

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT

Act 130 of 1993 (GoN 1850, G 15158),
Proc. 115, G. 15271,
GoN 222, G. 16271, c.i.o 1 March 1995,
GoN 127, G. 16957, c.i.o 1 March 1996,
GoN 292, G. 17803, c.i.o 1 March 1997,
Act 61 of 1997* (GoN 1517, G.18430, c.i.o 1 March 1998 [Proc. 18, G. 18705]),
GoN 554, G. 20012, c.i.o 1 May 1999,
GoN 73, G. 20843, c.i.o 1 March 2000,
GoN 77, G. 22005, c.i.o 1 March 2001,
GoN 68, G. 23046, c.i.o 1 March 2002,
GoN 141, G. 24294, c.i.o 1 March 2003,
GoN 89, G. 25954, c.i.o 1 April 2004,
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GoN 423, G. 28808, c.i.o 1 April 2006,
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GoN 694, G. 32339, c.i.o 1 July 2009,
GoN 304, G. 33118, c.i.o 1 April 2010,
GoN 382, G. 34251, c.i.o 1 April 2011,
GoN 448, G. 35432, c.i.o 1 April 2012,
GoN 212, G. 36273, c.i.o 1 April 2013,
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[Commencement: 1 March 1994]

*General Note: Any claim for compensation in respect of any accident that happened before the commencement of Act 61 of 1997 shall be dealt with in terms of the principal Act as it was in force immediately before the commencement of said Act.

ACT

To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith.

[Assented To: 24 September 1993]

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows.

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CHAPTER I
Interpretation of Act

1. Definitions

In this Act, unless the context indicates otherwise—

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

[“accident” subs by s 1(a) of Act 61 of 1997.]

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

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

“annual earnings” means—

- (a) the amount referred to in section 82(1)(a) if accepted by the Director-General as correct;
- (b) the amount determined by the Director-General if in his opinion the amount referred to in paragraph (a) is less than the amount actually paid; or
- (c) the estimated amount referred to in section 82(5);

“assessment” means an assessment made in terms of section 83;

“assessor” means a person appointed under section 8 as an assessor;

“Board” means the Compensation Board established by section 10;

“business” means any industry, undertaking, trade or occupation or any activity in which any employee is employed;

“chiropractor” means a person registered as a chiropractor in terms of the Associated Health Service Professions Act, 1982 (Act 63 of 1982);

“commissioner” means the Compensation Commissioner appointed under section 2(1)(a);
[“commissioner” subs by s 1(b) of Act 61 of 1997.]

“compensation” means compensation in terms of this Act and, where applicable, medical aid or payment of the cost of such medical aid;
[“compensation” subs by s 1(c) of Act 61 of 1997.]

“compensation fund” means the fund established by section 15;

“continental shelf” means the continental shelf referred to in section 7 of the Territorial Waters Act, 1963 (Act 87 of 1963);

“contractor” means a person referred to as a contractor in section 89;

“dependant of an employee” means—

- (a) a widow or widower who at the time of the employee’s death was married to the employee according to civil law;

- (b) a widow or widower who at the time of the employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage;
- (c) if there is no widow or widower referred to in paragraph (a) or (b), a person with whom the employee was at the time of the employee's death living as husband and wife;
- (d) a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, a step-child, an adopted child and a child born out of wedlock;
- (e) a child over the age of 18 years of the employee or of his or her spouse, and a parent or any person who in the opinion of the Director-General was acting in the place of a parent, a brother, a sister, a half-brother or half-sister, a grandparent or a grandchild of the employee;

and who was in the opinion of the Director-General at the time of the employee's death wholly or partly financially dependent upon the employee;

[“dependant of an employee” subs by s 1(d) of Act 61 of 1997.]

“**Director-General**” means the Director-General of the Department of Labour;

[“Director-General” ins by s 1(e) of Act 61 of 1997.]

“**disablement**” means temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement, as the case may be;

[“disablement” subs by s 1(f) of Act 61 of 1997.]

“**earnings**” means the remuneration of an employee at the time of the accident or the commencement of the occupational disease as calculated in terms of this Act;

[“earnings” subs by s 1(g) of Act 61 of 1997.]

“**employee**” means a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes—

- (a) a casual employee employed for the purpose of the employer's business;
- (b) a director or member of a body corporate who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far as he acts within the scope of his employment in terms of such contract;

- (c) a person provided by a labour broker against payment to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;
- (d) in the case of a deceased employee, his dependants, and in the case of an employee who is a person under disability, a curator acting on behalf of that employee;

but does not include—

- (i) a person, including a person in the employ of the State, performing military service or undergoing training referred to in the Defence Act, 1957 (Act 44 of 1957), and who is not a member of the Permanent Force of the South African Defence Force;
- (ii) a member of the Permanent Force of the South African Defence Force while on “service in defence of the Republic” as defined in section 1 of the Defence Act, 1957;
- (iii) a member of the South African Police Force while employed in terms of section 7 of the Police Act, 1958 (Act 7 of 1958), on “service in defence of the Republic” as defined in section 1 of the Defence Act, 1957;
- (iv) a person who contracts for the carrying out of work and himself engages other persons to perform such work;
- (v) a domestic employee employed as such in a private household;

“employer” means any person, including the State, who employs an employee, and includes—

- (a) any person controlling the business of an employer;
- (b) if the services of an employee are lent or let or temporarily made available to some other person by his employer, such employer for such period as the employee works for that other person;
- (c) a labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;

“employer individually liable” means an employer who in terms of section 84(1)(a) is exempt from paying assessments to the compensation fund;

“employers’ organisation” means an employers’ organisation as defined in section 1 of the Labour Relations Act, 1956 (Act 28 of 1956);

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

“mandator” means a person referred to as a mandator in section 89;

“medical aid” means medical, surgical or hospital treatment, skilled nursing services, any remedial treatment approved by the Director-General, the supply and repair of any prosthesis or any device necessitated by disablement, and ambulance services where, in the opinion of the Director-General, they were essential;

“medical practitioner” means a person registered as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974);

“Minister” means the Minister of Labour;

[“Minister” subs by s 1(h) of Act 61 of 1997.]

“mutual association” means a mutual association licensed under section 30;

“National Revenue Fund” means the fund established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[“National Revenue Fund” ins by s 1(i) of Act 61 of 1997.]

“natural resources” means the natural resources referred to in section 7 of the Territorial Waters Act, 1963 (Act 87 of 1963);

“occupational disease” means any disease contemplated in section 65(1)(a) or (b);

[“occupational disease” subs by s 1(j) of Act 61 of 1997.]

“occupational injury” means a personal injury sustained as a result of an accident;

“pension” means a pension referred to in section 49 or 54;

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

“permanent disablement”, in relation to an employee and subject to section 49, means the permanent inability of such employee to perform any work as a result of an accident or occupational disease for which compensation is payable;

[“permanent disablement” ins by s 1(k) of Act 61 of 1997.]

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

“prescribed” means prescribed in terms of this Act or by regulation;

“presiding officer” means any officer appointed in terms of section 2(1)(a) or (b) and designated as such by the Director-General;

[“presiding officer” ins by s 1(l) of Act 61 of 1997.]

“regulation” means a regulation made in terms of this Act;

“reserve fund” means the fund established by section 19;

“seaman” means an employee employed in any capacity on board a ship by the owner or person in command of the ship;

“serious and wilful misconduct” means—

- (a) being under the influence of intoxicating liquor or a drug having a narcotic effect;
- (b) a contravention of any law for the protection or the health of employees or for the prevention of accidents, if such contravention was committed wilfully or with a reckless disregard of the provisions of such law; or
- (c) any other act or omission which the Director-General having regard to all the circumstances considers to be serious and wilful misconduct;

“South African aircraft” means an aircraft registered or licensed in the Republic in terms of a law governing the registration or licensing of aircraft, and the owner of which is resident in the Republic or has a place of business in the Republic;

“South African ship” means a vessel used in navigation which—

- (a) is registered in the Republic in terms of any law governing the registration of ships and is not registered in any other state in terms of a similar law; or
- (b) is owned or chartered by a person whose head office or place of business is in the Republic or by a person who resides in the Republic;

“State Revenue Fund” ...

[“State Revenue Fund” rep by s 1(m) of Act 61 of 1997.]

“tariff of assessment” means the tariff of assessment referred to in section 83(1);

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

[“temporary partial disablement” subs by s 1(n) of Act 61 of 1997.]

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

[“temporary total disablement” subs by s 1(o) of Act 61 of 1997.]

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

“trade union” means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act 28 of 1956), and includes an employees’ organisation recognised by law and functioning;

“Workmen’s Compensation Act” means the Workmen’s Compensation Act, 1941 (Act 30 of 1941).

CHAPTER II

Administration of Act

2. Staff to assist Director-General

(1) The Minister shall, subject to such conditions as he or she may determine, in order to assist the Director-General in the performance of his or her functions in terms of or under this Act and subject to the laws governing the public service, appoint—

(a) an officer to be called the Compensation Commissioner; and

(b) such other officers and employees as the Minister or an officer designated by him or her may deem necessary.

(2) The commissioner, and the officers and employees referred to in subsection (1)(b), shall be remunerated out of the National Revenue Fund, which shall be reimbursed out of the compensation fund for the expenditure concerned.

[S 2 subs by s 2 of Act 61 of 1997.]

3. Delegation of powers and assignment of duties by Director-General

- (1) The Director-General may, subject to such conditions as he or she may determine, delegate any of his or her powers or assign any of his or her duties to the commissioner or an officer or employee referred to in section 2(1)(b), and may at any time cancel any such delegation or assignment.
- (2) A delegation or assignment under subsection (1)—
 - (a) shall not divest the Director-General of the power delegated or duty assigned, and he or she may at any time amend or set aside any decision made thereunder; and
 - (b) shall not prevent the exercise of the power or the performance of the duty concerned by the Director-General himself or herself.

[S 3 subs by s 3 of Act 61 of 1997.]

4. Functions of Director-General

- (1) Subject to the provisions of this Act, the Director-General shall—

[Words preceding s 4(1)(a) subs by s 4(a) of Act 61 of 1997.]

 - (a) ...

