occupational disease to any workman who, at the time of entering upon the relevant occupation, willfully and falsely represented to that employer in writing that he had not previously suffered from that disease.

Calculation of compensation.

39. The amount of compensation shall be calculated on the basis of the earnings of the workman when he was last employed in the occupation to the nature of which the disease was due by the employer liable to pay the compensation.

Presumption as to cause of disease.

40. If a workman contracts an occupational disease set out in the first column of the First Schedule that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employment if that employment was in the occupation set out against that disease in the second column of the said Schedule and he was so employed at any time within one month of the date of development of the disease.

Power of Minister to amend First Schedule.

41. (1) The Minister may, by regulations, amend the First Schedule by adding to it any disease or injury if he is satisfied that-

- (a) In relation to any prescribed classes of workmen, it should be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) It is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(2) The intention to make such regulations shall be published in the Gazette at least thirty days before the regulations are made and any person wishing to do so may within thirty days of such publication in the Gazette make any representations in writing to the Minister who shall consider them before the regulations are made.

Pneumoconiosis.

42.(1) The Minister may by regulations set up a scheme to provide for the payment of compensation by the employers of workmen in any specified industry or process, or group of industries or processes, involving exposure to the risk of pneumoconiosis who are certified in such manner as may be prescribed by the scheme-

- (a) To have suffered death or total disablement from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis;
- (b) Although not totally disabled, to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis to such a degree as to their earning capacity.

(2) The scale of compensation fixed by the scheme in the case of death or total disablement shall be that prescribed by the Act and in any other case shall be such as may be prescribed by the scheme.

(3) Provision may be made by the scheme-

- (a) For the constitution of a medical board and for the appointment and remuneration of its members on the same terms as those applying to the Workmen's Compensation Medical Board;
- (b) For requiring workmen to whom the scheme applies to submit themselves to periodical examination and to furnish such information as to their previous employment in any occupation to which the scheme applies as may be prescribed by the scheme and for making the right of workmen to compensation conditional on compliance with such requirements;
- (c) For the exclusion from employment in any scheduled occupation of workmen to whom the scheme applies who are, when first medically examined in pursuance of the scheme, found to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis or from tuberculosis or are found unsuitable for work in the industry or process by reason of failure to satisfy such requirements with respect to physique as may be prescribed by the scheme; and
- (d) For the application with necessary modification of any of the provisions of this Act or regulations made thereunder and

for defining the industries and processes to which the scheme applies and generally for such further or supplemental matters as appear necessary for giving full effect to the scheme.

Diseases resulting from an employment accident.

43. Nothing in this Part shall affect the right of a workman to recover compensation under this Act in respect of a disease if the disease result from an employment accident and it is not in relation to him, an occupational disease by virtue of his occupation.

## PART V-GENERAL

Regulations.

44. The Minister may make regulations regularly to give effect to the purposes of this Act and in particular such regulations may-

- (a) Prescribe anything which may be or is required to be prescribed;
- (b) Prescribe procedure, forms and fees in connection with specified matters;
- (c) Require the insurers and employers to make to the Labour Commissioner such returns as may be prescribed;
- (d) Require the insurers to pay to the Labour Commissioner, within a specified time, an amount of money equivalent to a specified percentage of premiums received from employers during a specified period on account of insurance under this Act.

Power of Minister to review maximum and minimum amounts.

45. (1) The Minister shall, on the first anniversary of the coming into operation of this Act and thereafter at intervals of one year, review the amount mentioned in section 10(1) and, if he is satisfied that, having regard to changes in the general level of prices and earnings those amounts should be verified, he shall give notice in the Gazette of his intention to make regulations revising the amounts to amounts which he shall specify in the notice, and shall, not earlier than thirty days after the date of the said notice, make regulations accordingly, taking account of any written representations received;

Provided that he shall not thereby vary any of the said amounts by more than 15 per cent in any review.

(2) The Minister shall at the same time, after consultation with the Minister of Health – MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD

29. Medical examination and treatment.
30. Medical expenses.
31. Workmen's Compensation Medical board.
32. Functions of Board.
33. Power of Court and Labour Commissioner.
34. Prescription of fees for medical aid.
35. Employer not to require contribution from workman.

## PART IV – OCCUPATIONAL DISEASES

36. Compensation for occupational diseases.
37. Date of development of disease.
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## PART V

44. Regulations.
45. Power of Minister to review maximum and minimum amounts.
46. Penalties.
47. Criminal liability of officers of body corporate.
48. Rules of Court.
49. Payment of compensation to non-resident workman or dependants.
50. Power of Labour Commissioner to institute proceedings.
51. Repeal.

First schedule  
Second Schedule

PART 1: PRELIMINARY

Short title, commencement and application.

1. (1) This Act may be cited as the Workmen's Compensation Act, 1983, and shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

(2) This Act applies to every employer in Swaziland, including the Government and to every workman who is employed in or outside Swaziland by such an employer except a workman who is employed outside Swaziland in employment to which any law of another country applies which provides compensation for employment accidents.

Meaning of 'workman'.

2. (1) In this Act, unless the context otherwise requires –

'workman' means, subject to sub-section (2) of this section, any person who has entered into or works under a contract of service or of apprenticeship or of traineeship whether the contract is express or implied, is oral in writing and whether the remuneration is calculated by time or work done.

(2) The following persons are excluded from the definition of 'workman'–

- a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purpose of any game or recreation and engaged or paid through a club;
- b) an outworker, that is to say a person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished, repaired or adapted for sale on premises not under the control of the employer;
- c) a domestic servant employed as such for wages in or about a private household by the householder;
- d) a member of the employer's family dwelling in his house;
- e) a member of Umbutfo Swaziland Defence Force;
- f) Any class of persons whom the Minister may by notice in the Gazette declares not to be workmen for the purpose of this Act.

(3) If in any claim for the recovery of compensation under this Act it appears to the Labour Commissioner or to the Court that the contract of service or apprenticeship or traineeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the Labour Commissioner or the Court as the case may be, may, if having regard to all the circumstances of the case it is thought proper so to do, deal with the matter as if the injured person had at the time the aforesaid been a person working under a valid contract of service or apprenticeship.

(4) Any reference to a workman who has been injured shall, unless the context otherwise requires, if the workman is dead, include a reference to his legal personal representative or to his dependants or any of them or to such officer as the Minister may appoint to act on behalf of the dependants of the workman.

Interpretation.

3. (1) In this Act, unless the context otherwise requires –

"Board" means the Workmen's Compensation Medical Board established under Section 31;

"Compensation" means compensation as provided for by this Act;

"Court" means the Industrial Court established by Section 4 of the Industrial Relations Act 1980;

"dependant" means a member of the family of a workman who was wholly or in part dependant upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent; and if the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grand-parent so dependent upon his earnings, shall include such an illegitimate child or parent or grand-parent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependant partially on contributions from such other person for the provision of the ordinary necessities of life suitable for persons



in his class and position;

“Dental practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970;

“Disablement” means, if of a temporary nature, such disablement as temporarily incapacitates a workman for, or temporarily reduces his earning capacity in, any employment which he was cable of undertaking at the time of the accident resulting in such disablement:

Provided that:-

(i) every injury specified in the Second Schedule shall be deemed to result in permanent disablement to the percentage degree specified against each; and

(ii) conspicuous disfigurement shall be deemed to result in permanent disablement whether or not accompanied by any actual loss of earning capacity;

“earnings” include wages any allowance in respect of increased cost of living paid to the workman by the employer, the value of any food, fuel or quarters supplied to the workman by the employer, any overtime payments or other special remuneration for work done whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, casual payments of a non-recurrent nature, any ex-gratia payment whether given by the employer or other person, the value of a traveling allowance, the value of any traveling concession, the value of contribution paid by the employer of a workman towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

“employer” includes the Government, the Swazi National Administration, any body of persons corporate or incorporate and the legal personal representative of a deceased employer and, if the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or of apprenticeship or of traineeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for such other person; and in relation to a person employed for a purpose 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 purpose of this Act, be deemed to be the employer;

“Incapacity” means incapacity for work which the workman concerned can reasonably be expected to do;

“Injury” means physical or mental injury and includes the contraction of a disease and the aggravation or acceleration of any pre-existing injury or disease where the employment is a contributory factor to such aggravation or acceleration;

“Labour Commissioner” means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorized in writing by the Labour Commissioner to act on his behalf;

“Medical aid” means any or all of the benefits prescribed in paragraphs (a) to (h) inclusive of Section 30(1);

“Medical practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970:

“Member of the family” means the wife, common law wife, husband, father, mother, grandfather, grandmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister:

“Minister” means the Minister for the time being responsible for Labour;

“month” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding month;

“Occupational disease” means any disease specified in the First Schedule and pneumoconiosis;

“pneumoconiosis” means fibrosis of the lungs to silica dust, asbestos and dust or other dust includes the condition of the lungs known as dust reticulation but does not include byssinosis or bagassosis;

“Serious and willful misconduct” shall include-

a) drunkenness;

b) a willful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen:

c) any other act or omission which the Court, having regard to all the circumstances of an accident, may determine to be serious and willful misconduct;

“Public authority” means the Government or the Swazi National Administration or a local.

(2) The exercise and performance of the powers and duties of a public authority shall, for the purposes of this Act, be deemed to be the trade or business of such public authority.

Definition of employment accident.

4. For the purposes of this Act, employment accident means an occurrence which causes personal injury to a workman by accident arising out of and in the course of his employment and shall be deemed to include personal injury by accident happening-

- (a) while traveling by any reasonable means and any reasonable route between a workman's place of residence for the time being and his place of work;
  - (b) notwithstanding that the workman is at the time acting in contravention of any statutory or other regulations applicable to his employment or of any orders given to him by or on behalf of his employer or that he is acting without instructions from his employer, if the act is done for the purposes of and in connection with his employer's trade or business;
  - (c) in or about premises at which the workman is for the time being employed for the purposes of his employer's trade or business if the accident happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or the thought to be, or possibly to be, injured or imperilled, or to avert or minimize serious damage to property;
  - (d) in the course of a workman's employment which is caused by another person's misconduct, skylarking or negligence or by the behaviour or presence of an animal (including a bird, fish or insect) or is caused by or consist in the workman being struck by any object or lightning if the workman did not directly or indirectly induce or contribute to the accident by his conduct outside the employment or by any act not incidental to the employment:
- Provided that an accident arising in the course of a workman's employment shall be deemed to have arisen out of that employment in the absence of evidence to the contrary.

#### PART 11-COMPENSATION FOR INJURY

Employer's liability for compensation for death or injury resulting from employment accident.

5. (1) If in any employment personal injury is caused to a workman by accident and that accident is an employment accident his employer shall be liable to pay compensation in accordance with this Act.

(2) Notwithstanding sub-section (1) the employer shall not be liable to pay compensation under this Act-

(a) in respect of any injury, except an injury causing death, which does not incapacitate the workman for at least three days from earning full wages at the work at which he was employed;

(b) if it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, unless the accident results in death or serious permanent disablement, in which case the Labour Commissioner or the Court, as the case may be, on consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as is thought fit.

(3) No compensation shall be payable under this Act in respect of any incapacity, disablement or death resulting from an employment accident or occupational disease if the workman has at any time represented in writing to the employer that he was not suffering and had not previously suffered from a similar serious incapacity or disablement knowing that the representation was false.

(4) When an employment accident happens to a workman to whom this Act applies, while he is temporarily employed by his employer outside Swaziland, the workman shall be entitled to compensation in the same manner as if the accident had happened in Swaziland.

Compensation in case of death.

6. If death results from injury-

(a) if the workman leaves any dependants wholly dependent on his earning, the amount of the compensation shall be a sum equal to forty eight months earnings, subject to the provisions of section 10 (1) (a). but if in respect of the same accident compensation has been paid under section 7, there shall be deducted from the sum payable under this paragraph any sum to pay:

Provided that notwithstanding any deduction made under this paragraph, the minimum amount of compensation payable to the dependants of the workman shall not be less than 48 times the amount stated in section 10 (1) (b);

(b) if the workman does not leave any dependants wholly dependent on his earnings but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the Labour Commissioner in accordance with rules made under this Act to be reasonable and proportionate to the injury to such dependants;

(c) in addition to any sums payable under paragraphs (a) or (b) of this Section, the reasonable expenses of the burial of

the deceased workman not exceeding three hundred Emalangeni shall be paid by the employer to the person responsible for paying the cost of the burial.

#### Compensation in case of permanent disablement.

7.(1) If at the termination of a period for which compensation is payable under section 8 or section 9 the workman is permanently disabled as a result of the injury the amount of compensation shall, subject to the following provisions of this section and of section 10(1), be-

- (a) in the case of an injury specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is specified in that Schedule as being the percentage of disablement caused by that injury;
- (b) in the case of an injury not specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused by that injury.

(2) If two or more injuries are caused to the workman by the same accident the percentage to be used in calculating the amount of compensation as in sub-section (1) shall, in the case of injuries specified in the Second Schedule, be the aggregate of the percentages for each sum injury specified in the Second Schedule or such greater amount as the medical practitioner may deem appropriate and in any other case such percentage as the medical practitioner may determine:

Provided that in no case shall the percentage exceed one hundred per cent.

(3) If the injury results in total permanent disablement of such a nature that the workman must have the constant help of another person additional compensation amounting to one quarter of the compensation otherwise payable under this section shall be paid.

#### Compensation in case of temporary disablement.

7. (1) If at the termination of a period for which compensation is payable under section 9 a workman is temporarily partially disabled as a result of the injury the amount of compensation shall, subject to the provisions of section 10(1) (a), be such percentage of the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused to the workman by the injury, multiplied by the number of months the temporary disablement is, in the opinion of the medical practitioner, likely to persist:

Provided that no assessment of temporary partial disablement shall be made for a period exceeding 12 months and where one such assessment is followed by a further assessment or assessments of temporary partial disablement the combined total of the periods covered by such assessments shall not exceed 24 months.