[S 4(1)(a) rep by s 4(b) of Act 61 of 1997.]
 - (b) inquire into accidents and occupational diseases;
 - (c) adjudicate on claims and other matters coming before him for decision;
 - (d) issue an order for the payment of compensation in respect of an award made by him;
 - (e) decide whether a person is an employee, an employer, a mandator or a contractor for the purposes of this Act;
 - (f) decide any question relating to—
 - (i) a right to compensation;
 - (ii) the submission, consideration and adjudication of claims for compensation;
 - (iii) the calculation of earnings;
 - (iv) the degree of disablement of any employee;
 - (v) the amount and manner of payment of compensation;

(vi) the award, withholding, review, discontinuance, suspension, increase or reduction of compensation;

(vii) the liability for payment of compensation as contemplated in section 29;

(g) decide whether a person is a dependant of an employee and, if so, the percentage of dependence, and, in the case where there is more than one dependant, which shall receive compensation and the allocation of compensation among them;

[S 4(1)(g) subs by s 4(c) of Act 61 of 1997.]

(h) consider and adjudicate upon claims in terms of section 62;

(i) decide upon—

(i) the need for, and the nature and sufficiency of, medical aid;

(ii) the reasonableness of the cost of medical aid, and the amount and manner of payment of such cost;

(j) decide upon the liability for assessment, tariffs of assessment, the amounts of assessments, the manner of payment of assessments and related matters;

(k) decide upon any other question falling within his functions in connection with the administration of this Act;

(l) administer the compensation fund and the reserve fund;

(m) recover amounts due to the compensation fund, including amounts which should not have been paid out in terms of this Act, or write off such amounts if, in his opinion, they cannot be recovered;

(n) after the conclusion of each financial year submit a report to the Minister regarding the administration of this Act during that year;

(o) record statistics and information regarding the occurrence and causes of accidents and occupational diseases, and the award of benefits in terms of this Act;

(p) institute such inquiries and perform such other functions as may be prescribed, or as he may deem necessary for the administration of this Act.

(2) The Director-General may—

[Words preceding s 4(2)(a) subs by s 4(d) of Act 61 of 1997.]

- (a) for the administration of this Act enter into an agreement with any person for the performance of a particular task or of particular work or for the rendering of particular services on such conditions and for such remuneration as may be agreed upon;
- (b) found, establish or subsidise, or assist with the founding, establishment or subsidising of, a body, organisation or scheme whose objects include one or more of the following—
 - (i) The prevention of accidents or of any disease which is due to the nature of a particular activity;
 - (ii) the promotion of the health or safety of employees;
 - (iii) the provision of facilities designed to assist injured employees and employees suffering from occupational diseases to return to their work or to reduce or remove any disability resulting from their injuries or diseases;
 - (iv) the carrying out of any activity which will contribute to the attainment of any of the objects referred to in subparagraphs (i), (ii) and (iii);
- (c) purchase or otherwise acquire shares in any body, organisation or scheme referred to in paragraph (b), and alienate any shares so acquired;
- (d) apply unclaimed compensation for the general welfare of injured employees or employees suffering from occupational diseases;
- (e) ...

[S 4(2)(e) rep by s 4(e) of Act 61 of 1997.]

5. Power of Director-General to acquire and alienate immovable property and to raise money

- (1) The Director-General may with the approval of the Minister—
 - (a) raise money by way of loans;
 - (b) purchase or otherwise acquire immovable property, and alienate such property.
- (2) Immovable property acquired under subsection (1) shall be held in the name of the Director-General in trust for the compensation fund.

6. Powers of Director-General regarding witnesses and subpoenas

- (1) (a) The Director-General may subpoena any person who in his opinion is able to give information concerning the subject of any inquiry in terms of this Act, or who is suspected to have or in the opinion of the Director-General has in his possession or custody or under his control any book, document or thing which has a bearing on the inquiry, to appear before him at a time and place specified in the subpoena, to be interrogated or to produce such book, document or thing, and the Director-General may retain such book, document or thing for further investigation.

(b) An inquiry referred to in paragraph (a) shall take place in public unless the Director-General orders otherwise.
- (2) The Director-General may call and administer an oath to, or accept an affirmation from, any person present at such an inquiry who was or could have been subpoenaed in terms of subsection (1), and the Director-General or an assessor may interrogate such person and order him to produce any book, document or thing in his possession or custody or under his control.
- (3) A person who—
 - (a) has been duly subpoenaed under subsection (1) and who fails without sufficient cause to attend at the time and place specified in the subpoena;
 - (b) has been duly subpoenaed under subsection (1) or called under subsection (2) and who—
 - (i) fails to remain in attendance until excused by the Director-General from further attendance;
 - (ii) refuses to be sworn as a witness or to make an affirmation;
 - (iii) refuses or fails to answer fully and satisfactorily any question lawfully put to him under subsection (2);
 - (iv) refuses or fails to produce any book, document or thing in his possession or custody or under his control which he has been required to produce under subsection (1) or (2);
 - (c) hinders or obstructs the Director-General in the performance of any of his functions in terms of this section,

shall be guilty of an offence.

- (4) A person who, after having been sworn as a witness or having made an affirmation, makes a false statement knowing it to be false, shall be guilty of an offence and shall upon conviction be liable to the penalty that may be imposed for perjury.

- (5) The law relating to privilege as applicable to a witness testifying in a court of law shall be applicable at an inquiry referred to in subsection (1).
- (6) If a person has been subpoenaed to appear before the Director-General and the Director-General is satisfied that such person has as a result of his appearance suffered any pecuniary loss or had to incur expense, the Director-General may pay out of the compensation fund the prescribed allowances or the amount of the loss or expense, whichever is the lesser.
- (7) The Director-General may delegate any of his functions under this section to an assessor, an officer or employee referred to in section 1 of the Public Service Act, 1984 (Act 111 of 1984), or a medical practitioner, and in this section “Director-General” includes any such assessor, officer, employee or medical practitioner while acting within the scope of such delegation.

6A. Functions of commissioner

The commissioner shall—

- (a) receive notices of accidents and occupational diseases, claims for compensation, medical reports and accounts, objections, applications, returns of earnings and payments due to the compensation fund;
- (b) by notice in the *Gazette* prescribe the rules referred to in section 56(3)(c), as well as the forms to be used and the particulars to be furnished in connection with notice of occupational injuries and diseases, claims for compensation or any other form or matter which he or she may deem necessary for the administration of this Act.

[S 6A ins by s 5 of Act 61 of 1997.]

7. Powers of authorised person

- (1) The Director-General may authorise any assessor, any officer or employee referred to in section 1 of the Public Service Act, 1984 (Act 111 of 1984), or any medical practitioner to investigate any matter that he may deem necessary for the performance of his functions.
- (2) A person authorised under subsection (1) (in this section referred to as an “authorised person”) shall be furnished with a certificate to that effect signed by the Director-General.
- (3) An authorised person may—
 - (a) without previous notice, at all reasonable times enter any premises, and take an interpreter or other assistant or a police officer with him onto the premises;

- (b) while he is on the premises, or at any time thereafter, question any person who is or was on the premises, either alone or in the presence of any other person on any matter to which this Act relates;
 - (c) order any person who has control over or custody of any book, document or thing on or in those premises to produce to him forthwith, or at such time and place as may be determined by him, such book, document or thing;
 - (d) at any time and place order any person who has the possession or custody of or is in the control of a book, document or thing relating to the business of an employer or previous employer, to produce forthwith or at such time and place as may be determined by him, such book, document or thing;
 - (e) seize any book, document or thing which in his opinion may serve as evidence in any matter in terms of this Act;
 - (f) examine or cause to be examined any book, document or thing produced to him or seized by him, and make extracts therefrom or copies thereof, and order any person who in his opinion is qualified thereto to explain any entry therein;
 - (g) order an employee to appear before him at such time and place as may be determined by him, and question that employee.
- (4) An authorised person performing any function in terms of this section shall on demand produce the certificate referred to in subsection (2).
- (5) Any person who—
- (a) falsely holds himself out to be an authorised person;
 - (b) refuses or fails to answer fully and satisfactorily any question put to him by an authorised person in the performance of his functions;
 - (c) refuses or fails to comply with any lawful request of or order by an authorised person;
 - (d) hinders or obstructs an authorised person in the performance of his functions,
- shall be guilty of an offence.

8. Assessors

- (1) The Minister may after consultation with the Board appoint so many persons as assessors as he may deem necessary to assist the Director-General in the hearing of any objection in terms of section 91.
- (2) The assessors referred to in subsection (1) shall be persons who in the opinion of the Minister represent the interests of employees and employers, respectively, and to that end the Minister may consult any organisation representing employees or employers.
- (3) The number of assessors appointed to represent the interests of employees shall be equal to the number of assessors appointed to represent the interests of employers.
- (4) The Minister may in addition to the assessors referred to in subsection (1) appoint one or more medical practitioners, including a medical practitioner appointed under section 2(1)(b), as medical assessors.

[S 8(4) subs by s 6 of Act 61 of 1997.]

- (5) An assessor shall be appointed for such period and on such conditions as the Minister may determine, but the Minister may at any time terminate the appointment of an assessor who—
 - (a) has been guilty of misconduct or neglect of duty;
 - (b) is not able to perform his functions in terms of this Act properly; or
 - (c) in his opinion no longer represents the interests on the ground of which he was appointed.
- (6) An assessor shall be paid the prescribed remuneration and travelling and subsistence allowances out of the compensation fund.

9. Compensation payable to assessors

- (1) If an assessor, excluding an assessor in the employ of an employer contemplated in section 84(1)(a)(i), meets with an accident arising out of and in the course of the performance by him or her of his or her functions as assessor and resulting in a personal injury, illness or his or her death, he or she or his or her dependants, as the case may be, shall be entitled to compensation as if he or she were an employee at the time of the accident.
- (2) Compensation in terms of this section shall be paid by the Director-General out of the compensation fund.

[S 9 subs by s 7 of Act 61 of 1997.]

10. Compensation Board

There is hereby established a board to be known as the Compensation Board.

11. Composition of Board

- (1) The Board shall consist of—
 - (a) the Director-General or an officer contemplated in section 2(1)(a) or (b) designated by him or her, who shall act as chairperson;
 - (b) two persons appointed by the Minister, one of whom shall be appointed after consultation with the Minister of Health;
 - (c) the Chief Inspector of Occupational Health and Safety or his or her nominee;
 - (d) one person as a member and one person as an alternate member appointed by the Minister from a list of the names of not more than three persons nominated in order of preference by The Rand Mutual Assurance Company Limited;
 - (e) one person as a member and one person as an alternate member appointed by the Minister from a list of the names of not more than three persons nominated in order of preference by the Federated Employers' Mutual Assurance Company Limited;
 - (f) two persons as members and up to two persons as alternate members appointed by the Minister from a list of the names of not more than six persons nominated in order of preference by the South African Medical and Dental Council;
 - (g) three persons as members and up to three persons as alternate members appointed by the Minister to represent the interests of all employers from a list of the names of not more than 10 persons nominated in order of preference by employers' organisations;
 - (h) five persons as members and up to five persons as alternate members appointed by the Minister to represent the interests of all employees from a list of the names of not more than 16 persons nominated in order of preference by employees' organisations.
- (2) An assessor may not be appointed as a member or an alternate member of the Board.
- (3) An alternate member may attend and take part in the proceedings at any meeting of the Board whenever the member in whose stead he or she has been appointed as an alternate member, is absent from the meeting.