(2) At the termination of a period of temporary partial disablement the workman shall be re-examined by a medical practitioner and the percentage of disablement, if any, then persisting shall be assessed and, subject to the provisions of sub-section (1), certified as temporary or permanent according to the opinion of the medical practitioner:

Provided that where the disablement has been certified as temporary for periods totaling 24 months any disablement still persisting at the end of the said 24 months shall be deemed to be permanent and compensation therefore shall be payable under section 7.

#### Compensation in case of temporary incapacity.

8. (1) If temporary incapacity results from the injury the compensation shall be equal to seventy five percent of the earnings which the workman would have earned for the period during which he is temporarily incapable of work, subject to section 10(1) (a) and to the following provisions of this section.

(2) Compensation provided under sub-section (1) shall, subject to sub-section (3), be payable for a maximum of six months from the date of the accident.

(3) If at the end of six months from the date of the accident the workman remains incapable, as a result of the injury, of any work which is suitable in his case and in the opinion of a medical practitioner is likely to remain so incapable for a further period-

- (a) Not exceeding twelve months, compensation under this section shall continue to be payable for such further period so

long as the incapacity continues;

(b) Exceeding twelve months, he shall be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(4) If a workman who is entitled to compensation under sub-section (3)(a) remains incapable of work at the end of the period of twelve months referred to in that sub-section, he shall be then deemed to be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(5) No deduction shall be made from compensation payable under section 6 or section 7 on account of compensation payable under this section or under section 8.

Method of calculating earnings.

9. (1) Subject to section 45(1), for the purpose of calculating the compensation payable under this Act-

(a) Any earnings of a workman in excess of five hundred Emalangi a month shall be disregarded;

(b) In the case of compensation payable on account of permanent disablement in the rate per month at which the workman was being remunerated at the time of the accident shall be deemed to be not less than seventy five Emalangi a month.

(2) For the purpose of this Act the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the accident.

(3) If, by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the earnings in the manner required by sub-section(2) regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, uninterrupted by absence from work due to illness or any other unavoidable cause, or, if there is no person so employed, by a person in the same grade employed in the same class of employment.

(4) For the purposes of assessing compensation payable in the case of permanent disablement-

(a) if the workman was under the apparent age of eighteen years at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of eighteen years or at the end of a period of five years after the accident, whichever calculation is more favourable to the workman; and

(b) if the workman was employed under a contract of apprenticeship or traineeship at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon completion of his apprenticeship or traineeship.

(5) If the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, 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 accident, provided that the earnings under the other contract or contracts were disclosed to that employer or employers, whichever occurred last.

(6) The employer liable to pay compensation shall, if so required by the workman or his dependants, furnish in writing particulars of the earnings upon which the amount of the monthly earnings has been calculated for the purposes of this section.

Persons entitled to compensation.

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

(2) If there are both total and partial dependants, nothing in this Act shall be construed as preventing compensation being allotted partly to the total and partly to the total and partly to the partial dependants.

(3) If a dependant dies before a claim for compensation in respect of the death of a workman is made 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 the claim for compensation shall be dealt with as if that dependant had died before the workman.

Distribution of compensation.

12.(1) Compensation payable if the death of a workman has resulted from the injury shall be apportioned by the Labour Commissioner among the dependants of the deceased workman in accordance with rules set out in regulations made under this Act.

(2) The Labour Commissioner shall direct that the sum allotted to any one dependant under sub-section(1) or the sum payable to an injured workman under section 7 or section 8 shall be paid to the person entitled to receive it or to such other person or authority as may be specified in the aforementioned rules for the purpose of investing, applying or otherwise dealing with the sum for the benefit of the workman or of the person in respect of whom it is paid as the Labour Commissioner thinks fit.

(3) Compensation payable to an injured workman under section 9 shall be paid to him at the intervals and times at which the workman would ordinarily receive his earnings or, where payment as aforesaid is not practicable, at such other intervals and times as the workman and the employer may agree;

Provided that where a workman ordinarily received his earnings at intervals of less than a week the employer shall not be required to pay compensation at intervals or less than one week.

(3) Any decision or direction of the Labour Commissioner given under sub-section (1) or (2) as to the apportionment or payment of compensation may, on application to the Court be made an order of the Court.

(4) An appeal shall lie to the court against any decision or direction of the Labour Commissioner given under this section.

(5) Where it appears to the Labour Commissioner that, on account of variation of the circumstances of the various dependants or for any other sufficient cause, an apportionment or direction as to payment of any sum so apportioned made under sub-section (1) or (2) ought to be varied, he may direct that the apportionment or direction shall be varied in such a manner as in the circumstances of the case he may think just, provided that where the former apportionment or direction has been made an order of the Court the power to make such variation shall devolve upon the Court.

(6) Subject to sub-section (6), any order or direction of the Court under this section shall be final.

Agreement as to compensation payable to workman.

13.(1) Subject to the approval of the Labour Commissioner as to the terms, the employer and the workman may agree in writing as to the compensation to be paid by the employer; such an agreement shall be in triplicate, the original of which shall be retained by the Labour Commissioner, one copy shall be kept by the employer and one copy shall be kept by the workman.

(2) An agreement made under sub-section(1)-

(a) Shall not provide for a lesser amount of compensation than is payable under this Act;

(b) Shall not be binding against the workman unless it is endorsed by a certificate of an authorized officer that he has read over and explained to the workman the terms therefore and that the workman appeared fully to understand and approve the agreement;

(c) May, on application to the Court, be made an order of the Court;

(d) Shall not be subject to any stamp duty.

(3) The Court may, notwithstanding that an agreement made under sub-section (1) has been made an order of the Court, on application by any party to the agreement within three months 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 it may think just, if it is proved-

(a) That the sum paid was or is not in accordance with sub-section(1) or sub-section(2)(a);or

(b) That the agreement was entered into by mistake or in ignorance as to the true nature of the injury; or

(c) That the agreement was obtained by fraud, undue influence, misrepresentation or other improper grounds for avoiding it.

(4) Any order or direction of the Court under this section shall be final.

(5) In this section "authorized officer" means the Labour Commissioner, or the District Commissioner of the district in which the accident occurred, and any other person the Labour Commissioner may designate or appoint in writing to be an officer for the purpose of this section.

Assessment of claims in event of disagreement.

14.(1) If an employer in whom a claim for compensation has been served under the provisions of section 18 does not, within twenty-one days after the receipt of the claim, agree in writing with the workman as to the amount of compensation to be paid under section (9) or within twenty-one days of the termination of the period for which compensation under section 9 is payable, agree in writing with the workman as to the amount of compensation to be paid under section 7 or section 8, as the case may be , or if, in connection with a claim for compensation, any question arises as to the liability to pay compensation or as to the amount or the duration of compensation, the employer or the workman shall apply to the

Labour Commissioner for the determination of any such question and for an assessment to be made of the claim.

(2) The Labour Commissioner may make such determination and assessment himself or he may refer the matter to the Court for determination and assessment.

(3) Where the question arising involves any matter which falls to be determined by a medical practitioner, the Labour Commissioner shall, prior to taking action in accordance with sub-section(2), refer to the Workmen's Compensation Medical Board for a decision on that matter as provided in section 32.

(4) An appeal against an assessment by the Labour Commissioner made under this section, or any matter arising therefrom (other than a dispute concerning the assessment of incapacity or disablement which falls to be dealt with under section 32), shall lie to the Court.

(5) The Labour Commissioner or the Court, as the case may be, may, for the purpose of making an assessment or hearing an appeal, call upon any competent person to give evidence if of the opinion that such person is, by virtue of his expert knowledge, able to assist the Labour Commissioner or the Court.

Payment pending settlement of a claim.

15. Nothing in section 12 of this Act shall prevent an employer from making any payment to a workman or to a dependant pending the settlement of a claim and the Labour Commissioner or the Court, as the case may be, may order that the whole or any part of such payment shall be deducted from the amount of compensation payable under the Act.

Review of periodical payments.

16.(1) Any periodical payment payable under this Act either under agreement between the parties or under an order of the Court may be reviewed by the Court on the application either of the workman.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended.

(3) If application is made by an employer under this section for any periodical payment to be ended or diminished, the employer may pay into Court the periodical payment or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on review under this section.

(4) In making a review under this section the Court shall have regard only to the capacity for work of the workman as affected by the accident.

Limitation of power of employer to end decrease periodical payment.

17. Except as provided in section 9, section 16(4), an employer shall not be entitled, otherwise than in pursuance of an agreement made under section 13 or an order of the Court, to end or decrease periodical payments except where a workman is certified by a medical practitioner as fit to resume work, or becomes entitled to compensation for temporary or permanent disablement, or dies.

Requirements as to notice of accident and claim for compensation.

18. (1) A claim for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given, either orally or in writing, to the employer or to any foreman or other official under whose supervision the worker is employed, by or on behalf of the workman as soon as practicable after the happening of the accident and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death.

(2) Notwithstanding anything contained in this section-

(a) The want of a notice of accident or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such a claim if the employer is proved to have had knowledge of the accident from any other source at or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by that want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;

(b) The failure to make a claim for compensation within the period specified in sub-section (1) shall not be a bar to the maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation should be maintainable unless it is made within a period of three years from the date of the accident or the date of death as the case may be.

(3) The notice referred to in sub-section(1) shall give the name and address of the person injured and state in ordinary

language the cause of the injury and the date on which it happened.

(4) To facilitate the giving of notice of accidents a book in the prescribed form shall be kept readily accessible at every work place where workmen are ordinarily employed, in which the particulars specified in the preceding sub-section may be entered by the injured workman or some other person acting on his behalf and an entry in such book shall, if made as soon as practicable after the happening of an accident, be sufficient notice of the accident for the purposes of the Act.

Duty of employer to report accident.

19. (1) If an accident occurs which results in the death of a workman or in any injury which would entitle him to compensation under this Act, a report in the prescribed form shall be given to the Labour Commissioner by the employer within seven days of receiving notice of the accident or of the first day of absence from work if later.

(2) In the event of a workman occurring after a report of accident to such workman has been given under sub-section(1), the Labour Commissioner shall be informed by the employer in writing of the death and of the death and of the date thereof.

(3) On the receipt of a report under sub-section (1) the Labour Commissioner may make such investigations as he may think fit and if, in the case of the death of a workman, it appears to him that a claim of compensation may lie under this Act in respect of such death, he shall take steps-

(a) To ascertain whether there are any dependants of the deceased workman and if so the degree of their dependency, and

(b) To inform such dependants, if any, of the reported cause and circumstances of the death of the workman and to ascertain whether such dependants intend to make a claim for compensation or wish a claim to be made on their behalf.

(4) Nothing contained in this section shall prevent any person from making a claim for compensation under this Act.

Jurisdiction of Court and right of appeal.

20. (1) Save as is provided in this Act, the Court shall, upon or in connection with any question to be investigated or determined under the Act, have all the powers and jurisdiction exercisable by the Court under the Industrial Relations Act 1980, and a decision of the Court shall be appealable to the extent provided under that Act.

(2) If a request is received from a court in another country for an investigation of any matter arising out of proceedings for compensation instituted in that court under a law relating to workmen's compensation, the Court shall have jurisdiction to deal with the matter as if it had arisen under this Act, provided that where the matter concerns the dependency of any person it shall be investigated in accordance with regulations under this Act.

Representation of parties.

21. Subject to any rules made under section 48, any party to any matter brought before the Court under this Act may be represented before the Court by a legal practitioner or any other person authorized by such party.

22. (1) If any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contract with any other person (which other person is 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, and that contractor fails to discharge his liabilities and obligations under this Act the principal shall be liable to pay any workman employed in execution of the work any compensation under this Act which he would have been liable to pay if such workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then, in the application 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 workman under the employer by whom he is immediately employed.

(2) If the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) If 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 workman from recovering 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.

Remedies against both employer and stranger.

23. If the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof –

- (a) The workman may take proceedings both against such person to recover damages and against any person liable to pay compensation under this Act for such compensation but shall not be entitled to recover both damages and compensation; and
- (b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called onto pay an indemnity under section 22 relating to liability in the case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay such damages and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act 1904.

Proceedings independently of Act.

24. (1) If the injury was caused by the personal negligence, breach of statutory duty or wrongful act or omission 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 in a civil court independently of this Act.

(2) Any damages awarded in any such proceedings shall be reduced by the value, as decided by the Court, of any compensation which has been paid or is payable under this Act workman for that injury.

(3) If, in proceedings independently of this Act or on appeal, it is determined that the employer is not liable under this proceedings, the Court may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation to payable.

Obligation of employer to insure.

25. (1) Every employer other than the Government who employs a workman or workmen shall insure and keep himself insured in respect of all liability which he may incur under this Act with such insurers as the Minister may approve in regulations.

(2) The Ministry may by certificate under his hand exempt any employer from the provisions of sub-section (1) on any condition as to the provision of a security or otherwise as he may determine, provided that the Minister shall not be bound of a security or otherwise as he may determine, provided that the Minister shall not be bound to disclose his reasons for refusing to grant such exemption.

(3) For the purpose of sub-section (2) a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under this Act to any workman employed by him.

Insolvency of employer.

26. (1) If any employer has entered into a contract with insurers in respect of any liability to any workman under this Act, then, in the event of the employer becoming an insolvent, or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the commencement of winding-up proceedings in respect of such company, or of the appointment of a receiver or judicial manager of the company's business or undertaking, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to insolvency and the winding-up of companies for the time being in force, be transferred to and vest in the workman, 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:

Provided that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included amongst the debts which under section 100 of the Insolvency Act 1955 are, in the distribution of the property or assets of an insolvent, to be paid in priority to all other debts, and under section 81 of the Companies Act 1912 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 accrued before the following dates, that is to say-



- (a) In the first case, the date of the sequestration order; and
- (b) In the second case, the date of commencement of the winding-up of the company.

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

(5) If the insolvent or company in liquidation has entered into such contract with insurers as if referred to in sub-section (1), sub-section (3), and (4) shall not apply in respect of the liability of the employer to the workman or that part thereof which is met by the insurers.