[S 11 subs by s 8 of Act 61 of 1997.]

12. Functions of Board

- (1) The Board shall advise the Minister regarding—
 - (a) matters of policy arising out of or in connection with the application of this Act;
 - (b) the nature and extent of the benefits that shall be payable to employees or dependants of employees, including the adjustment of existing pensions;
 - (c) the appointment of assessors;
 - (d) the amendment of this Act.
- (2) The Board may at the request of the Director-General advise him regarding the performance of a particular aspect of his functions.

13. Term of office and remuneration of members of Board

- (1) The members of the Board appointed by the Minister shall be appointed for a period not exceeding four years and on such conditions as the Minister may determine, but the Minister may at any time terminate the appointment of any member who—
 - (a) has been guilty of misconduct or neglect of duty; or
 - (b) is not able to perform his functions in terms of this Act properly.
- (2) The Minister may—
 - (a) at the request of a mutual association referred to in section 11(1)(d) or (e) terminate the appointment of a member representing such association; and
 - (b) terminate the appointment of a member referred to in section 11(1)(g) or (h) if in his opinion such member no longer represents the interests on the ground of which he was appointed.
- (3) A member of the Board shall be paid the prescribed remuneration and travelling and subsistence allowances out of the compensation fund.

14. Meetings of Board

- (1) The Board shall meet at the times and places determined by the chairman.
- (2) If six or more of the members of the Board request the Director-General in writing with a statement of reasons to convene a meeting, the Director-General shall within 21 days after having received such request convene a meeting of the Board.

- (3) A quorum for a meeting of the Board shall be nine members of the Board.
- (4) The decision of more than 75 per cent of the members present at a meeting of the Board shall be the decision of the Board.

CHAPTER III

Compensation Fund and Reserve Fund

15. Compensation fund

- (1) There is hereby established a fund to be known as the compensation fund.
- (2) The compensation fund shall consist of—
 - (a) any moneys vested in the compensation fund in terms of subsection (3);
 - (b) the assessments paid by employers in terms of this Act;
 - (c) any amounts paid by employers to the Director-General in terms of this Act;
 - (d) any penalties and fines imposed in terms of this Act other than by a court of law;
 - (e) any interest on investments of the compensation fund and the reserve fund;
 - (f) any amounts transferred from the reserve fund;
 - (g) the payments made to the Director-General in terms of section 88;
 - (h) any other amounts to which the compensation fund may become entitled.
- (3)
 - (a) The accident fund established by section 64 of the Workmen's Compensation Act shall, as from the commencement of this Act, cease to exist, and all amounts credited to the accident fund immediately before such commencement, shall as from such commencement vest in the compensation fund.
 - (b) All liabilities and rights, existing as well as accruing, of the accident fund shall devolve upon the compensation fund as from the commencement of this Act.

16. Application of compensation fund

- (1) The compensation fund shall, subject to the provisions of this Act, be under the control of the Director-General and its moneys shall be applied by the Director-General to—
- (a) the payment of compensation, the cost of medical aid or other pecuniary benefits to or on behalf of or in respect of employees in terms of this Act where no other person is liable for such payment;
 - (b) the maintenance of the reserve fund;
 - (c) the payment of expenses incurred in or in connection with the performance of his functions in terms of section 4(2);
 - (d) the reimbursement of the National Revenue Fund in respect of remuneration paid in terms of section 2(2);
[S 16(1)(d) subs by s 9 of Act 61 of 1997.]
 - (e) the payment of the prescribed remuneration and travelling and subsistence allowances to assessors;
 - (f) the payment of the cost of or in connection with the medical examination of employees;
 - (g) the payment of witness fees in terms of section 6(6);
 - (h) the payment of any other expenditure incurred by the Director-General in the performance of his functions in terms of this Act.
- (2) The Director-General may transfer any surplus in the compensation fund to the reserve fund.

17. Valuation of compensation fund

- (1) The assets and liabilities of the compensation fund shall from time to time, as the Director-General may consider necessary, but in any event at intervals of not more than three years, be valued by an actuary appointed by the Minister to determine the sufficiency of the fund.
- (2) The result of the valuation referred to in subsection (1) shall be included in the next annual report of the Director-General succeeding the completion of the valuation.

18. Accounting

- (1) The Director-General shall receive all money payable to or for the benefit of the compensation fund in terms of this Act, and shall be charged with the responsibility of accounting for all money received and the utilisation thereof.

- (2) The Director-General may transfer any part of the moneys in the compensation fund and the reserve fund to the Public Debt Commissioners for investment.

19. Reserve fund

- (1) There is hereby established a fund to be known as the reserve fund, consisting of cash or investments or both.
- (2) The amount of the reserve fund shall be determined by the Director-General.
- (3) The objects of the reserve fund are—
 - (a) to provide for unforeseen demands on the compensation fund;
 - (b) to stabilise the tariffs of assessment.
- (4) Payments out of the reserve fund shall take place on the authorisation of the Director-General.
- (5) The reserve fund established in terms of section 66 of the Workmen's Compensation Act shall, as from the commencement of this Act, cease to exist, and all amounts credited to the said reserve fund immediately before such commencement shall as from such commencement vest in the reserve fund established by subsection (1).

20. Accounts and audit

- (1) The Director-General shall keep such accounts, including an account with a bank contemplated in the Banks Act, 1990 (Act 94 of 1990) and records as are necessary for the exercise of proper control over the compensation fund and the reserve fund, and shall prepare yearly balance sheets made up to the last day of the financial year, showing in all necessary detail the assets and liabilities and the revenue and expenditure of the funds.

[S 20(1) subs by s 10 of Act 61 of 1997.]

- (2) The accounts of the said funds shall be audited by the Auditor-General, and the cost of such audit shall be paid out of the compensation fund.
- (3) The Director-General shall, as soon as possible after the completion of the balance sheets referred to in subsection (1), submit a copy thereof and a copy of the report referred to in section 4(1)(n) to the Minister, who shall table such copies in Parliament within 30 days after receipt thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 30 days of the commencement of its next ensuing ordinary session.

21. Income of funds exempt from tax

The income of the compensation fund and the reserve fund, including income from any investments, shall be exempt from income tax.

CHAPTER IV

Compensation for occupational injuries

22. Right of employee to compensation

- (1) If an employee meets with an accident resulting in his disablement or death such employee or the dependants of such employee shall, subject to the provisions of this Act, be entitled to the benefits provided for and prescribed in this Act.
- (2) No periodical payments shall be made in respect of temporary total disablement or temporary partial disablement which lasts for three days or less.
- (3) (a) If an accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable in terms of this Act, unless—
 - (i) the accident results in serious disablement; or
 - (ii) the employee dies in consequence thereof leaving a dependant wholly financially dependent upon him.
- (b) Notwithstanding paragraph (a) the Director-General may, and the employer individually liable or mutual association concerned, as the case may be, shall, if ordered thereto by the Director-General, pay the cost of medical aid or such portion thereof as the Director-General may determine.
- (4) For the purposes of this Act an accident shall be deemed to have arisen out of and in the course of the employment of an employee notwithstanding that the employee was at the time of the accident acting contrary to any law applicable to his employment or to any order by or on behalf of his employer, or that he was acting without any order of his employer, if the employee was, in the opinion of the Director-General, so acting for the purposes of or in the interests of or in connection with the business of his employer.
- (5) For the purposes of this Act the conveyance of an employee free of charge to or from his place of employment for the purposes of his employment by means of a vehicle driven by the employer himself or one of his employees and specially provided by his employer for the purpose of such conveyance, shall be deemed to take place in the course of such employee's employment.

23. Accidents outside Republic

- (1)
 - (a) If an employer carries on business chiefly in the Republic and an employee of his ordinarily employed in the Republic, meets with an accident while temporarily employed outside the Republic, such employee shall, subject to paragraph (c), be entitled to compensation as if the accident had happened in the Republic.
 - (b) The amount of compensation contemplated in paragraph (a) shall be determined on the basis of the earnings which the employee, in the opinion of the Director-General, would have received if he had remained in the Republic.
 - (c) This subsection shall cease to apply to an employee after he has been employed outside the Republic for a continuous period of 12 months, save by agreement between the Director-General, the employee and the employer concerned, and subject to such conditions as the Director-General may determine.
- (2) If an employee resident in the Republic meets with an accident while employed in, on or above the continental shelf, such employee shall be entitled to compensation as if the accident had happened in the Republic.
- (3)
 - (a) If an employer carries on business chiefly outside the Republic and an employee of his ordinarily employed outside the Republic, meets with an accident while temporarily employed in the Republic, such employee shall not be entitled to compensation unless the employer has previously agreed with the Director-General that such employee shall be entitled to compensation and, where applicable, has paid the necessary assessments in respect of him.
 - (b) An employee referred to in paragraph (a) who is so temporarily employed in the Republic for a continuous period of more than 12 months, shall be deemed to be ordinarily employed by such employer in the Republic.
- (4) If, in terms of the law of the state in which an accident happens, an employee, in the circumstances referred to in subsection (1), is entitled to compensation or if an employee meets with an accident in the circumstances referred to in subsection (2) or in the Republic and he would be entitled to compensation in terms of the law of any other state as well as in terms of this Act, he shall by written notice to the Director-General elect to claim compensation either in terms of this Act or in terms of the law of the other state.

24. Application of Act to seamen and airmen

This Act shall apply to a seaman or airman—

- (a) while employed on a South African ship or aircraft;

- (b) while, subject to section 23(3), employed in the Republic on any other ship or aircraft.

25. Accidents during training for or performance of emergency services

If an employee meets with an accident—

- (a) while he is, with the consent of his employer, being trained in organised first aid, ambulance or rescue work, fire-fighting or any other emergency service;
- (b) while he is engaged in or about his employer's mine, works or premises in organised first aid, ambulance or rescue work, fire-fighting or any other emergency service;
- (c) while he is, with the consent of his employer, engaged in any organised first aid, ambulance or rescue work, fire-fighting or other emergency service on any mine, works or premises other than his employer's,

such accident shall, for the purposes of this Act, be deemed to have arisen out of and in the course of his employment.