Prohibition against contracting out.

27. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right to compensation from an employer for injury arising out of an employment accident shall be null and void in as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Compensation not to be assigned, charged or attached.

28. 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.

### PART III

#### MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD

Medical examination and treatment.

29. (1) If a workman has given notice of an accident, the employer shall, as soon as reasonably possible thereafter, arrange to have him medically examined by a medical practitioner named by the employer and agreed to by workman (so however, that such agreement shall not be unreasonably withheld) and any workman who is in receipt of periodical payments under section 9 shall submit himself for medical examination from time to time as may be required by the employer or by the medical practitioner in charge of the case.

(2) The workman shall, when required, attend upon the medical practitioner at such reasonable time and place as shall be notified to the workman by the employer or the medical practitioner.

(3) If, in the opinion of any medical practitioner, the workman is unable or not in a fit state to attend on the medical practitioner for examination, the fact shall be notified to the employer, and the medical practitioner conducting the examination required by sub-section (1) shall fix a reasonable time and place for the examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for medical examination as required by this section, his right to compensation shall be suspended until such examination has taken place, and if the failure extends for the period of fifteen days from the date when the workman was required to submit himself for examination the workman shall forfeit his right to compensation unless it is proved, to the satisfaction of the Labour Commissioner, that there was reasonable cause for such failure.

(5) During the period of temporary incapacity, the employer shall arrange to submit the workman for medical treatment prescribed by a medical practitioner and such medical treatment shall include any special treatment which the medical practitioner may advise the workman to undergo.

(6) If the workman has failed to submit himself for treatment when so required under sub-section (5) or having submitted himself for such treatment has disregarded the instructions of the medical practitioner, then, if it is proved that the failure or disregard was unreasonable 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 workman had submitted himself for treatment and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

(7) A workman may, at his own expense, have his own medical practitioner present at any medical examination carried out by a practitioner nominated by the employer.

(8) A workman may, if he objects to the medical practitioner nominated by the employer, apply to the Labour Commissioner for leave to be examined and treated by his own practitioner, provided that he bears any additional expenses thereby incurred; and the decision of the Labour Commissioner on such application shall be final.

(9) No compensation shall be payable in respect of the death of a workman who unreasonably fails to submit himself for examination and treatment when required to do so in accordance with this section or unreasonably disregards the instructions of a medical practitioner if it is proved that the death of the workman was caused by such failure or disregard.

#### Medical expenses.

30. (1) Subject to this Act and any regulations made thereunder, the employer shall defray the expenses reasonably and necessarily incurred by or in respect of a workman as a result of an employment accident for-

- (a) General practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) Dental care;
- (c) Nursing care at home or in a hospital or other medical institution;
- (d) Maintenance in a hospital or other medical institution;
- (e) Dental, pharmaceutical and other medical or surgical supplies, including eye glasses;
- (f) Emergency and first-aid treatment;
- (g) Transportation to and from a place for the purpose of treatment certified as necessary by the medical practitioner in charge;
- (h) The supply, maintenance, repair and renewal of artificial limbs and apparatus necessitated by the accident.

(2) Subject to section 45(2), the liability of an employer under sub-section (1) shall be limited to an amount not exceeding five thousand five hundred Emalangeni.

(3) Except in the case of an accident to which section 5(40) applies, an employer shall only be liable to defray the expenses in connection with medical treatment in a place outside Swaziland if the journey and the treatment has been approved by the Director of Medical Services.

(4) All disputes as to the necessity for or character or sufficiency of any medical aid provided or proposed to be provided under this section shall be determined by the Workmen's Compensation Medical Board whose decision shall be final.

#### Workmen's Compensation Medical Board.

31. (1) There shall be a Board to be known as the Workmen's Compensation Medical Board, referred to hereafter as "the Board".

(2) The Board shall consist of three members appointed in writing by the Minister, of whom-

- (a) One, who shall be chairman, shall be a medical practitioner employed by the Government;
- (b) One shall be a medical practitioner nominated by the Federation of Swaziland Employers; and
- (c) One shall be a medical practitioner appointed to represent workman.

(3) The Board may, at the request of any party or of its own volition, invite any person to attend a meeting of the Board and give evidence on any matter before the Board concerning which he is competent.

(4) A member of the Board shall hold office for such period as the Minister may determine.

(5) A member of the Board who is not in full time employment of the Government and any person invited as in sub-section(3) to attend a meeting of the Board shall be paid out of the public revenue such fees and allowances as the Minister may direct.

(6) For a sitting of the Board two members shall constitute a quorum but, if agreement is not reached on a question, it shall be deferred for decision to a full meeting of the Board.

(7) The secretary of the Board shall be a public officer appointed by the Labour Commissioner.

#### Functions of Board.

32. (1) The Labour Commissioner shall refer to the Board any dispute or matter with regard to-

- (a) The degree and duration of incapacity or disablement under sections 7,8 and 9; or
- (b) The medical examination and treatment of a workman.

(2) The Board shall give a decision in writing to the Labour Commissioner on any matter or dispute referred to the Board by him and that decision shall be final and binding on the Labour Commissioner and on the parties concerned.

#### Power of Court and Labour Commissioner.

33. The Court or Labour Commissioner may, when determining any dispute or other matter in respect of compensation, or

upon the application of any interesting person, order the payment of any of the medical expenses referred to in section 30 to the persons entitled to receive such payment, and if such expenses exceed the amount provided for section 30 the Court or the Labour Commissioner as the case may be, may apportion such amount in a manner deemed just.

Prescription of fees for medical aid.

34. The fees which may be charged by a medical or dental practitioner or a medical or dental establishment in Swaziland for medical aid provided to a workman under this Act shall not exceed those set out in a scale prescribed under this Act.

Employer not to require contribution from workman.

35. An employer shall not require a workman to make any contribution towards the cost of any medical aid for which the employer is liable to defray the cost under this Act and no employer shall accept any such contribution.

#### PART IV-OCCUPATIONAL DISEASES

Compensation for occupational diseases.

36. (1) Where-

- (a) A medical practitioner certifies that a workman is suffering from a disease set out in the first column of the First Schedule and is thereby rendered incapable of work; or
- (b) The death of a workman is caused by any such disease;

And the disease is due to the nature of any employment in which the workman was engaged as a workman at any time prior to the date of development of the disease, he or his dependants, as the case may be, shall be entitled to compensation under this Act as if the disease were due to an employment accident, subject to the modifications set out in this Part of the Act.

(2) Certification of the diseases set out in paragraphs 16, 19 and 20 in the First Schedule shall be made by the Medical Board set up by the Minister under the powers conferred on him by section 42 and in the case of the disease set out in paragraph 16 (bagassosis) or paragraph 20 (byssinosis), compensation under this Act shall only be payable if that Board certifies that the workman is permanently disabled by the disease.

Date of development of the disease.

37. The date of development of the disease shall be deemed to be the date of the accident and shall be-

- (a) In the case of a claim for compensation under section 7.8 or 9, the first day on which the workman is incapable of work as a result of the disease;
- (b) In the case of a claim for compensation under section 6-
  - i. The date determined under sub-section (a); or
  - ii. The date of death if no incapacity preceded death.

Employer liable to pay compensation.

38. (1) The compensation shall, subject to the further provisions of this section, be payable by the last employer who employed the workman in the employment to the nature of which the disease is due unless that employer establishes that the disease was not contracted while the workman was in his employ.

(2) The workman or his dependants if so required shall furnish to that employer such information as they possess as to the names and addresses of all employers who employed the workman in that employment in the twelve months preceding the date of development of the disease and if that employer alleges that the disease was contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may cause such other employer to be joined as a party to claim and, if the allegation is proved, that other employer shall be the employer by whom the compensation is payable.

(3) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the work to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such contribution as, in default of agreement, may be determined by the Court.

(4) The notice of accident and claim for compensation required to be given under section 18 shall be made to the employer who last employed the workman in the occupation to the nature of which the disease was due and that employer shall, notwithstanding any dispute as to liability, report the accident to the Labour Commissioner as required under section 19.

(5) No employer shall be liable to pay compensation in respect of an occupational disease to any workman who, at the

time of entering upon the relevant occupation, willfully and falsely represented to that employer in writing that he had not previously suffered from that disease.

Calculation of compensation.

39. The amount of compensation shall be calculated on the basis of the earnings of the workman when he was last employed in the occupation to the nature of which the disease was due by the employer liable to pay the compensation.

Presumption as to cause of disease.

40. If a workman contracts an occupational disease set out in the first column of the First Schedule that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employment if that employment was in the occupation set out against that disease in the second column of the said Schedule and he was so employed at any time within one month of the date of development of the disease.

Power of Minister to amend First Schedule.

41. (1) The Minister may, by regulations, amend the First Schedule by adding to it any disease or injury if he is satisfied that-

- (a) In relation to any prescribed classes of workmen, it should be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) It is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(2) The intention to make such regulations shall be published in the Gazette at least thirty days before the regulations are made and any person wishing to do so may within thirty days of such publication in the Gazette make any representations in writing to the Minister who shall consider them before the regulations are made.

Pneumoconiosis.

42.(1) The Minister may by regulations set up a scheme to provide for the payment of compensation by the employers of workmen in any specified industry or process, or group of industries or processes, involving exposure to the risk of pneumoconiosis who are certified in such manner as may be prescribed by the scheme-

- (a) To have suffered death or total disablement from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis;
- (b) Although not totally disabled, to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis to such a degree as to their earning capacity.

(2) The scale of compensation fixed by the scheme in the case of death or total disablement shall be that prescribed by the Act and in any other case shall be such as may be prescribed by the scheme.

(3) Provision may be made by the scheme-

- (a) For the constitution of a medical board and for the appointment and remuneration of its members on the same terms as those applying to the Workmen's Compensation Medical Board;
- (b) For requiring workmen to whom the scheme applies to submit themselves to periodical examination and to furnish such information as to their previous employment in any occupation to which the scheme applies as may be prescribed by the scheme and for making the right of workmen to compensation conditional on compliance with such requirements;
- (c) For the exclusion from employment in any scheduled occupation of workmen to whom the scheme applies who are, when first medically examined in pursuance of the scheme, found to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis or from tuberculosis or are found unsuitable for work in the industry or process by reason of failure to satisfy such requirements with respect to physique as may be prescribed by the scheme; and
- (d) For the application with necessary modification of any of the provisions of this Act or regulations made thereunder and for defining the industries and processes to which the scheme applies and generally for such further or supplemental matters as appear necessary for giving full effect to the scheme.

Diseases resulting from an employment accident.

43. Nothing in this Part shall affect the right of a workman to recover compensation under this Act in respect of a disease if the disease result from an employment accident and it is not in relation to him, an occupational disease by virtue of his occupation.

## PART V-GENERAL

Regulations.

44. The Minister may make regulations regularly to give effect to the purposes of this Act and in particular such regulations may-

- (a) Prescribe anything which may be or is required to be prescribed;
- (b) Prescribe procedure, forms and fees in connection with specified matters;
- (c) Require the insurers and employers to make to the Labour Commissioner such returns as may be prescribed;
- (d) Require the insurers to pay to the Labour Commissioner, within a specified time, an amount of money equivalent to a specified percentage of premiums received from employers during a specified period on account of insurance under this Act.

Power of Minister to review maximum and minimum amounts.

45. (1) The Minister shall, on the first anniversary of the coming into operation of this Act and thereafter at intervals of one year, review the amount mentioned in section 10(1) and, if he is satisfied that, having regard to changes in the general level of prices and earnings those amounts should be verified, he shall give notice in the Gazette of his intention to make regulations revising the amounts to amounts which he shall specify in the notice, and shall, not earlier than thirty days after the date of the said notice, make regulations accordingly, taking account of any written representations received;

Provided that he shall not thereby vary any of the said amounts by more than 15 per cent in any review.

(2) The Minister shall at the same time, after consultation with the Minister of Health THE WORKMEN'S COMPENSATION ACT, 1983 (Act No.7 of 1983)

An Act to provide for the compensation and medical treatment of workmen who suffer injury or contract disease in the course of their employment.

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## PART 1: PRELIMINARY

Short title , commencement and application.

1. (1) This Act may be cited as the Workmen's Compensation Act, 1983, and shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

(2) This Act applies to every employer in Swaziland, including the Government and to every workman who is employed in or outside Swaziland by such an employer except a workman who is employed outside Swaziland in employment to which any law of another country applies which provides compensation for employment accidents.

Meaning of 'workman'.

2. (1) In this Act, unless the context otherwise requires –  
'workman' means, subject to sub-section (2) of this section, any person who has entered into or works under a contract of service or of apprenticeship or of traineeship whether the contract is express or implied, is oral in writing and whether the remuneration is calculated by time or work done.

(2) The following persons are excluded from the definition of 'workman'-

- a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purpose of any game or recreation and engaged or paid through a club;
- b) an outworker, that is to say a person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished, repaired or adapted for sale on premises not under the control of the employer;
- c) a domestic servant employed as such for wages in or about a private household by the householder;
- d) a member of the employer's family dwelling in his house;
- e) a member of Umbutfo Swaziland Defence Force;

f) Any class of persons whom the Minister may by notice in the Gazette declares not to be workmen for the purpose of this Act.

(3) If in any claim for the recovery of compensation under this Act it appears to the Labour Commissioner or to the Court that the contract of service or apprenticeship or traineeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the Labour Commissioner or the Court as the case may be, may, if having regard to all the circumstances of the case it is thought proper so to do, deal with the matter as if the injured person had at the time the aforesaid been a person working under a valid contract of service or apprenticeship.

(4) Any reference to a workman who has been injured shall, unless the context otherwise requires, if the workman is dead, include a reference to his legal personal representative or to his dependants or any of them or to such officer as the Minister may appoint to act on behalf of the dependants of the workman.

Interpretation.

3. (1) In this Act, unless the context otherwise requires –

“Board” means the Workmen’s Compensation Medical Board established under Section 31;

“Compensation” means compensation as provided for by this Act;

“Court” means the Industrial Court established by Section 4 of the Industrial Relations Act 1980;

“dependant” means a member of the family of a workman who was wholly or in part dependant upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent; and if the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grand-parent so dependent upon his earnings, shall include such an illegitimate child or parent or grand-parent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependant partially on contributions from such other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

“Dental practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970;

“Disablement” means, if of a temporary nature, such disablement as temporarily incapacitates a workman for, or temporarily reduces his earning capacity in, any employment which he was capable of undertaking at the time of the accident resulting in such disablement:

Provided that:-

(i) every injury specified in the Second Schedule shall be deemed to result in permanent disablement to the percentage degree specified against each; and

(ii) conspicuous disfigurement shall be deemed to result in permanent disablement whether or not accompanied by any actual loss of earning capacity;

“earnings” include wages any allowance in respect of increased cost of living paid to the workman by the employer, the value of any food, fuel or quarters supplied to the workman by the employer, any overtime payments or other special remuneration for work done whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, casual payments of a non-recurrent nature, any ex-gratia payment whether given by the employer or other person, the value of a traveling allowance, the value of any traveling concession, the value of contribution paid by the employer of a workman towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

“employer” includes the Government, the Swazi National Administration, any body of persons corporate or incorporate and the legal personal representative of a deceased employer and, if the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or of apprenticeship or of traineeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for such other person; and in relation to a person employed for a purpose 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 purpose of this Act, be deemed to be the employer;

“Incapacity” means incapacity for work which the workman concerned can reasonably be expected to do;

“Injury” means physical or mental injury and includes the contraction of a disease and the aggravation or acceleration of any pre-existing injury or disease where the employment is a contributory factor to such aggravation or acceleration;

“Labour Commissioner” means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorized in writing by the Labour Commissioner to act on his behalf;

“Medical aid” means any or all of the benefits prescribed in paragraphs (a) to (h) inclusive of Section 30(1);

“Medical practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970:

“Member of the family” means the wife, common law wife, husband, father, mother, grandfather, grandmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister:

“Minister” means the Minister for the time being responsible for Labour;

“month” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding month;

“Occupational disease” means any disease specified in the First Schedule and pneumoconiosis;

“pneumoconiosis” means fibrosis of the lungs to silica dust, asbestos and dust or other dust includes the condition of the lungs known as dust reticulation but does not include byssinosis or bagassosis;

“Serious and willful misconduct” shall include-

- a) drunkenness;
- b) a willful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen;
- c) any other act or omission which the Court, having regard to all the circumstances of an accident, may determine to be serious and willful misconduct;

“Public authority” means the Government or the Swazi National Administration or a local.

(2) The exercise and performance of the powers and duties of a public authority shall, for the purposes of this Act, be deemed to be the trade or business of such public authority.

Definition of employment accident.

4. For the purposes of this Act, employment accident means an occurrence which causes personal injury to a workman by accident arising out of and in the course of his employment and shall be deemed to include personal injury by accident happening-

- (a) while traveling by any reasonable means and any reasonable route between a workman’s place of residence for the time being and his place of work;
- (b) notwithstanding that the workman is at the time acting in contravention of any statutory or other regulations applicable to his employment or of any orders given to him by or on behalf of his employer or that he is acting without instructions from his employer, if the act is done for the purposes of and in connection with his employer’s trade or business;
- (c) in or about premises at which the workman is for the time being employed for the purposes of his employer’s trade or business if the accident happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or the thought to be, or possibly to be, injured or imperilled, or to avert or minimize serious damage to property;
- (d) in the course of a workman’s employment which is caused by another person’s misconduct, skylarking or negligence or by the behaviour or presence of an animal (including a bird, fish or insect) or is caused by or consist in the workman being struck by any object or lightning if the workman did not directly or indirectly induce or contribute to the accident by his conduct outside the employment or by any act not incidental to the employment:

Provided that an accident arising in the course of a workman’s employment shall be deemed to have arisen out of that employment in the absence of evidence to the contrary.

## PART 11-COMPENSATION FOR INJURY

Employer’s liability for compensation for death or injury resulting from employment accident.

5. (1) If in any employment personal injury is caused to a workman by accident and that accident is an employment accident his employer shall be liable to pay compensation in accordance with this Act.

(2) Notwithstanding sub-section (1) the employer shall not be liable to pay compensation under this Act-

(a) in respect of any injury, except an injury causing death, which does not incapacitate the workman for at least three days from earning full wages at the work at which he was employed;



(b) if it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, unless the accident results in death or serious permanent disablement, in which case the Labour Commissioner or the Court, as the case may be, on consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as is thought fit.

(3) No compensation shall be payable under this Act in respect of any incapacity, disablement or death resulting from an employment accident or occupational disease if the workman has at any time represented in writing to the employer that he was not suffering and had not previously suffered from a similar serious incapacity or disablement knowing that the representation was false.

(4) When an employment accident happens to a workman to whom this Act applies, while he is temporarily employed by his employer outside Swaziland, the workman shall be entitled to compensation in the same manner as if the accident had happened in Swaziland.

Compensation in case of death.

6. If death results from injury-

(a) if the workman leaves any dependants wholly dependent on his earning, the amount of the compensation shall be a sum equal to forty eight months earnings, subject to the provisions of section 10 (1) (a). but if in respect of the same accident compensation has been paid under section 7, there shall be deducted from the sum payable under this paragraph any sum to pay:

Provided that notwithstanding any deduction made under this paragraph, the minimum amount of compensation payable to the dependants of the workman shall not be less than 48 times the amount stated in section 10 (1) (b);

(b) if the workman does not leave any dependants wholly dependent on his earnings but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the Labour Commissioner in accordance with rules made under this Act to be reasonable and proportionate to the injury to such dependants;

(c) in addition to any sums payable under paragraphs (a) or (b) of this Section, the reasonable expenses of the burial of the deceased workman not exceeding three hundred Emalangenzi shall be paid by the employer to the person responsible for paying the cost of the burial.

Compensation in case of permanent disablement.

7.(1) If at the termination of a period for which compensation is payable under section 8 or section 9 the workman is permanently disabled as a result of the injury the amount of compensation shall, subject to the following provisions of this section and of section 10(1), be-

(a) in the case of an injury specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is specified in that Schedule as being the percentage of disablement caused by that injury;

(b) in the case of an injury not specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused by that injury.

(2) If two or more injuries are caused to the workman by the same accident the percentage to be used in calculating the amount of compensation as in sub-section (1) shall, in the case of injuries specified in the Second Schedule, be the aggregate of the percentages for each sum injury specified in the Second Schedule or such greater amount as the medical practitioner may deem appropriate and in any other case such percentage as the medical practitioner may determine:

Provided that in no case shall the percentage exceed one hundred per cent.

(3) If the injury results in total permanent disablement of such a nature that the workman must have the constant help of another person additional compensation amounting to one quarter of the compensation otherwise payable under this section shall be paid.

Compensation in case of temporary disablement.

7. (1) If at the termination of a period for which compensation is payable under section 9 a workman is temporarily partially disabled as a result of the injury the amount of compensation shall, subject to the provisions of section 10(1) (a), be such percentage of the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused to the workman by the injury, multiplied by the number of months the temporary disablement is, in the opinion of the medical practitioner, likely to persist:

Provided that no assessment of temporary partial disablement shall be made for a period exceeding 12 months and where one such assessment is followed by a further assessment or assessments of temporary partial disablement the combined total of the periods covered by such assessments shall not exceed 24 months.

(2) At the termination of a period of temporary partial disablement the workman shall be re-examined by a medical practitioner and the percentage of disablement, if any, then persisting shall be assessed and, subject to the provisions of sub-section (1), certified as temporary or permanent according to the opinion of the medical practitioner:

Provided that where the disablement has been certified as temporary for periods totaling 24 months any disablement still persisting at the end of the said 24 months shall be deemed to be permanent and compensation therefore shall be payable under section 7.

Compensation in case of temporary incapacity.

8. (1) If temporary incapacity results from the injury the compensation shall be equal to seventy five percent of the earnings which the workman would have earned for the period during which he is temporarily incapable of work, subject to section 10(1) (a) and to the following provisions of this section.

(2) Compensation provided under sub-section (1) shall, subject to sub-section (3), be payable for a maximum of six months from the date of the accident.

(3) If at the end of six months from the date of the accident the workman remains incapable, as a result of the injury, of any work which is suitable in his case and in the opinion of a medical practitioner is likely to remain so incapable for a further period-

(a) Not exceeding twelve months, compensation under this section shall continue to be payable for such further period so long as the incapacity continues;

(b) Exceeding twelve months, he shall be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(4) If a workman who is entitled to compensation under sub-section (3)(a) remains incapable of work at the end of the period of twelve months referred to in that sub-section, he shall be then deemed to be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(5) No deduction shall be made from compensation payable under section 6 or section 7 on account of compensation payable under this section or under section 8.

Method of calculating earnings.

9. (1) Subject to section 45(1), for the purpose of calculating the compensation payable under this Act-

(a) Any earnings of a workman in excess of five hundred Emalangeni a month shall be disregarded;

(b) In the case of compensation payable on account of permanent disablement in the rate per month at which the workman was being remunerated at the time of the accident shall be deemed to be not less than seventy five Emalangeni a month.

(2) For the purpose of this Act the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the accident.

(3) If, by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the earnings in the manner required by sub-section(2) regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, uninterrupted by absence from work due to illness or any other unavoidable cause, or, if there is no person so employed, by a person in the same grade employed in the same class of employment.

(4) For the purposes of assessing compensation payable in the case of permanent disablement-

(a) if the workman was under the apparent age of eighteen years at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of eighteen years or at the end of a period of five years after the accident, whichever calculation is more favourable

to the workman; and

(b) if the workman was employed under a contract of apprenticeship or traineeship at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon completion of his apprenticeship or traineeship.

(5) If the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, 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 accident, provided that the earnings under the other contract or contracts were disclosed to that employer or employers, whichever occurred last.

(6) The employer liable to pay compensation shall, if so required by the workman or his dependants, furnish in writing particulars of the earnings upon which the amount of the monthly earnings has been calculated for the purposes of this section.

Persons entitled to compensation.

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

(2) If there are both total and partial dependants, nothing in this Act shall be construed as preventing compensation being allotted partly to the total and partly to the total and partly to the partial dependants.

(3) If a dependant dies before a claim for compensation in respect of the death of a workman is made 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 the claim for compensation shall be dealt with as if that dependant had died before the workman.

Distribution of compensation.

12.(1) Compensation payable if the death of a workman has resulted from the injury shall be apportioned by the Labour Commissioner among the dependants of the deceased workman in accordance with rules set out in regulations made under this Act.

(2) The Labour Commissioner shall direct that the sum allotted to any one dependant under sub-section(1) or the sum payable to an injured workman under section 7 or section 8 shall be paid to the person entitled to receive it or to such other person or authority as may be specified in the aforementioned rules for the purpose of investing, applying or otherwise dealing with the sum for the benefit of the workman or of the person in respect of whom it is paid as the Labour Commissioner thinks fit.

(3) Compensation payable to an injured workman under section 9 shall be paid to him at the intervals and times at which the workman would ordinarily receive his earnings or, where payment as aforesaid is not practicable, at such other intervals and times as the workman and the employer may agree;

Provided that where a workman ordinarily received his earnings at intervals of less than a week the employer shall not be required to pay compensation at intervals or less than one week.

(3) Any decision or direction of the Labour Commissioner given under sub-section (1) or (2) as to the apportionment or payment of compensation may, on application to the Court be made an order of the Court.

(4) An appeal shall lie to the court against any decision or direction of the Labour Commissioner given under this section.

(5) Where it appears to the Labour Commissioner that, on account of variation of the circumstances of the various dependants or for any other sufficient cause, an apportionment or direction as to payment of any sum so apportioned made under sub-section (1) or (2) ought to be varied, he may direct that the apportionment or direction shall be varied in such a manner as in the circumstances of the case he may think just, provided that where the former apportionment or direction has been made an order of the Court the power to make such variation shall devolve upon the Court.

(6) Subject to sub-section (6), any order or direction of the Court under this section shall be final.

Agreement as to compensation payable to workman.

13.(1) Subject to the approval of the Labour Commissioner as to the terms, the employer and the workman may agree in writing as to the compensation to be paid by the employer; such an agreement shall be in triplicate, the original of which shall be retained by the Labour Commissioner, one copy shall be kept by the employer and one copy shall be kept by the

workman.

(2) An agreement made under sub-section(1)-

- (a) Shall not provide for a lesser amount of compensation than is payable under this Act;
- (b) Shall not be binding against the workman unless it is endorsed by a certificate of an authorized officer that he has read over and explained to the workman the terms therefore and that the workman appeared fully to understand and approve the agreement;
- (c) May, on application to the Court, be made an order of the Court;
- (d) Shall not be subject to any stamp duty.

(3) The Court may, notwithstanding that an agreement made under sub-section (1) has been made an order of the Court, on application by any party to the agreement within three months 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 it may think just, if it is proved-

- (a) That the sum paid was or is not in accordance with sub-section(1) or sub-section(2)(a);or
- (b) That the agreement was entered into by mistake or in ignorance as to the true nature of the injury; or
- (c) That the agreement was obtained by fraud, undue influence, misrepresentation or other improper grounds for avoiding it.

(4) Any order or direction of the Court under this section shall be final.

(5) In this section “authorized officer” means the Labour Commissioner, or the District Commissioner of the district in which the accident occurred, and any other person the Labour Commissioner may designate or appoint in writing to be an officer for the purpose of this section.

Assessment of claims in event of disagreement.

14.(1) If an employer in whom a claim for compensation has been served under the provisions of section 18 does not, within twenty-one days after the receipt of the claim, agree in writing with the workman as to the amount of compensation to be paid under section (9) or within twenty-one days of the termination of the period for which compensation under section 9 is payable, agree in writing with the workman as to the amount of compensation to be paid under section 7 or section 8, as the case may be , or if, in connection with a claim for compensation, any question arises as to the liability to pay compensation or as to the amount or the duration of compensation, the employer or the workman shall apply to the Labour Commissioner for the determination of any such question and for an assessment to be made of the claim.