26. Special circumstances in which Director-General may refuse award

If a right to compensation in terms of this Act arises owing to the death or disablement of an employee as a result of an accident, the Director-General may refuse to award the whole or a portion of such compensation and the Director-General, or, if authorised thereto by the Director-General, the employer individually liable or mutual association concerned, as the case may be, may also refuse to pay the whole or any portion of the cost of medical aid—

- (a) if the employee at any time represented to the employer or the Director-General, knowing the information to be false, that he was not then suffering from or had not previously suffered from a serious injury or occupational disease or any other serious disease, and such an accident was caused by, or the death resulted from or the disablement resulted from or was aggravated by, such injury or disease; or
- (b) if, in the opinion of the Director-General, the death was caused, or the disablement was caused, prolonged or aggravated, by the unreasonable refusal or wilful neglect of the employee to submit to medical aid in respect of any injury or disease, whether caused by the accident or existing before the accident.

27. Special circumstances in which Director-General may make award

If in a claim for compensation in terms of this Act it appears to the Director-General that the contract of service or apprenticeship or learnership of the employee concerned is invalid, he may deal with such claim as if the contract was valid at the time of the accident.

28. Employee requiring constant help

If the injury in respect of which compensation is payable causes disablement of such a nature that the employee is unable to perform the essential actions of life without the constant help of another person, the Director-General may in addition to any other benefits in terms of this Act grant an allowance towards the cost of such help.

29. Liability for payment of compensation

If an employee is entitled to compensation in terms of this Act, the Director-General or the employer individually liable or the mutual association concerned, as the case may be, shall be liable for the payment of such compensation.

30. Mutual associations

- (1) The Minister may, for such period and subject to such conditions as he may determine, issue a licence to carry on the business of insurance of employers against their liabilities to employees in terms of this Act to a mutual association which was licensed on the date of commencement of this Act in terms of section 95(1) of the Workmen's Compensation Act: Provided that the Minister may, from time to time, order that, in addition to any securities deposited in terms of the Insurance Act, 1943 (Act 27 of 1943), and the Workmen's Compensation Act, securities considered by the Director-General to be sufficient to cover the liabilities of the mutual association in terms of this Act be deposited with the Director-General or his or her nominee.

[Proviso to s 30(1) subs by s 11(a) of Act 61 of 1997.]

- (2) Subject to the provisions of subsection (4), a security so deposited shall be used solely for making good the default of the association concerned in respect of any liability of an employer in terms of this Act, and for payment of any expenses lawfully incurred in connection with such making good or the enforcement of such liability.
- (3) The Minister may from time to time determine the conditions upon which, the manner in which and the period within which any such security shall be made available to a person entitled to payment therefrom.
- (4) If the Minister is satisfied that the whole or any portion of such security is no longer necessary and that the association concerned is not in a position to incur a liability payable therefrom, he shall cause such security, or portion thereof, to be returned to such association.

- (5) If an association has deposited with the Director-General or his or her nominee any such security and thereafter fails to meet in full any of its liabilities in terms of this Act, or is placed in liquidation, then, notwithstanding the provisions of any other law, such security shall vest in the Director-General for the purpose of the liabilities of the association in terms of this Act.

[S 30(5) subs by s 11(b) of Act 61 of 1997.]

- (6) If at any time the Minister is satisfied that a mutual association has failed to comply with any of the conditions imposed by him or her under subsection (1), he or she may suspend or withdraw the licence issued to that association under the said subsection.

[S 30(6) subs by s 11(b) of Act 61 of 1997.]

31. Security for payment of compensation and cost of medical aid by employers individually liable

- (1) The Director-General may order an employer individually liable to deposit such securities as in the opinion of the Director-General are sufficient to cover the liabilities of the employer in terms of this Act.
- (2) If an employer has deposited with the Director-General any such security and thereafter fails to meet in full his liabilities in terms of this Act, the Director-General may apply such security to pay those liabilities, and he may deposit any unused balance in the compensation fund and apply it for the payment of future liabilities of that employer in terms of this Act.

32. Compensation may not be alienated or reduced

- (1) Notwithstanding anything to the contrary in any other law contained, compensation shall not—

(a) be ceded or pledged;

(b) be capable of attachment or any form of execution under a judgment or order of a court of law;

(c) ...

[S 32(1)(c) rep by s 12 of Act 61 of 1997.]

(d) be set off against any debt of the person entitled to the compensation.

- (2) Notwithstanding subsection (1), the Director-General or the mutual association concerned, as the case may be, may pay compensation payable to an employee in whole or in part to the employer to the extent to which such employer has made payments to the employee in respect of disablement arising out of an occupational injury or disease.

33. Cession or relinquishment of benefits void

Any provision of an agreement existing at the commencement of this Act or concluded thereafter in terms of which an employee cedes or purports to cede or relinquishes or purports to relinquish any right to benefits in terms of this Act, shall be void.

34. Compensation not to form part of deceased employee's estate

Compensation in terms of this Act owing to the death of an employee shall not form part of his estate.

35. Substitution of compensation for other legal remedies

- (1) No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.
- (2) For the purposes of subsection (1) a person referred to in section 56(1)(b), (c), (d) and (e) shall be deemed to be an employer.

36. Recovery of damages and compensation paid from third parties

- (1) If an occupational injury or disease in respect of which compensation is payable, was caused in circumstances resulting in some person other than the employer of the employee concerned (in this section referred to as the "third party") being liable for damages in respect of such injury or disease—
 - (a) the employee may claim compensation in terms of this Act and may also institute action for damages in a court of law against the third party; and
 - (b) the Director-General or the employer by whom compensation is payable may institute action in a court of law against the third party for the recovery of compensation that he is obliged to pay in terms of this Act.
- (2) In awarding damages in an action referred to in subsection (1)(a) the court shall have regard to the compensation paid in terms of this Act.

[S 36(2) subs by s 13 of Act 61 of 1997.]

- (3) In an action referred to in subsection (1)(b) the amount recoverable shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the employee but for this Act.

- (4) For the purposes of this section, compensation includes the cost of medical aid already incurred and any amount paid or payable in terms of section 28, 54(2) or 72(2) and, in the case of a pension, the capitalised value as determined by the Director-General of the pension, irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 52 or 60, and periodical payments or allowances, as the case may be.

37. Threats and compulsion

Any person who threatens an employee or in any manner compels or influences an employee to do something resulting in or directed at the deprivation of that employee's right to benefits in terms of this Act, shall be guilty of an offence.

CHAPTER V

Claims for compensation

38. Notice of accident by employee to employer

- (1) Written or verbal notice of an accident shall, as soon as possible after such accident happened, be given by or on behalf of the employee concerned to the employer, and notice of the accident may also be given as soon as possible to the commissioner in the prescribed manner.
- (2) Failure to give notice to an employer as required in subsection (1) shall not bar a right to compensation if it is proved that the employer had knowledge of the accident from any other source at or about the time of the accident.
- (3) Subject to section 43, failure to give notice to an employer as required in subsection (1), or any error or inaccuracy in such notice, shall not bar a right to compensation if in the opinion of the Director-General—
- (a) the compensation fund or the employer or mutual association concerned, as the case may be, is not or would not be seriously prejudiced by such failure, error or inaccuracy if notice is then given or the error or inaccuracy is corrected;
 - (b) such failure, error or inaccuracy was caused by an oversight, absence from the Republic or other reasonable cause.
- (4) If a seaman or airman meets with an accident, the person in command or the owner of the ship or aircraft, as the case may be, shall for the purposes of this section and sections 39, 40, 41 and 43 be deemed to be the employer.

39. Notice of accident by employer to commissioner

- (1) Subject to the provisions of this section an employer shall within seven days after having received notice of an accident or having learned in some other way that an employee has met with an accident, report the accident to the commissioner in the prescribed manner.
- (2) For the purposes of subsection (1) an employer referred to in section 84(1)(a)(i) means, in the case of—
 - (a) the national and provincial spheres of government, the respective heads of departments referred to in section 7(3) of the Public Service Act, 1994 (Proc. 103 of 1994);
[S 39(2)(a) subs by s 14(a) of Act 61 of 1997.]
 - (b) Parliament, the Secretary to Parliament;
 - (c) a provincial legislature, the Secretary of the provincial legislature in question.
[S 39(2)(c) subs by s 14(b) of Act 61 of 1997.]
- (3)
 - (a) An employer referred to in section 84(1)(a)(ii) shall within 60 days after the commencement of this Act, and an employer referred to in section 84(1)(a)(iii) shall within 30 days after having been granted exemption under section 84(2) furnish the commissioner in the prescribed manner with the name of a person who shall be responsible to report on behalf of such employer accidents as required by subsection (1) (in this section referred to as the “responsible person”).
[S 39(3)(a) subs by s 14(c) of Act 61 of 1997.]
 - (b) If such employer individually liable thereafter designates some other person as the responsible person such employer shall within 30 days after such designation notify the commissioner thereof in the prescribed manner.
- (4) Notwithstanding subsection (1) the Director-General may upon application authorise an employer individually liable to report accidents at such intervals and in such manner as the Director-General may determine.
- (5) An employer referred to in section 84(1)(b) shall report accidents to the mutual association concerned in the prescribed manner.
- (6) An employer, excluding an employer referred to in section 84(1)(a)(i), (ii) and (iii), who fails to comply with subsection (1) shall be guilty of an offence.
[S 39(6) subs by s 14(d) of Act 61 of 1997.]
- (7) For the purposes of this section an accident includes any injury reported by an employee to his employer, if the employee when reporting the injury alleges that it arose out of and in the course of his employment and irrespective of the fact that in the opinion of the employer the alleged accident did not so arise out of and in the course thereof.

- (8) If an employer, excluding an employer referred to in section 84(1)(a)(i), (ii) and (iii), fails to report in the prescribed manner an accident which has happened to an employee in his, her or its service within seven days after having received notice thereof or having learned thereof in some other manner, the Director-General may impose a fine of not more than the full amount of the compensation payable in respect of such accident upon him, her or it in addition to any other penalty to which he, she or it may be liable.

[S 39(8) subs by s 14(e) of Act 61 of 1997.]

- (9) If a fine is in terms of subsection (8) imposed upon an employer referred to in section 84(1)(b), and is paid to the Director-General or recovered by him, such fine shall be paid over to the mutual association concerned.
- (10) For the purposes of subsection (8) compensation includes the cost of medical aid and any amount paid or payable in terms of section 28, 54(2) or 72(2) and, in the case of a pension, the capitalised value as determined by the Director-General of the pension, irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 52 or 60, and periodical payments or allowances, as the case may be.
- (11) If the Director-General is of the opinion that the failure referred to in subsection (8) was not wilful or was due to a cause over which the employer had no control or that the payment of the full amount of the compensation payable in respect of such accident, including the capitalised value as determined in subsection (10), will probably result in the insolvency of the employer concerned or, in the case of an employer that is a company, its liquidation, the Director-General may on such conditions as he may think fit-
- (a) reduce or remit any fine imposed by him;
 - (b) permit the employer to pay the fine in such instalments as he may determine.

- (12) An employer shall at the request of an employee or the dependant of an employee furnish such employee or dependant with a copy of the notice of the accident furnished by the employer to the commissioner in respect of a claim for compensation by such employee or dependant.

40. Inquiry by Director-General into accident

- (1) The Director-General shall, after having received notice of an accident or having learned in some other way that an employee has met with an accident, make such inquiry as he may deem necessary to enable him to decide upon any claim or liability in terms of this Act.
- (2) An employee or employer shall, at the request of the Director-General, furnish such further particulars regarding the accident and injuries concerned as the Director-General may require.

- (3) The Director-General shall, at the request of an injured employee or his employer, furnish such information as the Director-General may deem necessary to enable that employee or employer to comply with the provisions of this Act.
- (4) An employer who fails to comply with the provisions of this section shall be guilty of an offence.
- (5) Notwithstanding section 4(1)(c), the Director-General may refuse to adjudicate on the claim of an employee who fails to comply with subsection (2).

41. Particulars in support of claim

- (1) An employee who has met with an accident shall, when reporting the accident or thereafter at the request of the employer or commissioner, furnish such information and documents as may be prescribed or as the employer or commissioner may direct.
- (2) Subject to section 62, an employer shall within seven days after having received a claim, medical report or other documents or information concerning such claim send such claim, report, documents or information to the commissioner.

[S 41(2) subs by s 15 of Act 61 of 1997.]

42. Employee to submit to medical examination

- (1) An employee who claims compensation or to whom compensation has been paid or is payable shall when so required by the Director-General or the employer or mutual association concerned, as the case may be, after reasonable notice, submit himself at the time and place mentioned in the notice to an examination by the medical practitioner designated by the Director-General or the employer or mutual association concerned.
- (2) Such expenses incurred by the employee to comply with the provisions of this section as the Director-General may deem necessary and reasonable, and the prescribed remuneration for a medical examination in terms of this section, shall be paid by the party requiring the examination.
- (3) If, in the opinion of any medical practitioner, the employee is not capable of calling upon the designated medical practitioner, the employee shall inform the party requiring the examination thereof or cause him to be so informed, and the designated medical practitioner shall then examine the employee at a time and place as agreed upon.
- (4) An employee shall be entitled at his own expense to have a medical practitioner or chiropractor of his choice present at an examination by a designated medical practitioner.

43. Claim for compensation

- (1) (a) A claim for compensation in terms of this Act shall be lodged by or on behalf of the claimant in the prescribed manner with the commissioner or the employer or the mutual association concerned, as the case may be, within 12 months after the date of the accident or, in the case of death, within 12 months after the date of death.
- (b) If a claim for compensation is not lodged as prescribed in paragraph (a), such claim for compensation shall not be considered in terms of this Act, except where the accident concerned has been reported in terms of section 39.
- (2) Notwithstanding subsection (1)(a) a claim for compensation by any seaman or airman may be lodged with the person in command of the ship or aircraft concerned, as the case may be, except if such seaman or airman is himself the person in command.
- (3) If any seaman or airman meets with an accident outside the Republic resulting in death, a claim for compensation shall be instituted within 12 months after news of the death has been received by any dependant claiming compensation.
- (4) The provisions of section 38 shall apply *mutatis mutandis* in respect of any failure to institute a claim or in respect of any error or inaccuracy in a claim instituted in terms of this section.

44. Prescription

A right to benefits in terms of this Act shall lapse if the accident in question is not brought to the attention of the commissioner or of the employer or mutual association concerned, as the case may be, within 12 months after the date of such accident.

45. Consideration of claim

- (1) The Director-General shall consider and adjudicate on a claim for compensation, and for that purpose may carry out such investigation as he may deem necessary or he may formally hear the claim.
- (2) If the Director-General decides upon a formal hearing, he shall in the prescribed manner give notice of the date, time and place of the hearing to the claimant and employer.
- (3) If the Director-General considers it necessary that any person, including the claimant and the employer, should be present at a formal hearing to be interrogated, he may issue a subpoena for the appearance of such witness.
- (4) Upon application by a person who in the opinion of the Director-General has a sufficient interest in the subject of a formal hearing, the Director-General shall issue a subpoena for the appearance of a person except if he is of the opinion that such person cannot further the investigation, in which case

the Director-General shall issue a subpoena only if the party applying therefor deposits with the Director-General a sum sufficient to cover the necessary expenses to be incurred by the witness as well as the cost of the service of such subpoena.

- (5) The provisions of section 6 shall apply *mutatis mutandis* to a person subpoenaed in terms of subsection (3) or (4).
- (6) The Director-General may from time to time adjourn a formal hearing to a date, time and place determined by him.
- (7) The Director-General shall keep or cause to be kept a record of the proceedings at a formal hearing, and upon payment of the prescribed fees any person may obtain a copy of such record.

46. Appearance of parties

- (1) (a) Every party to a claim for compensation or his representative may appear before the Director-General at a formal hearing.

(b) The Director-General may designate any person to investigate a claim, attend a formal hearing, cross-examine witnesses, adduce rebutting evidence and present arguments.
- (2) No person other than an advocate or attorney shall be entitled to any fees or remuneration except such necessary expenses as the Director-General may allow.
- (3) No fees or remuneration shall be claimed from an employee or employer except with the approval of the Director-General.
- (4) (a) The Director-General may of his or her own motion or on an *ex parte* application by a party to a claim for compensation, order any attorney employed by such party or a representative who has allegedly, contrary to subsection (2), claimed fees or remuneration, to submit to him or her a statement showing what he or she has received or contracted to receive from his or her client, and to submit for taxation his or her bill of costs, including attorney and client costs, against such client.

[S 46(4)(a) subs by s 16 of Act 61 of 1997.]

- (b) Upon such taxation the Director-General may allow such fees, costs and expenses as he may consider reasonable in the circumstances.
- (c) If an amount has been paid in excess of the amount allowed upon taxation, the excess shall be refunded to the person concerned, and any agreement in terms of which such an excess is otherwise payable shall be void as to that excess.

- (5) The provisions of subsections (2), (3) and (4) shall also apply to any act in connection with a claim for compensation which is not the subject of a formal hearing.
- (6) Any person who agrees or attempts to collect any money contrary to the provisions of this section shall be guilty of an offence.

CHAPTER VI

Determination and calculation of compensation

47. Compensation for temporary total or partial disablement

- (1) (a) Compensation for temporary total disablement shall be calculated on the basis set out in item 1 of Schedule 4 subject to the minimum and maximum amounts.

[S 47(1)(a) subs by s 17(a) of Act 61 of 1997.]

- (b) ...

[S 47(1)(b) rep by s 17(b) of Act 61 of 1997.]

- (2) Compensation for temporary partial disablement shall consist of such portion of the amount calculated in terms of subsection (1) as the Director-General may consider equitable.

- (3) (a) Notwithstanding section 29 the employer in whose service an employee is at the time of the accident shall be liable for the payment of the compensation referred to in subsection (1) for the first three months from the date of accident.

- (b) After the expiry of the said three months, compensation so paid by such employer shall be repaid to the employer by the Director-General or mutual association concerned, as the case may be.

[S 47(3)(b) subs by s 17(c) of Act 61 of 1997.]

- (c) An employer who fails to comply with paragraph (a) shall be guilty of an offence.

[S 47(3)(c) ins by s 17(d) of Act 61 of 1997.]

- (4) Payment of compensation in terms of subsections (1) and (2) shall take place in the form of periodical payments at such times and intervals, but not exceeding one month, as the Director-General may determine.

- (5) (a) Periodical payments shall take place for so long as the temporary total disablement continues, but not for a period exceeding 24 months.

[S 47(5)(a) subs by s 17(e) of Act 61 of 1997.]

- (b) If such disablement continues for longer than 12 months, the Director-General may order the continuation of those payments for such further period as he may determine.
- (6) Temporary total disablement continuing for more than 24 months may be treated by the Director-General as permanent disablement.
- (7) (a) No periodical payments shall be payable for the period in respect of which the employer pays the cost of maintenance of an injured seaman in terms of the merchant shipping law.
- (b) Notwithstanding paragraph (a) such payments may be made as the Director-General may deem equitable but not exceeding the amount contemplated in subsection (1).

48. Expiry of compensation for temporary total or partial disablement

- (1) The right to compensation for temporary total or partial disablement shall expire—
 - (a) upon the termination of such disablement or if the employee resumes the work upon which he was employed at the time of the accident or occupational disease, or resumes any other work at the same or greater earnings;
 - (b) if the employee is awarded compensation for permanent disablement.
- (2) Notwithstanding subsection (1) the Director-General may, and the employer individually liable or mutual association concerned, as the case may be, shall, if directed thereto by the Director-General, again award compensation for temporary total or partial disablement if—
 - (a) the disablement of the employee concerned recurs or deteriorates; or
 - (b) the employee receives further medical aid necessitating further absence from his service, provided that such aid will in the opinion of the Director-General reduce his disablement.
- (3) If the Director-General awards compensation under subsection (2), he may suspend or direct the employer individually liable or mutual association concerned, as the case may be, to suspend any pension payments to the employee concerned in respect of the same accident for so long as such employee is receiving periodical payments.

49. Compensation for permanent disablement

- (1) (a) Compensation for permanent disablement shall be calculated on the basis set out in items 2, 3, 4 and 5 of Schedule 4 subject to the minimum and maximum amounts.

[S 49(1)(a) subs by s 18(a) of Act 61 of 1997.]

(b) ...

[S 49(1)(b) rep by s 18(b) of Act 61 of 1997.]

- (2) (a) If an employee has sustained an injury set out in Schedule 2, he shall for the purposes of this Act be deemed to be permanently disabled to the degree set out in the second column of the said Schedule.
- (b) If an employee has sustained an injury or serious mutilation not mentioned in Schedule 2 which leads to permanent disablement, the Director-General shall determine such percentage of disablement in respect thereof as in his opinion will not lead to a result contrary to the guidelines of Schedule 2.
- (c) If an injury or serious mutilation contemplated in paragraph (a) or (b) has unusually serious consequences for an employee as a result of the special nature of the employee's occupation, the Director-General may determine such higher percentage as he or she deems equitable.