(2) The Labour Commissioner may make such determination and assessment himself or he may refer the matter to the Court for determination and assessment.

(3) Where the question arising involves any matter which falls to be determined by a medical practitioner, the Labour Commissioner shall, prior to taking action in accordance with sub-section(2), refer to the Workmen’s Compensation Medical Board for a decision on that matter as provided in section 32.

(4)An appeal against an assessment by the Labour Commissioner made under this section, or any matter arising therefrom (other than a dispute concerning the assessment of incapacity or disablement which falls to be dealt with under section32), shall lie to the Court.

(5)The Labour Commissioner or the Court, as the case may be, may, for the purpose of making an assessment or hearing an appeal, call upon any competent person to give evidence if of the opinion that such person is, by virtue of his expert knowledge, able to assist the Labour Commissioner or the Court.

Payment pending settlement of a claim.

15. Nothing in section 12 of this Act shall prevent an employer from making any payment to a workman or to a dependant pending the settlement of a claim and the Labour Commissioner or the Court , as the case may be, may order that the whole or any part of such payment shall be deducted from the amount of compensation payable under the Act.

Review of periodical payments.

16.(1) Any periodical payment payable under this Act either under agreement between the parties or under an order of the Court may be reviewed by the Court on the application either of the workman.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended.

(3) If application is made by an employer under this section for any periodical payment to be ended or diminished, the employer may pay into Court the periodical payment or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on review under this section.

(4) In making a review under this section the Court shall have regard only to the capacity for work of the workman as affected by the accident.

Limitation of power of employer to end decrease periodical payment.

17. Except as provided in section 9, section 16(4), an employer shall not be entitled, otherwise than in pursuance of an agreement made under section 13 or an order of the Court, to end or decrease periodical payments except where a workman is certified by a medical practitioner as fit to resume work, or becomes entitled to compensation for temporary or permanent disablement, or dies.

Requirements as to notice of accident and claim for compensation.

18. (1) A claim for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given, either orally or in writing, to the employer or to any foreman or other official under whose supervision the worker is employed, by or on behalf of the workman as soon as practicable after the happening of the accident and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death.

(2) Notwithstanding anything contained in this section-

(a) The want of a notice of accident or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such a claim if the employer is proved to have had knowledge of the accident from any other source at or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by that want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;

(b) The failure to make a claim for compensation within the period specified in sub-section (1) shall not be a bar to the maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation should be maintainable unless it is made within a period of three years from the date of the accident or the date of death as the case may be.

(3) The notice referred to in sub-section(1) shall give the name and address of the person injured and state in ordinary language the cause of the injury and the date on which it happened.

(4) To facilitate the giving of notice of accidents a book in the prescribed form shall be kept readily accessible at every work place where workmen are ordinarily employed, in which the particulars specified in the preceding sub-section may be entered by the injured workman or some other person acting on his behalf and an entry in such book shall, if made as soon as practicable after the happening of an accident, be sufficient notice of the accident for the purposes of the Act.

Duty of employer to report accident.

19. (1) If an accident occurs which results in the death of a workman or in any injury which would entitle him to compensation under this Act, a report in the prescribed form shall be given to the Labour Commissioner by the employer within seven days of receiving notice of the accident or of the first day of absence from work if later.

(2) In the event of a workman occurring after a report of accident to such workman has been given under sub-section(1), the Labour Commissioner shall be informed by the employer in writing of the death and of the date thereof.

(3) On the receipt of a report under sub-section (1) the Labour Commissioner may make such investigations as he may think fit and if, in the case of the death of a workman, it appears to him that a claim of compensation may lie under this Act in respect of such death, he shall take steps-

(a) To ascertain whether there are any dependants of the deceased workman and if so the degree of their dependency, and

(b) To inform such dependants, if any, of the reported cause and circumstances of the death of the workman and to ascertain whether such dependants intend to make a claim for compensation or wish a claim to be made on their behalf.

(4) Nothing contained in this section shall prevent any person from making a claim for compensation under this Act.

Jurisdiction of Court and right of appeal.

20. (1) Save as is provided in this Act, the Court shall, upon or in connection with any question to be investigated or determined under the Act, have all the powers and jurisdiction exercisable by the Court under the Industrial Relations Act 1980, and a decision of the Court shall be appealable to the extent provided under that Act.

(2) If a request is received from a court in another country for an investigation of any matter arising out of proceedings for compensation instituted in that court under a law relating to workmen's compensation, the Court shall have jurisdiction to deal with the matter as if it had arisen under this Act, provided that where the matter concerns the dependency of any person it shall be investigated in accordance with regulations under this Act.

#### Representation of parties.

21. Subject to any rules made under section 48, any party to any matter brought before the Court under this Act may be represented before the Court by a legal practitioner or any other person authorized by such party.

22. (1) If any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contract with any other person (which other person is 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, and that contractor fails to discharge his liabilities and obligations under this Act the principal shall be liable to pay any workman employed in execution of the work any compensation under this Act which he would have been liable to pay if such workman 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 workman under the employer by whom he is immediately employed.

(2) If the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) If 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 workman from recovering 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.

#### Remedies against both employer and stranger.

23. If the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof –

(a) The workman may take proceedings both against such person to recover damages and against any person liable to pay compensation under this Act for such compensation but shall not be entitled to recover both damages and compensation; and

(b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called onto pay an indemnity under section 22 relating to liability in the case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay such damages and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act 1904.

#### Proceedings independently of Act.

24. (1) If the injury was caused by the personal negligence, breach of statutory duty or wrongful act or omission 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 in a civil court independently of this Act.

(2) Any damages awarded in any such proceedings shall be reduced by the value, as decided by the Court, of any compensation which has been paid or is payable under this Act workman for that injury.

(3) If, in proceedings independently of this Act or on appeal, it is determined that the employer is not liable under this proceedings, the Court may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation to payable.

#### Obligation of employer to insure.

25. (1) Every employer other than the Government who employs a workman or workmen shall insure and keep himself insured in respect of all liability which he may incur under this Act with such insurers as the Minister may approve in regulations.

(2) The Ministry may by certificate under his hand exempt any employer from the provisions of sub-section (1) on any

condition as to the provision of a security or otherwise as he may determine, provided that the Minister shall not be bound of a security or otherwise as he may determine, provided that the Minister shall not be bound to disclose his reasons for refusing to grant such exemption.

(3) For the purpose of sub-section (2) a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under this Act to any workman employed by him.

Insolvency of employer.

26. (1) If any employer has entered into a contract with insurers in respect of any liability to any workman under this Act, then, in the event of the employer becoming an insolvent, or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the commencement of winding-up proceedings in respect of such company, or of the appointment of a receiver or judicial manager of the company's business or undertaking, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to insolvency and the winding-up of companies for the time being in force, be transferred to and vest in the workman, 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:

Provided that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included amongst the debts which under section 100 of the Insolvency Act 1955 are, in the distribution of the property or assets of an insolvent, to be paid in priority to all other debts, and under section 81 of the Companies Act 1912 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 accrued before the following dates, that is to say-

- (a) In the first case, the date of the sequestration order; and
- (b) In the second case, the date of commencement of the winding-up of the company.

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

(5) If the insolvent or company in liquidation has entered into such contract with insurers as if referred to in sub-section (1), sub-section (3), and (4) shall not apply in respect of the liability of the employer to the workman or that part thereof which is met by the insurers.

Prohibition against contracting out.

27. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right to compensation from an employer for injury arising out of an employment accident shall be null and void in as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Compensation not to be assigned, charged or attached.

28. 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.

### PART III

#### MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD

Medical examination and treatment.

29. (1) If a workman has given notice of an accident, the employer shall, as soon as reasonably possible thereafter, arrange to have him medically examined by a medical practitioner named by the employer and agreed to by workman (so however, that such agreement shall not be unreasonably withheld) and any workman who is in receipt of periodical payments under section 9 shall submit himself for medical examination from time to time as may be required by the employer or by the medical practitioner in charge of the case.

(2) The workman shall, when required, attend upon the medical practitioner at such reasonable time and place as shall

be notified to the workman by the employer or the medical practitioner.

(3) If, in the opinion of any medical practitioner, the workman is unable or not in a fit state to attend on the medical practitioner for examination, the fact shall be notified to the employer, and the medical practitioner conducting the examination required by sub-section (1) shall fix a reasonable time and place for the examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for medical examination as required by this section, his right to compensation shall be suspended until such examination has taken place, and if the failure extends for the period of fifteen days from the date when the workman was required to submit himself for examination the workman shall forfeit his right to compensation unless it is proved, to the satisfaction of the Labour Commissioner, that there was reasonable cause for such failure.

(5) During the period of temporary incapacity, the employer shall arrange to submit the workman for medical treatment prescribed by a medical practitioner and such medical treatment shall include any special treatment which the medical practitioner may advise the workman to undergo.

(6) If the workman has failed to submit himself for treatment when so required under sub-section (5) or having submitted himself for such treatment has disregarded the instructions of the medical practitioner, then, if it is proved that the failure or disregard was unreasonable 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 workman had submitted himself for treatment and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

(7) A workman may, at his own expense, have his own medical practitioner present at any medical examination carried out by a practitioner nominated by the employer.

(8) A workman may, if he objects to the medical practitioner nominated by the employer, apply to the Labour Commissioner for leave to be examined and treated by his own practitioner, provided that he bears any additional expenses thereby incurred; and the decision of the Labour Commissioner on such application shall be final.

(9) No compensation shall be payable in respect of the death of a workman who unreasonably fails to submit himself for examination and treatment when required to do so in accordance with this section or unreasonably disregards the instructions of a medical practitioner if it is proved that the death of the workman was caused by such failure or disregard.

#### Medical expenses.

30. (1) Subject to this Act and any regulations made thereunder, the employer shall defray the expenses reasonably and necessarily incurred by or in respect of a workman as a result of an employment accident for-

- (a) General practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) Dental care;
- (c) Nursing care at home or in a hospital or other medical institution;
- (d) Maintenance in a hospital or other medical institution;
- (e) Dental, pharmaceutical and other medical or surgical supplies, including eye glasses;
- (f) Emergency and first-aid treatment;
- (g) Transportation to and from a place for the purpose of treatment certified as necessary by the medical practitioner in charge;
- (h) The supply, maintenance, repair and renewal of artificial limbs and apparatus necessitated by the accident.

(2) Subject to section 45(2), the liability of an employer under sub-section (1) shall be limited to an amount not exceeding five thousand five hundred Emalangeni.

(3) Except in the case of an accident to which section 5(40) applies, an employer shall only be liable to defray the expenses in connection with medical treatment in a place outside Swaziland if the journey and the treatment has been approved by the Director of Medical Services.

(4) All disputes as to the necessity for or character or sufficiency of any medical aid provided or proposed to be provided under this section shall be determined by the Workmen's Compensation Medical Board whose decision shall be final.

#### Workmen's Compensation Medical Board.

31. (1) There shall be a Board to be known as the Workmen's Compensation Medical Board, referred to hereafter as "the Board".



- (2) The Board shall consist of three members appointed in writing by the Minister, of whom-
- (a) One, who shall be chairman, shall be a medical practitioner employed by the Government;
  - (b) One shall be a medical practitioner nominated by the Federation of Swaziland Employers; and
  - (c) One shall be a medical practitioner appointed to represent workman.

(3) The Board may, at the request of any party or of its own volition, invite any person to attend a meeting of the Board and give evidence on any matter before the Board concerning which he is competent.

(4) A member of the Board shall hold office for such period as the Minister may determine.

(5) A member of the Board who is not in full time employment of the Government and any person invited as in subsection (3) to attend a meeting of the Board shall be paid out of the public revenue such fees and allowances as the Minister may direct.

(6) For a sitting of the Board two members shall constitute a quorum but, if agreement is not reached on a question, it shall be deferred for decision to a full meeting of the Board.

(7) The secretary of the Board shall be a public officer appointed by the Labour Commissioner.

Functions of Board.

32. (1) The Labour Commissioner shall refer to the Board any dispute or matter with regard to-

- (a) The degree and duration of incapacity or disablement under sections 7, 8 and 9; or
- (b) The medical examination and treatment of a workman.

(2) The Board shall give a decision in writing to the Labour Commissioner on any matter or dispute referred to the Board by him and that decision shall be final and binding on the Labour Commissioner and on the parties concerned.

Power of Court and Labour Commissioner.

33. The Court or Labour Commissioner may, when determining any dispute or other matter in respect of compensation, or upon the application of any interested person, order the payment of any of the medical expenses referred to in section 30 to the persons entitled to receive such payment, and if such expenses exceed the amount provided for section 30 the Court or the Labour Commissioner as the case may be, may apportion such amount in a manner deemed just.

Prescription of fees for medical aid.

34. The fees which may be charged by a medical or dental practitioner or a medical or dental establishment in Swaziland for medical aid provided to a workman under this Act shall not exceed those set out in a scale prescribed under this Act.

Employer not to require contribution from workman.

35. An employer shall not require a workman to make any contribution towards the cost of any medical aid for which the employer is liable to defray the cost under this Act and no employer shall accept any such contribution.

#### PART IV-OCCUPATIONAL DISEASES

Compensation for occupational diseases.

36. (1) Where-

- (a) A medical practitioner certifies that a workman is suffering from a disease set out in the first column of the First Schedule and is thereby rendered incapable of work; or
- (b) The death of a workman is caused by any such disease;

And the disease is due to the nature of any employment in which the workman was engaged as a workman at any time prior to the date of development of the disease, he or his dependants, as the case may be, shall be entitled to compensation under this Act as if the disease were due to an employment accident, subject to the modifications set out in this Part of the Act.

(2) Certification of the diseases set out in paragraphs 16, 19 and 20 in the First Schedule shall be made by the Medical Board set up by the Minister under the powers conferred on him by section 42 and in the case of the disease set out in paragraph 16 (bagassosis) or paragraph 20 (byssinosis), compensation under this Act shall only be payable if that Board certifies that the workman is permanently disabled by the disease.

Date of development of the disease.

37. The date of development of the disease shall be deemed to be the date of the accident and shall be-
- (a) In the case of a claim for compensation under section 7.8 or 9, the first day on which the workman is incapable of work as a result of the disease;
  - (b) In the case of a claim for compensation under section 6-
    - i. The date determined under sub-section (a); or
    - ii. The date of death if no incapacity preceded death.

Employer liable to pay compensation.

38. (1) The compensation shall, subject to the further provisions of this section, be payable by the last employer who employed the workman in the employment to the nature of which the disease is due unless that employer establishes that the disease was not contracted while the workman was in his employ.

(2) The workman or his dependants if so required shall furnish to that employer such information as they possess as to the names and addresses of all employers who employed the workman in that employment in the twelve months preceding the date of development of the disease and if that employer alleges that the disease was contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may cause such other employer to be joined as a party to claim and, if the allegation is proved, that other employer shall be the employer by whom the compensation is payable.

(3) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the work to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such contribution as, in default of agreement, may be determined by the Court.

(4) The notice of accident and claim for compensation required to be given under section 18 shall be made to the employer who last employed the workman in the occupation to the nature of which the disease was due and that employer shall, notwithstanding any dispute as to liability, report the accident to the Labour Commissioner as required under section 19.

(5) No employer shall be liable to pay compensation in respect of an occupational disease to any workman who, at the time of entering upon the relevant occupation, willfully and falsely represented to that employer in writing that he had not previously suffered from that disease.

Calculation of compensation.

39. The amount of compensation shall be calculated on the basis of the earnings of the workman when he was last employed in the occupation to the nature of which the disease was due by the employer liable to pay the compensation.

Presumption as to cause of disease.

40. If a workman contracts an occupational disease set out in the first column of the First Schedule that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employment if that employment was in the occupation set out against that disease in the second column of the said Schedule and he was so employed at any time within one month of the date of development of the disease.

Power of Minister to amend First Schedule.

41. (1) The Minister may, by regulations, amend the First Schedule by adding to it any disease or injury if he is satisfied that-

- (a) In relation to any prescribed classes of workmen, it should be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) It is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(2) The intention to make such regulations shall be published in the Gazette at least thirty days before the regulations are made and any person wishing to do so may within thirty days of such publication in the Gazette make any representations in writing to the Minister who shall consider them before the regulations are made.

Pneumoconiosis.

42.(1) The Minister may by regulations set up a scheme to provide for the payment of compensation by the employers of workmen in any specified industry or process, or group of industries or processes, involving exposure to the risk of pneumoconiosis who are certified in such manner as may be prescribed by the scheme-

- (a) To have suffered death or total disablement from pneumoconiosis or from pneumoconiosis accompanied by

tuberculosis;

(b) Although not totally disabled, to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis to such a degree as to their earning capacity.

(2) The scale of compensation fixed by the scheme in the case of death or total disablement shall be that prescribed by the Act and in any other case shall be such as may be prescribed by the scheme.

(3) Provision may be made by the scheme-

(a) For the constitution of a medical board and for the appointment and remuneration of its members on the same terms as those applying to the Workmen's Compensation Medical Board;

(b) For requiring workmen to whom the scheme applies to submit themselves to periodical examination and to furnish such information as to their previous employment in any occupation to which the scheme applies as may be prescribed by the scheme and for making the right of workmen to compensation conditional on compliance with such requirements;

(c) For the exclusion from employment in any scheduled occupation of workmen to whom the scheme applies who are, when first medically examined in pursuance of the scheme, found to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis or from tuberculosis or are found unsuitable for work in the industry or process by reason of failure to satisfy such requirements with respect to physique as may be prescribed by the scheme; and

(d) For the application with necessary modification of any of the provisions of this Act or regulations made thereunder and for defining the industries and processes to which the scheme applies and generally for such further or supplemental matters as appear necessary for giving full effect to the scheme.

Diseases resulting from an employment accident.

43. Nothing in this Part shall affect the right of a workman to recover compensation under this Act in respect of a disease if the disease result from an employment accident and it is not in relation to him, an occupational disease by virtue of his occupation.

## PART V-GENERAL

Regulations.

44. The Minister may make regulations regularly to give effect to the purposes of this Act and in particular such regulations may-

(a) Prescribe anything which may be or is required to be prescribed;

(b) Prescribe procedure, forms and fees in connection with specified matters;

(c) Require the insurers and employers to make to the Labour Commissioner such returns as may be prescribed;

(d) Require the insurers to pay to the Labour Commissioner, within a specified time, an amount of money equivalent to a specified percentage of premiums received from employers during a specified period on account of insurance under this Act.

Power of Minister to review maximum and minimum amounts.

45. (1) The Minister shall, on the first anniversary of the coming into operation of this Act and thereafter at intervals of one year, review the amount mentioned in section 10(1) and, if he is satisfied that, having regard to changes in the general level of prices and earnings those amounts should be verified, he shall give notice in the Gazette of his intention to make regulations revising the amounts to amounts which he shall specify in the notice, and shall, not earlier than thirty days after the date of the said notice, make regulations accordingly, taking account of any written representations received;

Provided that he shall not thereby vary any of the said amounts by more than 15 per cent in any review.

(2) The Minister shall at the same time, after consultation with the Minister of Health – MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD

29. Medical examination and treatment.

30. Medical expenses.

31. Workmen's Compensation Medical board.

32. Functions of Board.

33. Power of Court and Labour Commissioner.

34. Prescription of fees for medical aid.

35. Employer not to require contribution from workman.

## PART IV – OCCUPATIONAL DISEASES

36. Compensation for occupational diseases.
37. Date of development of disease.
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39. Calculation of compensation.
40. Presumption as to cause of disease.
41. Power of Minister to amend First Schedule.
42. Pneumoconiosis.
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## PART V

44. Regulations.
45. Power of Minister to review maximum and minimum amounts.
46. Penalties.
47. Criminal liability of officers of body corporate.
48. Rules of Court.
49. Payment of compensation to non-resident workman or dependants.
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51. Repeal.
  - First schedule
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## PART 1: PRELIMINARY

Short title ,commencement and application.

1. (1) This Act may be cited as the Workmen's Compensation Act, 1983, and shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

(2) This Act applies to every employer in Swaziland, including the Government and to every workman who is employed in or outside Swaziland by such an employer except a workman who is employed outside Swaziland in employment to which any law of another country applies which provides compensation for employment accidents.

Meaning of 'workman'.

2. (1) In this Act, unless the context otherwise requires –

'workman' means, subject to sub-section (2) of this section, any person who has entered into or works under a contract of service or of apprenticeship or of traineeship whether the contract is express or implied, is oral in writing and whether the remuneration is calculated by time or work done.

(2) The following persons are excluded from the definition of 'workman'-

a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purpose of any game or recreation and engaged or paid through a club:

b) an outworker, that is to say a person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished, repaired or adapted for sale on premises not under the control of the employer;

c) a domestic servant employed as such for wages in or about a private household by the householder;

d) a member of the employer's family dwelling in his house;

e) a member of Umbutfo Swaziland Defence Force;

f) Any class of persons whom the Minister may by notice in the Gazette declares not to be workmen for the purpose of this Act.

(3) If in any claim for the recovery of compensation under this Act it appears to the Labour Commissioner or to the Court that the contract of service or apprenticeship or traineeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the Labour Commissioner or the Court as the case may be, may, if having regard to all the circumstances of the case it is thought proper so to do, deal with the matter as if the injured person had at the time the aforesaid been a person working under a valid contract of service or apprenticeship.

(4) Any reference to a workman who has been injured shall, unless the context otherwise requires, if the workman is dead, include a reference to his legal personal representative or to his dependants or any of them or to such officer as

the Minister may appoint to act on behalf of the dependants of the workman.

Interpretation.

3. (1) In this Act, unless the context otherwise requires –

“Board” means the Workmen’s Compensation Medical Board established under Section 31;

“Compensation” means compensation as provided for by this Act;

“Court” means the Industrial Court established by Section 4 of the Industrial Relations Act 1980;

“dependant” means a member of the family of a workman who was wholly or in part dependant upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent; and if the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grand-parent so dependent upon his earnings, shall include such an illegitimate child or parent or grand-parent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependant partially on contributions from such other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

“Dental practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970;

“Disablement” means, if of a temporary nature, such disablement as temporarily incapacitates a workman for, or temporarily reduces his earning capacity in, any employment which he was cable of undertaking at the time of the accident resulting in such disablement:

Provided that:-

(i) every injury specified in the Second Schedule shall be deemed to result in permanent disablement to the percentage degree specified against each; and

(ii) conspicuous disfigurement shall be deemed to result in permanent disablement whether or not accompanied by any actual loss of earning capacity;

“earnings” include wages any allowance in respect of increased cost of living paid to the workman by the employer, the value of any food, fuel or quarters supplied to the workman by the employer, any overtime payments or other special remuneration for work done whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, casual payments of a non-recurrent nature, any ex-gratia payment whether given by the employer or other person, the value of a traveling allowance, the value of any traveling concession, the value of contribution paid by the employer of a workman towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

“employer” includes the Government, the Swazi National Administration, any body of persons corporate or incorporate and the legal personal representative of a deceased employer and, if the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or of apprenticeship or of traineeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for such other person; and in relation to a person employed for a purpose 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 purpose of this Act, be deemed to be the employer;

“Incapacity” means incapacity for work which the workman concerned can reasonably be expected to do;

“Injury” means physical or mental injury and includes the contraction of a disease and the aggravation or acceleration of any pre-existing injury or disease where the employment is a contributory factor to such aggravation or acceleration;

“Labour Commissioner” means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorized in writing by the Labour Commissioner to act on his behalf;

“Medical aid” means any or all of the benefits prescribed in paragraphs (a) to (h) inclusive of Section 30(1);

“Medical practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act 1970:

“Member of the family” means the wife, common law wife, husband, father, mother, grandfather, grandmother, stepfather, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half-sister:

“Minister” means the Minister for the time being responsible for Labour;

“month” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding month;

“Occupational disease” means any disease specified in the First Schedule and pneumoconiosis;

“pneumoconiosis” means fibrosis of the lungs to silica dust, asbestos and dust or other dust includes the condition of the lungs known as dust reticulation but does not include byssinosis or bagassosis;

“Serious and willful misconduct” shall include-

- a) drunkenness;
- b) a willful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen;
- c) any other act or omission which the Court, having regard to all the circumstances of an accident, may determine to be serious and willful misconduct;

“Public authority” means the Government or the Swazi National Administration or a local.

(2) The exercise and performance of the powers and duties of a public authority shall, for the purposes of this Act, be deemed to be the trade or business of such public authority.

Definition of employment accident.

4. For the purposes of this Act, employment accident means an occurrence which causes personal injury to a workman by accident arising out of and in the course of his employment and shall be deemed to include personal injury by accident happening-

- (a) while traveling by any reasonable means and any reasonable route between a workman’s place of residence for the time being and his place of work;
- (b) notwithstanding that the workman is at the time acting in contravention of any statutory or other regulations applicable to his employment or of any orders given to him by or on behalf of his employer or that he is acting without instructions from his employer, if the act is done for the purposes of and in connection with his employer’s trade or business;
- (c) in or about premises at which the workman is for the time being employed for the purposes of his employer’s trade or business if the accident happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or the thought to be, or possibly to be, injured or imperilled, or to avert or minimize serious damage to property;
- (d) in the course of a workman’s employment which is caused by another person’s misconduct, skylarking or negligence or by the behaviour or presence of an animal (including a bird, fish or insect) or is caused by or consist in the workman being struck by any object or lightning if the workman did not directly or indirectly induce or contribute to the accident by his conduct outside the employment or by any act not incidental to the employment:

Provided that an accident arising in the course of a workman’s employment shall be deemed to have arisen out of that employment in the absence of evidence to the contrary.

## PART 11-COMPENSATION FOR INJURY

Employer’s liability for compensation for death or injury resulting from employment accident.

5. (1) If in any employment personal injury is caused to a workman by accident and that accident is an employment accident his employer shall be liable to pay compensation in accordance with this Act.

(2) Notwithstanding sub-section (1) the employer shall not be liable to pay compensation under this Act-

(a) in respect of any injury, except an injury causing death, which does not incapacitate the workman for at least three days from earning full wages at the work at which he was employed;

(b) if it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, unless the accident results in death or serious permanent disablement, in which case the Labour Commissioner or the Court, as the case may be, on consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as is thought fit.

(3) No compensation shall be payable under this Act in respect of any incapacity, disablement or death resulting from an employment accident or occupational disease if the workman has at any time represented in writing to the employer that he was not suffering and had not previously suffered from a similar serious incapacity or disablement knowing that the representation was false.

(4) When an employment accident happens to a workman to whom this Act applies, while he is temporarily employed by

his employer outside Swaziland, the workman shall be entitled to compensation in the same manner as if the accident had happened in Swaziland.

Compensation in case of death.

6. If death results from injury-

(a) if the workman leaves any dependants wholly dependent on his earning, the amount of the compensation shall be a sum equal to forty eight months earnings, subject to the provisions of section 10 (1) (a). but if in respect of the same accident compensation has been paid under section 7, there shall be deducted from the sum payable under this paragraph any sum to pay:

Provided that notwithstanding any deduction made under this paragraph, the minimum amount of compensation payable to the dependants of the workman shall not be less than 48 times the amount stated in section 10 (1) (b);

(b) if the workman does not leave any dependants wholly dependent on his earnings but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the Labour Commissioner in accordance with rules made under this Act to be reasonable and proportionate to the injury to such dependants;

(c) in addition to any sums payable under paragraphs (a) or (b) of this Section, the reasonable expenses of the burial of the deceased workman not exceeding three hundred Emalangeneni shall be paid by the employer to the person responsible for paying the cost of the burial.

Compensation in case of permanent disablement.