[S 49(2)(c) ins by s 18(c) of Act 61 of 1997.]

- (3) No payment for temporary disablement in terms of section 47 shall be deducted from compensation payable in terms of this section.
- (4) For the purposes of this section "monthly pension" means, where it appears in the relevant items in Schedule 4, a pension payable monthly during the lifetime of the employee and which expires at the end of the month in which the employee dies.

50. Amendment of Schedule 2

The Minister may on the recommendation of the Director-General, and after consultation with the Board, amend Schedule 2 by notice in the *Gazette* in respect of injuries or categories of injuries as well as the percentage of disablement: Provided that at least 60 days before any such amendment a notice shall be published in the *Gazette*—

[Words preceding the proviso to s 50 subs by s 19 of Act 61 of 1997.]

- (a) of the intention to effect an amendment and the proposed content of the amendment; and
- (b) inviting any person who wishes to comment on the proposed amendment to submit such comment in writing to the commissioner within the period mentioned in the notice.

51. Compensation for permanent disablement of employee in training or under 26 years of age

- (1) If as a result of an accident an employee sustains permanent disablement and at the time of the accident—

- (a) was an apprentice or in the process of being trained in any trade, occupation or profession; or
- (b) was under 26 years of age,

the Director-General shall determine the earnings of such employee in accordance with subsection (2) for the purpose of the calculation of compensation in terms of section 49.

(2)

- (a) In the case of an employee referred to in subsection (1)(a), his earnings shall be calculated on the basis of the earnings to which a recently qualified person or a person in the same occupation, trade or profession with five years more experience than the employee would have been entitled at the time of the accident, whichever calculation is more favourable to the employee.
- (b) In the case of an employee referred to in subsection (1)(b), his earnings shall be calculated on the basis of the earnings to which a person of 26 years of age would normally have been entitled if at the time of the accident he had been performing the same work as the employee or a person in the same occupation, trade or profession with five years more experience than the employee, whichever calculation is more favourable to the employee.

52. Payment of lump sum in lieu of pension

- (1) If a pension does not exceed a prescribed amount, the Director-General may, upon the application of the pensioner, pay or direct the payment of a lump sum in lieu of that pension or a portion thereof.

(2)

- (a) If a pension exceeds the prescribed amount, the Director-General may, upon the application of the pensioner, in lieu of a portion of that pension not exceeding the prescribed amount pay or direct the payment of a lump sum.

[S 52(2)(a) subs by s 20 of Act 61 of 1997.]

- (b) If the balance of the pension payable is less than the prescribed amount per month, the Director-General may pay or direct the payment of a lump sum in lieu of the whole of such pension.
- (3) No pension or portion of a pension due to a child shall be paid in a lump sum.
- (4) Any lump sum in terms of this section shall be calculated on the basis determined by the Director-General, and the payment thereof shall be subject to the control of the Director-General as referred to in section 59.

53. Compensation to employee previously in receipt of compensation

- (1) In awarding compensation to an employee in respect of permanent disablement or in reviewing an award of compensation, the Director-General may take into account any compensation awarded in terms of this Act or any other law to the employee as a result of permanent disablement.
- (2) If an employee has received compensation for permanent disablement in terms of this Act and subsequently meets with an accident resulting in further permanent disablement in respect of which compensation is payable in terms of this Act, the Director-General may calculate his compensation in respect of such further permanent disablement and, where applicable, also the first-mentioned compensation, on the basis of the earnings that he received at the time of any of the accidents concerned, whichever earnings are more favourable to the employee.
- (3) Subject to section 56, an employee shall not be paid compensation in the form of a pension or pensions in respect of one or more accidents if it amounts to more than the pension payable in respect of 100 per cent disablement.

54. Amount of compensation if employee dies

- (1) If an employee dies as a result of an injury caused by an accident, compensation shall be payable as follows—
 - (a) If the employee leaves a dependant referred to in paragraph (a), (b) or (c) of the definition of “dependant of an employee” in section 1 (in this section referred to as “widow or widower”), and there are no children, a lump sum as set out in item 6 of Schedule 4 and a monthly pension as set out in item 7 of Schedule 4;

[S 54(1)(a) subs by s 21(a) of Act 61 of 1997.]
 - (b) if the employee leaves a widow or widower and a child referred to in paragraph (d) of the said definition, compensation to the widow or widower calculated in accordance with paragraph (a) of this subsection, and in respect of the child a pension calculated in accordance with paragraph (c) of this subsection: Provided that any pension payable in terms of this paragraph shall not in all exceed the pension for 100 per cent permanent disablement which would have been payable to the employee under section 49(1);

[Words preceding the proviso to s 54(1)(b) subs by s 21(b) of Act 61 of 1997.]
 - (c) if the employee leaves a child referred to in paragraph (d) of the said definition, or a child referred to in paragraph (e) of the said definition who in the opinion of the Director-General is unable to earn an income owing to a physical or mental disability, a pension as set out in item 8 of Schedule 4: Provided that—

[Words preceding the proviso to s 54(1)(c) subs by s 21(c) of Act 61 of 1997.]

- (i) if the employee at the time of his death does not leave a widow or widower or where such a widow or widower later dies, the aggregate amount of the pensions payable in terms of this paragraph may, in the discretion of the Director-General and subject to review by him from time to time, be increased by an amount not exceeding the pension which is or would have been payable in terms of paragraph (a) of this subsection to the widow or widower;
- (ii) the pension payable in terms of this paragraph shall not in all exceed the pension which would have been awarded to the employee under section 49(1) in the case of 100 per cent permanent disablement;
- (iii) any increase or reduction of a pension in terms of this proviso shall be calculated in such manner as the Director-General may deem equitable, and the amount and manner of awarding may be reviewed by him from time to time;
- (iv) the pension payable to a child referred to in paragraph (d) of the said definition shall lapse at the end of the month in which such child reaches the age of 18 years, except where such child is unable to earn an income owing to a physical or mental disability, or dies or marries before reaching the age of 18 years, or until the child completes secondary education, or while the child is undergoing tertiary education and it could reasonably have been expected that the employee would have contributed to the maintenance of that child, whichever occurs last;

[S 54(1)(c)(iv) subs by s 21(d) of Act 61 of 1997.]

- (v) the pension payable to a child referred to in paragraph (d) or (e) of the said definition who is unable to earn an income owing to a physical or mental disability, shall cease on a date determined by the Director-General when in his or her opinion it may reasonably have been expected that the employee would no longer have contributed towards the maintenance of that child;

[S 54(1)(c)(v) subs by s 21(d) of Act 61 of 1997.]

- (d) if the employee leaves no dependants referred to in paragraph (a), (b) or (c) of this subsection but a dependant referred to in paragraph (e) of the said definition, excluding a child over the age of 18 years who is unable to earn an income owing to a physical or mental disability, and –
 - (i) who was wholly financially dependent upon the employee, a monthly pension which in all shall not amount to more than 40 per cent of the pension which would have been payable to the employee under section 49(1) for 100 per cent permanent disablement, for so long as in the opinion of the Director-General it may reasonably have been expected that the employee would have contributed to the maintenance of that person; or

- (ii) who was partly financially dependent upon the employee and there is no dependant as contemplated in subparagraph (i), a lump sum as set out in item 9 of Schedule 4.

[S 54(1)(d) subs by s 21(e) of Act 61 of 1997.]

- (e) ...

[S 54(1)(e) rep by s 21(g) of Act 61 of 1997.]

- (2) The Director-General may pay out of the compensation fund such amount as he may deem reasonable, within the limits set out in item 10 of Schedule 4, for the funeral costs of an employee or direct the employer individually liable or mutual association concerned, as the case may be, to pay such costs.
- (3) No amount shall be deducted from the compensation awarded in terms of this section to a dependant in respect of any compensation awarded to the employee himself in respect of the same or any other accident.
- (4) A pension payable to a widow or widower in terms of this section shall lapse on the last day of the month in which she or he dies.
- (5) If an employee leaves two or more dependants referred to in paragraph (b), (d) or (e) of the definition of “dependant of an employee” in section 1—
 - (a) the compensation payable to the dependants shall, notwithstanding the provisions of this section, be awarded in such manner as the Director-General may determine: Provided that the compensation payable in all shall not exceed the lump sum and pension which would have been payable in terms of this section if such employee had left only one such dependant;
 - (b) the Director-General may, if one of the dependants referred to in the said paragraph (b) dies, allocate the pension which was payable to that dependant to the children, if any, of such dependant or, if there are no children, to the other dependant or dependants referred to in the said paragraph (b).
- (6) For the purposes of this section a dependant referred to in paragraph (a), (b) or (d) of the definition of “dependant of an employee” in section 1 shall be deemed to have been wholly financially dependent upon the employee at the time of the accident unless the contrary is proved.

55. Amendment of Schedule 4

The Minister may on the recommendation of the Director-General, and after consultation with the Board, amend Schedule 4 by notice in the *Gazette* in respect of the nature, extent, minimum and maximum amount of benefits: Provided that at least 60 days before any such amendment a notice shall be published in the *Gazette*—

[Words preceding the proviso to s 55 subs by s 22 of Act 61 of 1997.]

- (a) of the intention to effect an amendment and the proposed content of the amendment; and
- (b) inviting any person who wishes to comment on the proposed amendment to submit such comment in writing to the commissioner within the period mentioned in the notice.

56. Increased compensation due to negligence of employer

- (1) If an employee meets with an accident or contracts an occupational disease which is due to the negligence—
 - (a) of his employer;
 - (b) of an employee charged by the employer with the management or control of the business or of any branch or department thereof;
 - (c) of an employee who has the right to engage or discharge employees on behalf of the employer;
 - (d) of an engineer appointed to be in general charge of machinery, or of a person appointed to assist such engineer in terms of any regulation made under the Minerals Act, 1991 (Act 50 of 1991); or
 - (e) of a person appointed to be in charge of machinery in terms of any regulation made under the Occupational Health and Safety Act, 1993 (Act 85 of 1993),

the employee may, notwithstanding any provision to the contrary contained in this Act, apply to the commissioner for increased compensation in addition to the compensation normally payable in terms of this Act.

- (2) For the purposes of subsection (1) an accident or occupational disease shall be deemed also to be due to the negligence of the employer if it was caused by a patent defect in the condition of the premises, place of employment, equipment, material or machinery used in the business concerned, which defect the employer or a person referred to in paragraph (b), (c), (d) or (e) of subsection (1) has failed to remedy or cause to be remedied.
- (3) (a) An application for increased compensation in terms of this section shall be lodged with the commissioner in the prescribed manner within 24 months after the date of the accident or the commencement of the occupational disease, but the commissioner may extend that period by a further period not exceeding 12 months if he is satisfied that there are good reasons why the employee did not lodge his application within that period, and that neither the compensation fund nor the employer will unreasonably be prejudiced by the extension of such period.

- (b) The commissioner shall, as soon as possible after receipt of such an application, send a copy thereof to the employer in whose employ the employee was at the time of the accident or the employer in whose employ the employee was when he contracted the occupational disease.
 - (c) The provisions of sections 6, 7, 45 and 46 shall, subject to such rules as the commissioner may prescribe for the facilitation of the consideration of applications in terms of this section, apply *mutatis mutandis* in respect of such an application.
- (4) (a) If the Director-General is satisfied that the accident or occupational disease was due to negligence as referred to in subsection (1), he shall award the applicant such additional compensation as he may deem equitable.
- (b) The amount of such additional compensation together with any other compensation awarded in terms of this Act shall not exceed the amount of the pecuniary loss which the applicant has in the opinion of the Director-General suffered or can reasonably be expected to suffer as a direct result of the said accident or occupational disease.
- (5) The Director-General may deal with an application in terms of subsection (1) *mutatis mutandis* in accordance with the procedure prescribed in section 91 as if it were an objection in terms of that section.
- (6) The presiding officer may in any proceedings in terms of this section make such an order as to costs and the payment thereof as he may deem fit.
- [S 56(6) subs by s 23 of Act 61 of 1997.]
- (7) If increased compensation has been awarded in terms of this section the Director-General may for such period as he may deem necessary apply the provisions of section 85(2) in respect of the employer of the employee concerned.

57. Increase of monthly pensions

- (1) The Minister may on the recommendation of the Director-General by notice in the *Gazette* increase the monthly pensions payable in terms of sections 49 and 54 by such percentage as he may so determine: Provided that at least 60 days before any such increase a notice shall be published in the *Gazette*—
- (a) of the intention to increase the monthly pensions; and
 - (b) inviting any person who wishes to comment on the proposed increase to submit such comment in writing to the commissioner within the period mentioned in the notice.

- (2) In determining the percentage referred to in subsection (1) the Minister may differentiate between accidents which happened on different dates.

58. Advances on compensation

In anticipation of the award of compensation the Director-General may, if in his opinion the interests or pressing need of the employee warrants it, advance to or on behalf of the employee such amount as he may deem equitable or direct the employer individually liable or mutual association concerned to advance it, subject to such conditions as the Director-General may determine.

59. Control over payment of compensation

- (1) Compensation payable in terms of this Act may for reasons deemed by the Director-General to be sufficient, be—
- (a) paid to the employee or the dependant of an employee entitled thereto, or to any other person on behalf of such employee or dependant, in instalments or in such other manner as he may deem fit;
 - (b) invested or applied to the advantage of the employee or the dependants of an employee;
 - (c) paid to the Master of the Supreme Court, a trustee or any other person to be applied in accordance with such conditions as may be determined by the Director-General;
 - (d) applied according to one or more of paragraphs (a), (b) and (c).
- (2) Notwithstanding any provision to the contrary contained in this Act, if compensation is payable by an employer individually liable or a mutual association, as the case may be, the Director-General may direct such employer or mutual association to pay the whole or any portion of the compensation concerned to the Director-General to be dealt with in terms of subsection (1).
- (3) (a) On the death of an employee or a dependant of an employee the unpaid balance of any compensation awarded shall not form part of his estate and shall be paid to such dependant as the Director-General may designate.
- (b) Where there is no dependant, the Director-General may pay such balance or a portion thereof to the estate of the deceased.

60. Pensioner resident outside Republic

- (1) If an employee or a dependant of an employee to whom a pension is payable in terms of this Act is resident outside the Republic or is absent from the Republic for a period or periods totalling more than

six months, the Director-General may award a lump sum as determined by him in lieu of such pension, and upon payment of such lump sum the right to the pension shall expire.

- (2) Before the Director-General exercises his power under subsection (1), he shall notify that employee or dependant of his intention and request him to submit any representations that he wishes to make for consideration to the Director-General within the period specified by the Director-General.

61. Recovery of compensation or other benefits

- (1) If an employer individually liable or a mutual association that is liable for the payment of compensation or any other pecuniary benefit in terms of this Act, refuses or fails to pay such compensation or benefit, the Director-General may issue an order in the prescribed form for the payment thereof.
- (2) The Director-General shall send a certified copy of the order referred to in subsection (1) to the clerk of the magistrate's court of the district in which the party referred to in subsection (1) has its place of business, and thereupon such order shall have the effect of a civil judgment of that magistrate's court and the Director-General shall have all the powers of a judgment creditor.
- (3) Any amount recovered under subsection (2) shall be paid into the compensation fund and the provisions of section 59 shall apply *mutatis mutandis* in respect of such amount.

62. Provisional settlements

- (1) Notwithstanding any provision to the contrary contained in this Act, the Director-General may, subject to such conditions as he may determine, authorise an employer individually liable or a mutual association to provisionally settle claims by employees for compensation or for the payment of the cost of medical aid.
- (2) An employer or association referred to in subsection (1) shall report provisional settlements to the Director-General at such intervals and with such particulars as the Director-General may determine, and the Director-General may confirm, amend or repudiate any such provisional settlement, or deal with the claim in accordance with section 45 as if the provisional settlement concerned had not been made.

63. Manner of calculating earnings

- (1) In order to determine compensation, the Director-General shall calculate the earnings of an employee in such manner as in his opinion is best to determine the monthly rate at which the employee was being remunerated by his employer at the time of the accident, including—

- (a) the value of any food or quarters or both supplied by the employer to the date of the accident;

- (b) any overtime payment or other special remuneration in cash or in kind of a regular nature or for work ordinarily performed,

but excluding—

- (i) payment for intermittent overtime;
 - (ii) payment for non-recurrent occasional services;
 - (iii) amounts paid by an employer to an employee to cover any special expenses;
 - (iv) *ex gratia* payments whether by the employer or any other person.
- (2) If an employee's remuneration is determined in accordance with a rate calculated upon work performed, his earnings shall be deemed to be his remuneration for similar work upon the same conditions of remuneration for as long a period as possible prior to the accident but not exceeding 12 months.
 - (3) If by reason of the short duration of the service of an employee with his employer it is impracticable to calculate his earnings in such service, his earnings shall, if possible, be calculated on the basis of the amount which the employee with similar work at the same conditions of remuneration earned with another employer during the 12 months immediately prior to the accident, or on the basis of the amount which during the 12 months immediately prior to the accident was earned by other employees of the first-mentioned employer with similar work and on the same conditions of remuneration, or would have been earned by the employee during the previous 12 months had he been so employed.
 - (4) If an employee has entered into contracts of service with two or more employers and has in terms of those contracts worked at one time for one employer and at another time for another employer, his earnings shall be calculated 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.
 - (5) If in the opinion of the Director-General it is not practicable to calculate the earnings of an employee in accordance with the preceding provisions, the Director-General may calculate those earnings in such manner as he may deem equitable, but with due regard to the principles laid down in those provisions.
 - (6) This section shall not be construed as prohibiting the calculation of earnings on a weekly basis, but where earnings are so calculated the monthly earnings shall be calculated as equal to four and one-third times the amount of such weekly earnings.

64. Certain compensation to employers prohibited

- (1) Any employer who deducts from the earnings of an employee any amount or receives any amount from him to compensate the employer directly or indirectly for any amount which the employer is liable to pay in terms of this Act, shall be guilty of an offence.
- (2) Any court convicting an employer of contravening subsection (1) shall, in addition to any penalty it may impose, order the employer to pay to the commissioner within a specified period and in instalments or otherwise as the court may determine, such amount as he has received contrary to the provisions of subsection (1).
- (3) The commissioner shall pay the amount received by him in terms of such an order to the employee from whose earnings that amount has been deducted or from whom the amount has been received.
- (4) Upon application by the employer the court may at any time, on good cause shown, extend the period within which the amount referred to in subsection (2) is payable or amend the amount of the instalments.
- (5) An order made under this section shall have the effect of a civil judgment of a magistrate's court in favour of the commissioner.

CHAPTER VII

Occupational diseases

65. Compensation for occupational diseases

- (1) Subject to the provisions of this Chapter, an employee shall be entitled to the compensation provided for and prescribed in this Act if it is proved to the satisfaction of the Director-General—
 - (a) that the employee has contracted a disease mentioned in the first column of Schedule 3 and that such disease has arisen out of and in the course of his or her employment; or
 - (b) that the employee has contracted a disease other than a disease contemplated in paragraph (a) and that such disease has arisen out of and in the course of his or her employment.

[S 65(1) subs by s 24(a) of Act 61 of 1997.]

- (2) If an employee has contracted a disease referred to in subsection (1) and the Director-General is of the opinion that the recovery of the employee is being delayed or that his temporary total disablement is being prolonged by reason of some other disease of which the employee is suffering, he may approve medical aid also for such other disease for so long as he may deem it necessary.
- (3) If an employee has contracted a disease referred to in subsection (1) resulting in permanent disablement and that disease is aggravated by some other disease, the Director-General may in determining the degree of permanent disablement have regard to the effect of such other disease.

- (4) Subject to section 66, a right to benefits in terms of this Chapter shall lapse if any disease referred to in subsection (1) is not brought to the attention of the commissioner or the employer or mutual association concerned, as the case may be, within 12 months from the commencement of that disease.
- (5) For the purposes of this Act the commencement of a disease referred to in subsection (1) shall be deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the Director-General may determine if it is more favourable to the employee.
- (6) The provisions of this Act regarding an accident shall apply *mutatis mutandis* to a disease referred to in subsection (1), except where such provisions are clearly inappropriate.

[S 65(6) subs by s 24(b) of Act 61 of 1997.]

66. Presumption regarding cause of occupational disease

If an employee who has contracted an occupational disease was employed in any work mentioned in Schedule 3 in respect of that disease, it shall be presumed, unless the contrary is proved, that such disease arose out of and in the course of his employment.

67. Calculation of compensation

- (1) Compensation for a disease referred to in section 65(1) shall be calculated on the basis of the earnings of the employee calculated *mutatis mutandis* in accordance with the provisions of section 63 and the disablement of the employee at the time of the commencement of the disease or such earlier date as the Director-General may determine, if it is proved to his satisfaction that the employee was suffering from the disease at an earlier date, whichever earnings are more favourable to the employee.
- (2) If an employee is no longer in employment at the time of the commencement of the said disease, his earnings shall be calculated on the basis of the earnings that he would probably have been earning had he still been working.