7.(1) If at the termination of a period for which compensation is payable under section 8 or section 9 the workman is permanently disabled as a result of the injury the amount of compensation shall, subject to the following provisions of this section and of section 10(1), be-

(a) in the case of an injury specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is specified in that Schedule as being the percentage of disablement caused by that injury;

(b) in the case of an injury not specified in the Second Schedule, such percentage of fifty four times the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused by that injury.

(2) If two or more injuries are caused to the workman by the same accident the percentage to be used in calculating the amount of compensation as in sub-section (1) shall, in the case of injuries specified in the Second Schedule, be the aggregate of the percentages for each sum injury specified in the Second Schedule or such greater amount as the medical practitioner may deem appropriate and in any other case such percentage as the medical practitioner may determine:

Provided that in no case shall the percentage exceed one hundred per cent.

(3) If the injury results in total permanent disablement of such a nature that the workman must have the constant help of another person additional compensation amounting to one quarter of the compensation otherwise payable under this section shall be paid.

Compensation in case of temporary disablement.

7. (1) If at the termination of a period for which compensation is payable under section 9 a workman is temporarily partially disabled as a result of the injury the amount of compensation shall, subject to the provisions of section 10(1) (a), be such percentage of the monthly earnings of the workman at the time of the accident as is assessed by a medical practitioner as being the percentage of disablement caused to the workman by the injury, multiplied by the number of months the temporary disablement is, in the opinion of the medical practitioner, likely to persist:

Provided that no assessment of temporary partial disablement shall be made for a period exceeding 12 months and where one such assessment is followed by a further assessment or assessments of temporary partial disablement the combined total of the periods covered by such assessments shall not exceed 24 months.

(2) At the termination of a period of temporary partial disablement the workman shall be re-examined by a medical practitioner and the percentage of disablement, if any, then persisting shall be assessed and, subject to the provisions of

sub-section (1), certified as temporary or permanent according to the opinion of the medical practitioner:

Provided that where the disablement has been certified as temporary for periods totaling 24 months any disablement still persisting at the end of the said 24 months shall be deemed to be permanent and compensation therefore shall be payable under section 7.

Compensation in case of temporary incapacity.

8. (1) If temporary incapacity results from the injury the compensation shall be equal to seventy five percent of the earnings which the workman would have earned for the period during which he is temporarily incapable of work, subject to section 10(1) (a) and to the following provisions of this section.

(2) Compensation provided under sub-section (1) shall, subject to sub-section (3), be payable for a maximum of six months from the date of the accident.

(3) If at the end of six months from the date of the accident the workman remains incapable, as a result of the injury, of any work which is suitable in his case and in the opinion of a medical practitioner is likely to remain so incapable for a further period-

(a) Not exceeding twelve months, compensation under this section shall continue to be payable for such further period so long as the incapacity continues;

(b) Exceeding twelve months, he shall be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(4) If a workman who is entitled to compensation under sub-section (3)(a) remains incapable of work at the end of the period of twelve months referred to in that sub-section, he shall be then deemed to be one hundred percent permanently disabled and compensation shall be payable accordingly under section 7.

(5) No deduction shall be made from compensation payable under section 6 or section 7 on account of compensation payable under this section or under section 8.

Method of calculating earnings.

9. (1) Subject to section 45(1), for the purpose of calculating the compensation payable under this Act-

(a) Any earnings of a workman in excess of five hundred Emalangeni a month shall be disregarded;

(b) In the case of compensation payable on account of permanent disablement in the rate per month at which the workman was being remunerated at the time of the accident shall be deemed to be not less than seventy five Emalangeni a month.

(2) For the purpose of this Act the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the accident.

(3) If, by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the earnings in the manner required by sub-section(2) regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, uninterrupted by absence from work due to illness or any other unavoidable cause, or, if there is no person so employed, by a person in the same grade employed in the same class of employment.

(4) For the purposes of assessing compensation payable in the case of permanent disablement-

(a) if the workman was under the apparent age of eighteen years at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of eighteen years or at the end of a period of five years after the accident, whichever calculation is more favourable to the workman; and

(b) if the workman was employed under a contract of apprenticeship or traineeship at the date of the accident, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon completion of his apprenticeship or traineeship.

(5) If the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, 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 accident, provided that the earnings under the other contract or contracts were disclosed to that employer or employers, whichever occurred last.

(6) The employer liable to pay compensation shall, if so required by the workman or his dependants, furnish in writing



particulars of the earnings upon which the amount of the monthly earnings has been calculated for the purposes of this section.

Persons entitled to compensation.

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

(2) If there are both total and partial dependants, nothing in this Act shall be construed as preventing compensation being allotted partly to the total and partly to the total and partly to the partial dependants.

(3) If a dependant dies before a claim for compensation in respect of the death of a workman is made 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 the claim for compensation shall be dealt with as if that dependant had died before the workman.

Distribution of compensation.

12.(1) Compensation payable if the death of a workman has resulted from the injury shall be apportioned by the Labour Commissioner among the dependants of the deceased workman in accordance with rules set out in regulations made under this Act.

(2) The Labour Commissioner shall direct that the sum allotted to any one dependant under sub-section(1) or the sum payable to an injured workman under section 7 or section 8 shall be paid to the person entitled to receive it or to such other person or authority as may be specified in the aforementioned rules for the purpose of investing, applying or otherwise dealing with the sum for the benefit of the workman or of the person in respect of whom it is paid as the Labour Commissioner thinks fit.

(3) Compensation payable to an injured workman under section 9 shall be paid to him at the intervals and times at which the workman would ordinarily receive his earnings or, where payment as aforesaid is not practicable, at such other intervals and times as the workman and the employer may agree;

Provided that where a workman ordinarily received his earnings at intervals of less than a week the employer shall not be required to pay compensation at intervals or less than one week.

(3) Any decision or direction of the Labour Commissioner given under sub-section (1) or (2) as to the apportionment or payment of compensation may, on application to the Court be made an order of the Court.

(4) An appeal shall lie to the court against any decision or direction of the Labour Commissioner given under this section.

(5) Where it appears to the Labour Commissioner that, on account of variation of the circumstances of the various dependants or for any other sufficient cause, an apportionment or direction as to payment of any sum so apportioned made under sub-section (1) or (2) ought to be varied, he may direct that the apportionment or direction shall be varied in such a manner as in the circumstances of the case he may think just, provided that where the former apportionment or direction has been made an order of the Court the power to make such variation shall devolve upon the Court.

(6) Subject to sub-section (6), any order or direction of the Court under this section shall be final.

Agreement as to compensation payable to workman.

13.(1) Subject to the approval of the Labour Commissioner as to the terms, the employer and the workman may agree in writing as to the compensation to be paid by the employer; such an agreement shall be in triplicate, the original of which shall be retained by the Labour Commissioner, one copy shall be kept by the employer and one copy shall be kept by the workman.

(2) An agreement made under sub-section(1)-

(a) Shall not provide for a lesser amount of compensation than is payable under this Act;

(b) Shall not be binding against the workman unless it is endorsed by a certificate of an authorized officer that he has read over and explained to the workman the terms therefore and that the workman appeared fully to understand and approve the agreement;

(c) May, on application to the Court, be made an order of the Court;

(d) Shall not be subject to any stamp duty.

(3) The Court may, notwithstanding that an agreement made under sub-section (1) has been made an order of the Court, on application by any party to the agreement within three months 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 it may think just, if it is proved-

- (a) That the sum paid was or is not in accordance with sub-section(1) or sub-section(2)(a);or
- (b) That the agreement was entered into by mistake or in ignorance as to the true nature of the injury; or
- (c) That the agreement was obtained by fraud, undue influence, misrepresentation or other improper grounds for avoiding it.

(4) Any order or direction of the Court under this section shall be final.

(5) In this section “authorized officer” means the Labour Commissioner, or the District Commissioner of the district in which the accident occurred, and any other person the Labour Commissioner may designate or appoint in writing to be an officer for the purpose of this section.

Assessment of claims in event of disagreement.

14.(1) If an employer in whom a claim for compensation has been served under the provisions of section 18 does not, within twenty-one days after the receipt of the claim, agree in writing with the workman as to the amount of compensation to be paid under section (9) or within twenty-one days of the termination of the period for which compensation under section 9 is payable, agree in writing with the workman as to the amount of compensation to be paid under section 7 or section 8, as the case may be , or if, in connection with a claim for compensation, any question arises as to the liability to pay compensation or as to the amount or the duration of compensation, the employer or the workman shall apply to the Labour Commissioner for the determination of any such question and for an assessment to be made of the claim.

(2) The Labour Commissioner may make such determination and assessment himself or he may refer the matter to the Court for determination and assessment.

(3) Where the question arising involves any matter which falls to be determined by a medical practitioner, the Labour Commissioner shall, prior to taking action in accordance with sub-section(2), refer to the Workmen’s Compensation Medical Board for a decision on that matter as provided in section 32.

(4)An appeal against an assessment by the Labour Commissioner made under this section, or any matter arising therefrom (other than a dispute concerning the assessment of incapacity or disablement which falls to be dealt with under section32), shall lie to the Court.

(5)The Labour Commissioner or the Court, as the case may be, may, for the purpose of making an assessment or hearing an appeal, call upon any competent person to give evidence if of the opinion that such person is, by virtue of his expert knowledge, able to assist the Labour Commissioner or the Court.

Payment pending settlement of a claim.

15. Nothing in section 12 of this Act shall prevent an employer from making any payment to a workman or to a dependant pending the settlement of a claim and the Labour Commissioner or the Court , as the case may be, may order that the whole or any part of such payment shall be deducted from the amount of compensation payable under the Act.

Review of periodical payments.

16.(1) Any periodical payment payable under this Act either under agreement between the parties or under an order of the Court may be reviewed by the Court on the application either of the workman.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended.

(3) If application is made by an employer under this section for any periodical payment to be ended or diminished, the employer may pay into Court the periodical payment or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on review under this section.

(4) In making a review under this section the Court shall have regard only to the capacity for work of the workman as affected by the accident.

Limitation of power of employer to end decrease periodical payment.

17. Except as provided in section 9, section 16(4), an employer shall not be entitled, otherwise than in pursuance of an agreement made under section 13 or an order of the Court ,to end or decrease periodical payments except where a workman is certified by a medical practitioner as fit to resume work, or becomes entitled to compensation for temporary or permanent disablement, or dies.

Requirements as to notice of accident and claim for compensation.

18. (1) A claim for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given, either orally or in writing, to the employer or to any foreman or other official under whose supervision the worker is employed, by or on behalf of the workman as soon as practicable after the happening of the accident and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death.

(2) Notwithstanding anything contained in this section-

(a) The want of a notice of accident or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such a claim if the employer is proved to have had knowledge of the accident from any other source at or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by that want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;

(b) The failure to make a claim for compensation within the period specified in sub-section (1) shall not be a bar to the maintenance of such a claim if it is found that the failure was occasioned by mistake or other reasonable cause, but no claim for the recovery of compensation should be maintainable unless it is made within a period of three years from the date of the accident or the date of death as the case may be.

(3) The notice referred to in sub-section(1) shall give the name and address of the person injured and state in ordinary language the cause of the injury and the date on which it happened.

(4) To facilitate the giving of notice of accidents a book in the prescribed form shall be kept readily accessible at every work place where workmen are ordinarily employed, in which the particulars specified in the preceding sub-section may be entered by the injured workman or some other person acting on his behalf and an entry in such book shall, if made as soon as practicable after the happening of an accident, be sufficient notice of the accident for the purposes of the Act.

Duty of employer to report accident.

19. (1) If an accident occurs which results in the death of a workman or in any injury which would entitle him to compensation under this Act, a report in the prescribed form shall be given to the Labour Commissioner by the employer within seven days of receiving notice of the accident or of the first day of absence from work if later.

(2) In the event of a workman occurring after a report of accident to such workman has been given under sub-section(1), the Labour Commissioner shall be informed by the employer in writing of the death and of the date thereof.

(3) On the receipt of a report under sub-section (1) the Labour Commissioner may make such investigations as he may think fit and if, in the case of the death of a workman, it appears to him that a claim of compensation may lie under this Act in respect of such death, he shall take steps-

(a) To ascertain whether there are any dependants of the deceased workman and if so the degree of their dependency, and

(b) To inform such dependants, if any, of the reported cause and circumstances of the death of the workman and to ascertain whether such dependants intend to make a claim for compensation or wish a claim to be made on their behalf.

(4) Nothing contained in this section shall prevent any person from making a claim for compensation under this Act.

Jurisdiction of Court and right of appeal.

20. (1) Save as is provided in this Act, the Court shall, upon or in connection with any question to be investigated or determined under the Act, have all the powers and jurisdiction exercisable by the Court under the Industrial Relations Act 1980, and a decision of the Court shall be appealable to the extent provided under that Act.

(2) If a request is received from a court in another country for an investigation of any matter arising out of proceedings for compensation instituted in that court under a law relating to workmen's compensation, the Court shall have jurisdiction to deal with the matter as if it had arisen under this Act, provided that where the matter concerns the dependency of any person it shall be investigated in accordance with regulations under this Act.

Representation of parties.

21. Subject to any rules made under section 48, any party to any matter brought before the Court under this Act may be represented before the Court by a legal practitioner or any other person authorized by such party.

22. (1) If any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contract with any other person (which other person is 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, and that contractor fails to discharge his liabilities and obligations under this Act the principal shall be liable to pay any workman employed in execution of the work any compensation under this Act which he would have been liable to pay if such workman 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 workman under the employer by whom he is immediately employed.

(2) If the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) If 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 workman from recovering 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.

Remedies against both employer and stranger.

23. If the injury in respect of which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof –

(a) The workman may take proceedings both against such person to recover damages and against any person liable to pay compensation under this Act for such compensation but shall not be entitled to recover both damages and compensation; and

(b) If the workman has recovered compensation under this Act, the person by whom the compensation was paid and any person who has been called onto pay an indemnity under section 22 relating to liability in the case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay such damages and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act 1904.

Proceedings independently of Act.

24. (1) If the injury was caused by the personal negligence, breach of statutory duty or wrongful act or omission 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 in a civil court independently of this Act.

(2) Any damages awarded in any such proceedings shall be reduced by the value, as decided by the Court, of any compensation which has been paid or is payable under this Act workman for that injury.

(3) If, in proceedings independently of this Act or on appeal, it is determined that the employer is not liable under this Act, the Court may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation to payable.

Obligation of employer to insure.

25. (1) Every employer other than the Government who employs a workman or workmen shall insure and keep himself insured in respect of all liability which he may incur under this Act with such insurers as the Minister may approve in regulations.

(2) The Minister may by certificate under his hand exempt any employer from the provisions of sub-section (1) on any condition as to the provision of a security or otherwise as he may determine, provided that the Minister shall not be bound of a security or otherwise as he may determine, provided that the Minister shall not be bound to disclose his reasons for refusing to grant such exemption.

(3) For the purpose of sub-section (2) a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under this Act to any workman employed by him.

Insolvency of employer.

26. (1) If any employer has entered into a contract with insurers in respect of any liability to any workman under this Act, then, in the event of the employer becoming an insolvent, or making a composition or arrangement with his creditors, or if

the employer is a company, in the event of the commencement of winding-up proceedings in respect of such company, or of the appointment of a receiver or judicial manager of the company's business or undertaking, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to insolvency and the winding-up of companies for the time being in force, be transferred to and vest in the workman, 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:

Provided that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included amongst the debts which under section 100 of the Insolvency Act 1955 are, in the distribution of the property or assets of an insolvent, to be paid in priority to all other debts, and under section 81 of the Companies Act 1912 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 accrued before the following dates, that is to say-

- (a) In the first case, the date of the sequestration order; and
- (b) In the second case, the date of commencement of the winding-up of the company.

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

(5) If the insolvent or company in liquidation has entered into such contract with insurers as if referred to in sub-section (1), sub-section (3), and (4) shall not apply in respect of the liability of the employer to the workman or that part thereof which is met by the insurers.

Prohibition against contracting out.

27. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right to compensation from an employer for injury arising out of an employment accident shall be null and void in as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Compensation not to be assigned, charged or attached.

28. 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.

### PART III

#### MEDICAL AID AND ESTABLISHMENT OF MEDICAL BOARD

Medical examination and treatment.

29. (1) If a workman has given notice of an accident, the employer shall, as soon as reasonably possible thereafter, arrange to have him medically examined by a medical practitioner named by the employer and agreed to by workman (so however, that such agreement shall not be unreasonably withheld) and any workman who is in receipt of periodical payments under section 9 shall submit himself for medical examination from time to time as may be required by the employer or by the medical practitioner in charge of the case.

(2) The workman shall, when required, attend upon the medical practitioner at such reasonable time and place as shall be notified to the workman by the employer or the medical practitioner.

(3) If, in the opinion of any medical practitioner, the workman is unable or not in a fit state to attend on the medical practitioner for examination, the fact shall be notified to the employer, and the medical practitioner conducting the examination required by sub-section (1) shall fix a reasonable time and place for the examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for medical examination as required by this section, his right to compensation shall be suspended until such examination has taken place, and if the failure extends for the period of fifteen days from the date when the workman was required to submit himself for examination the workman shall forfeit his right to compensation unless it is proved, to the satisfaction of the Labour Commissioner, that there was reasonable cause for such failure.

(5) During the period of temporary incapacity, the employer shall arrange to submit the workman for medical treatment prescribed by a medical practitioner and such medical treatment shall include any special treatment which the medical practitioner may advise the workman to undergo.

(6) If the workman has failed to submit himself for treatment when so required under sub-section (5) or having submitted himself for such treatment has disregarded the instructions of the medical practitioner, then, if it is proved that the failure or disregard was unreasonable 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 workman had submitted himself for treatment and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

(7) A workman may, at his own expense, have his own medical practitioner present at any medical examination carried out by a practitioner nominated by the employer.

(8) A workman may, if he objects to the medical practitioner nominated by the employer, apply to the Labour Commissioner for leave to be examined and treated by his own practitioner, provided that he bears any additional expenses thereby incurred; and the decision of the Labour Commissioner on such application shall be final.

(9) No compensation shall be payable in respect of the death of a workman who unreasonably fails to submit himself for examination and treatment when required to do so in accordance with this section or unreasonably disregards the instructions of a medical practitioner if it is proved that the death of the workman was caused by such failure or disregard.

Medical expenses.

30. (1) Subject to this Act and any regulations made thereunder, the employer shall defray the expenses reasonably and necessarily incurred by or in respect of a workman as a result of an employment accident for-

- (a) General practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) Dental care;
- (c) Nursing care at home or in a hospital or other medical institution;
- (d) Maintenance in a hospital or other medical institution;
- (e) Dental, pharmaceutical and other medical or surgical supplies, including eye glasses;
- (f) Emergency and first-aid treatment;
- (g) Transportation to and from a place for the purpose of treatment certified as necessary by the medical practitioner in charge;
- (h) The supply, maintenance, repair and renewal of artificial limbs and apparatus necessitated by the accident.

(2) Subject to section 45(2), the liability of an employer under sub-section (1) shall be limited to an amount not exceeding five thousand five hundred Emalangeni.

(3) Except in the case of an accident to which section 5(40) applies, an employer shall only be liable to defray the expenses in connection with medical treatment in a place outside Swaziland if the journey and the treatment has been approved by the Director of Medical Services.

(4) All disputes as to the necessity for or character or sufficiency of any medical aid provided or proposed to be provided under this section shall be determined by the Workmen's Compensation Medical Board whose decision shall be final.

Workmen's Compensation Medical Board.

31. (1) There shall be a Board to be known as the Workmen's Compensation Medical Board, referred to hereafter as "the Board".

(2) The Board shall consist of three members appointed in writing by the Minister, of whom-

- (a) One, who shall be chairman, shall be a medical practitioner employed by the Government;
- (b) One shall be a medical practitioner nominated by the Federation of Swaziland Employers; and
- (c) One shall be a medical practitioner appointed to represent workman.

(3) The Board may, at the request of any party or of its own volition, invite any person to attend a meeting of the Board and give evidence on any matter before the Board concerning which he is competent.

(4) A member of the Board shall hold office for such period as the Minister may determine.

(5) A member of the Board who is not in full time employment of the Government and any person invited as in sub-section(3) to attend a meeting of the Board shall be paid out of the public revenue such fees and allowances as the

Minister may direct.

(6) For a sitting of the Board two members shall constitute a quorum but, if agreement is not reached on a question, it shall be deferred for decision to a full meeting of the Board.

(7) The secretary of the Board shall be a public officer appointed by the Labour Commissioner.

Functions of Board.

32. (1) The Labour Commissioner shall refer to the Board any dispute or matter with regard to-

- (a) The degree and duration of incapacity or disablement under sections 7,8 and 9; or
- (b) The medical examination and treatment of a workman.

(2) The Board shall give a decision in writing to the Labour Commissioner on any matter or dispute referred to the Board by him and that decision shall be final and binding on the Labour Commissioner and on the parties concerned.

Power of Court and Labour Commissioner.

33. The Court or Labour Commissioner may, when determining any dispute or other matter in respect of compensation, or upon the application of any interested person, order the payment of any of the medical expenses referred to in section 30 to the persons entitled to receive such payment, and if such expenses exceed the amount provided for section 30 the Court or the Labour Commissioner as the case may be, may apportion such amount in a manner deemed just.

Prescription of fees for medical aid.

34. The fees which may be charged by a medical or dental practitioner or a medical or dental establishment in Swaziland for medical aid provided to a workman under this Act shall not exceed those set out in a scale prescribed under this Act.

Employer not to require contribution from workman.

35. An employer shall not require a workman to make any contribution towards the cost of any medical aid for which the employer is liable to defray the cost under this Act and no employer shall accept any such contribution.

#### PART IV-OCCUPATIONAL DISEASES

Compensation for occupational diseases.

36. (1) Where-

- (a) A medical practitioner certifies that a workman is suffering from a disease set out in the first column of the First Schedule and is thereby rendered incapable of work; or
- (b) The death of a workman is caused by any such disease;

And the disease is due to the nature of any employment in which the workman was engaged as a workman at any time prior to the date of development of the disease, he or his dependants, as the case may be, shall be entitled to compensation under this Act as if the disease were due to an employment accident, subject to the modifications set out in this Part of the Act.

(2) Certification of the diseases set out in paragraphs 16,19 and 20 in the First Schedule shall be made by the Medical Board set up by the Minister under the powers conferred on him by section 42 and in the case of the disease set out in paragraph 16 (bagassosis) or paragraph 20 (byssinosis), compensation under this Act shall only be payable if that Board certifies that the workman is permanently disabled by the disease.

Date of development of the disease.

37. The date of development of the disease shall be deemed to be the date of the accident and shall be-

- (a) In the case of a claim for compensation under section 7.8 or 9, the first day on which the workman is incapable of work as a result of the disease;
- (b) In the case of a claim for compensation under section 6-
  - i. The date determined under sub-section (a); or
  - ii. The date of death if no incapacity preceded death.

Employer liable to pay compensation.

38. (1) The compensation shall, subject to the further provisions of this section, be payable by the last employer who employed the workman in the employment to the nature of which the disease is due unless that employer establishes that the disease was not contracted while the workman was in his employ.

(2) The workman or his dependants if so required shall furnish to that employer such information as they possess as to the names and addresses of all employers who employed the workman in that employment in the twelve months preceding the date of development of the disease and if that employer alleges that the disease was contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may cause such other employer to be joined as a party to claim and, if the allegation is proved, that other employer shall be the employer by whom the compensation is payable.

(3) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the work to the nature of which the disease was due shall be liable to make to the employer by whom compensation is payable such contribution as, in default of agreement, may be determined by the Court.

(4) The notice of accident and claim for compensation required to be given under section 18 shall be made to the employer who last employed the workman in the occupation to the nature of which the disease was due and that employer shall, notwithstanding any dispute as to liability, report the accident to the Labour Commissioner as required under section 19.

(5) No employer shall be liable to pay compensation in respect of an occupational disease to any workman who, at the time of entering upon the relevant occupation, willfully and falsely represented to that employer in writing that he had not previously suffered from that disease.

Calculation of compensation.

39. The amount of compensation shall be calculated on the basis of the earnings of the workman when he was last employed in the occupation to the nature of which the disease was due by the employer liable to pay the compensation.

Presumption as to cause of disease.

40. If a workman contracts an occupational disease set out in the first column of the First Schedule that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employment if that employment was in the occupation set out against that disease in the second column of the said Schedule and he was so employed at any time within one month of the date of development of the disease.

Power of Minister to amend First Schedule.

41. (1) The Minister may, by regulations, amend the First Schedule by adding to it any disease or injury if he is satisfied that-

- (a) In relation to any prescribed classes of workmen, it should be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) It is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(2) The intention to make such regulations shall be published in the Gazette at least thirty days before the regulations are made and any person wishing to do so may within thirty days of such publication in the Gazette make any representations in writing to the Minister who shall consider them before the regulations are made.

Pneumoconiosis.

42.(1) The Minister may by regulations set up a scheme to provide for the payment of compensation by the employers of workmen in any specified industry or process, or group of industries or processes, involving exposure to the risk of pneumoconiosis who are certified in such manner as may be prescribed by the scheme-

- (a) To have suffered death or total disablement from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis;
- (b) Although not totally disabled, to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis to such a degree as to their earning capacity.

(2) The scale of compensation fixed by the scheme in the case of death or total disablement shall be that prescribed by the Act and in any other case shall be such as may be prescribed by the scheme.

(3) Provision may be made by the scheme-

- (a) For the constitution of a medical board and for the appointment and remuneration of its members on the same terms as those applying to the Workmen's Compensation Medical Board;
- (b) For requiring workmen to whom the scheme applies to submit themselves to periodical examination and to furnish such information as to their previous employment in any occupation to which the scheme applies as may be prescribed



by the scheme and for making the right of workmen to compensation conditional on compliance with such requirements;

(c) For the exclusion from employment in any scheduled occupation of workmen to whom the scheme applies who are, when first medically examined in pursuance of the scheme, found to be suffering from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis or from tuberculosis or are found unsuitable for work in the industry or process by reason of failure to satisfy such requirements with respect to physique as may be prescribed by the scheme; and

(d) For the application with necessary modification of any of the provisions of this Act or regulations made thereunder and for defining the industries and processes to which the scheme applies and generally for such further or supplemental matters as appear necessary for giving full effect to the scheme.

Diseases resulting from an employment accident.

43. Nothing in this Part shall affect the right of a workman to recover compensation under this Act in respect of a disease if the disease result from an employment accident and it is not in relation to him, an occupational disease by virtue of his occupation.

## PART V-GENERAL

Regulations.

44. The Minister may make regulations regularly to give effect to the purposes of this Act and in particular such regulations may-

- (a) Prescribe anything which may be or is required to be prescribed;
- (b) Prescribe procedure, forms and fees in connection with specified matters;
- (c) Require the insurers and employers to make to the Labour Commissioner such returns as may be prescribed;
- (d) Require the insurers to pay to the Labour Commissioner, within a specified time, an amount of money equivalent to a specified percentage of premiums received from employers during a specified period on account of insurance under this Act.

Power of Minister to review maximum and minimum amounts.

45. (1) The Minister shall, on the first anniversary of the coming into operation of this Act and thereafter at intervals of one year, review the amount mentioned in section 10(1) and, if he is satisfied that, having regard to changes in the general level of prices and earnings those amounts should be verified, he shall give notice in the Gazette of his intention to make regulations revising the amounts to amounts which he shall specify in the notice, and shall, not earlier than thirty days after the date of the said notice, make regulations accordingly, taking account of any written representations received;

Provided that he shall not thereby vary any of the said amounts by more than 15 per cent in any review.

(2) The Minister shall at the same time, after consultation with the Minister of Health