68. Notice of occupational disease by employee and employer

- (1) An employee shall as soon as possible after the commencement of a disease referred to in section 65(1) give written notice thereof to his employer or to the employer where he was last employed, and he may also give written notice of the said disease in the prescribed manner to the commissioner.
- (2) An employer shall within 14 days after having so received notice or having learned in some other way that an employee has contracted a disease referred to in section 65(1), report such disease in the prescribed manner to the commissioner or mutual association concerned, as the case may be,

irrespective of whether he may be of the opinion that the employee did not contract such disease in his employ or in the employ of a previous employer.

- (3) An employer who fails to comply with subsection (2) shall be guilty of an offence.

69. Amendment of Schedule 3

The Minister may on the recommendation of the Director-General, and after consultation with the Board and the chairpersons of the medical advisory panels, amend Schedule 3 by notice in the *Gazette*, also with retrospective effect, in respect of the description of the diseases and work: Provided that at least 60 days before any such amendment a notice shall be published in the *Gazette*—

[Words preceding the proviso to s 69 subs by s 25 of Act 61 of 1997.]

- (a) of the intention to effect an amendment and the proposed content of the amendment; and
- (b) in which any person who wishes to comment on the proposed amendment is invited to submit such comment in writing to the commissioner within the period mentioned in the notice.

70. Appointment of medical advisory panels

- (1) The Director-General may, on a regional basis appoint medical advisory panels which shall consist of as many members as he or she may deem necessary to—

[Words preceding s 70(1)(a) subs by s 26 of Act 61 of 1997.]

- (a) assist him with regard to the diagnosis of occupational diseases in individual cases;
- (b) advise him regarding the inclusion of occupational diseases in Schedule 3;
- (c) advise him regarding general policy concerning the diagnosis of, and disablement as a result of, occupational diseases.
- (2) A member of a medical advisory panel shall be paid the prescribed remuneration and travelling and subsistence allowances out of the compensation fund.
- (3) The Director-General shall designate a member of a medical advisory panel as chairman thereof.
- (4) The members of medical advisory panels shall be appointed by the Director-General for such period and on such conditions as he may determine, but the Director-General may at any time terminate the appointment of any member who—

- (a) has been guilty of misconduct or neglect of duty; or
 - (b) is not able to perform his functions in terms of this Act properly.
- (5) The provisions of section 9 shall apply *mutatis mutandis* to members of medical advisory panels.

CHAPTER VIII

Medical aid

71. ...

[S 71 rep by s 27 of Act 61 of 1997.]

72. Conveyance of injured employee

- (1) If an employee meets with an accident which necessitates his conveyance to a hospital or medical practitioner or from a hospital or medical practitioner to his residence, his employer shall forthwith make the necessary conveyance available.
- (2) The Director-General or the employer individually liable or mutual association concerned, as the case may be, shall pay the reasonable cost (as determined by the Director-General) incurred in respect of that conveyance.
- (3) Any employer who fails to comply with subsection (1) shall be guilty of an offence.

73. Medical expenses

- (1) The Director-General or the employer individually liable or mutual association concerned, as the case may be, shall for a period of not more than two years from the date of an accident or the commencement of a disease referred to in section 65(1) pay the reasonable cost incurred by or on behalf of an employee in respect of medical aid necessitated by such accident or disease.
- (2) If, in the opinion of the Director-General, further medical aid in addition to that referred to in subsection (1) will reduce the disablement from which the employee is suffering, he may pay the cost incurred in respect of such further aid or direct the employer individually liable or the mutual association concerned, as the case may be, to pay it.

74. Submission of medical report

- (1) A medical practitioner or chiropractor shall within 14 days after having for the first time examined an employee injured in an accident or within 14 days after having diagnosed an occupational disease in an employee, furnish a medical report to the employer concerned in the prescribed manner: Provided

that where the employee was at the time of the diagnosis of an occupational disease not employed, the medical report shall be furnished in the prescribed manner to the commissioner.

- (2) If the commissioner or the employer individually liable or mutual association concerned, as the case may be, requires further medical reports regarding an employee, the medical practitioner or chiropractor who has treated or is treating the employee shall upon request furnish the desired reports in the manner and at the time and intervals specified or prescribed.
- (3) If a medical practitioner or chiropractor fails to furnish a medical report as required in subsection (1) or (2) or in the opinion of the commissioner or the employer individually liable or mutual association concerned, as the case may be, fails to complete it in a satisfactory manner, such party may defer the payment of the cost of the medical aid concerned until the report has been furnished or completed in a satisfactory manner, and no action for the recovery of the said cost shall be instituted before the report has been so furnished or completed.
- (4) No remuneration shall be payable to a medical practitioner or chiropractor for the completion and furnishing of a report referred to in subsection (1) or (2).
- (5) A medical practitioner or chiropractor shall at the request of an employee or the dependant of an employee furnish such employee or dependant with a copy of the report referred to in subsection (1).

75. Director-General to decide on need for, and nature and sufficiency of, medical aid

All questions regarding the need for, and the nature and sufficiency of, any medical aid supplied or to be supplied in terms of this Chapter shall be decided by the Director-General.

76. Fees for medical aid

- (1) Subject to the provisions of this section, the cost of medical aid shall be calculated in accordance with a tariff of fees determined by the Director-General.
- (2) The tariff of fees for medical aid affecting the Medical Association of South Africa, the Chiropractic Association of South Africa and the Dental Association of South Africa shall be determined after consultation with those associations.
- (3) If the Director-General or an employer individually liable or a mutual association is liable in terms of this Act for the payment of the cost of medical aid—
 - (a) no amount in excess of that determined in the tariff of fees or, if no amount has been determined for particular medical aid, no amount in excess of that deemed reasonable by the Director-General, shall be recoverable for the medical aid concerned;

- (b) no amount in respect of the said cost shall be recoverable from the employee or an employer other than an employer individually liable.

77. Contributions by employees towards cost of medical aid prohibited

- (1) An employer who demands or receives from an employee a contribution towards the cost of medical aid supplied or to be supplied in terms of this Act, shall be guilty of an offence.
- (2) If an employer has been convicted of contravening subsection (1), the Director-General may in the prescribed form issue an order against that employer for the payment of the amount that he received contrary to the provisions of subsection (1), and section 61(2) and (3) shall then apply *mutatis mutandis* in respect of such order and amount.

78. Medical aid provided by employers

- (1) If an employer makes arrangements to provide to his employees injured in accidents medical aid which in the opinion of the Director-General is not less favourable to the employees than that provided for in this Chapter, the Director-General may, subject to such conditions as he may determine, approve such arrangements.
- (2) If the Director-General has approved the arrangements referred to in subsection (1)—
 - (a) the employees concerned shall be entitled to medical aid in accordance with the arrangements;
 - (b) the employer concerned shall not be required to provide or pay for medical aid except in accordance with the said arrangements;
 - (c) the Director-General may reimburse an employer who is not individually liable so much out of the compensation fund or reduce his assessment to such an extent as he may deem equitable.
- (3) The Director-General may at any time withdraw the approval or amend the conditions referred to in subsection (1).

79. Consultation of representative medical authorities by Director-General

The Director-General may consult the South African Medical and Dental Council referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), the Medical Association of South Africa, the Chiropractic Association of South Africa and any other representative medical authority concerning matters connected with or arising out of the application of the provisions of this Act with regard to medical aid, and may for that purpose disclose any information relating to a matter in respect of which the views of the Council, the Associations or other authority are required.

CHAPTER IX
Obligations of employers

80. Employer to register with commissioner and to furnish him with particulars

- (1) An employer carrying on business in the Republic shall within the prescribed period and in the prescribed manner register with the commissioner, and shall furnish the commissioner with the prescribed particulars of his business, and shall within a period determined by the commissioner furnish such additional particulars as the commissioner may require.
- (2) The particulars referred to in subsection (1) shall be furnished separately in respect of each business carried on by the employer.
- (3) An employer shall within seven days of any change in the particulars so furnished notify the commissioner of such change.
- (4) The Director-General may exempt employers referred to in section 84(1)(a) and (b) from the provisions of this section.
- (5) Any person not resident in the Republic or any body corporate not registered in terms of any law governing the registration of bodies corporate in the Republic, and carrying on business in the Republic or engaged in, on or above the continental shelf in activities in connection with surveys, research, prospecting or exploitation of natural resources, and employing an employee in connection therewith, shall furnish the commissioner with the address of his or its head office and the name and address of his or its chief officer in the Republic, and that officer shall for the purposes of this Act be deemed to be the employer of the said employee.
- (6) Any person who fails to comply with the provisions of this section shall be guilty of an offence.

81. Employer to keep record

- (1) An employer shall keep a register or other record of the earnings and other prescribed particulars of all the employees, and shall at all reasonable times produce such register or record or a microfilm or other microform reproduction thereof on demand to an authorised person referred to in section 7 for inspection.

[S 81(1) subs by s 28(a) of Act 61 of 1997.]

- (2) An employer shall retain the register, record or reproduction referred to in subsection (1) for a period of at least four years after the date of the last entry in that register or record.
- (3) An employer who fails to comply with a provision of this section shall be guilty of an offence.

- (4) A health and safety representative elected in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993), or the Mine Health and Safety Act, 1996 (Act 29 of 1996), and a trade union representative elected in terms of section 14 of the Labour Relations Act, 1995 (Act 66 of 1995), shall have the right to inspect, and where appropriate bring to the attention of the commissioner, any register, record or document which the employer must maintain, keep or complete in terms of this Act.

[S 81(4) ins by s 28(b) of Act 61 of 1997.]

82. Employer to furnish returns of earnings

- (1) Subject to subsection (1A), an employer, excluding an employer referred to in section 84(1)(a) and (b), shall not later than the thirty-first day of March in each year furnish the commissioner with a return in the prescribed form, certified by him, her or it as correct, showing—

(a) the amount of earnings up to the maximum contemplated in section 83(8) paid by him, her or it to his, her or its employees during the period with effect from the first day of March of the immediately preceding year up to and including the last day of February of the following year; and

(b) such further information as may be prescribed or as the Director-General may require.

[S 82(1) subs by s 29(a) of Act 61 of 1997.]

- (1A) An employer who commences business after the last day of February of a particular year shall within seven days after such commencement furnish the commissioner with a return in the prescribed form, certified by him, her or it as correct, showing the estimated earnings of his, her or its employees for the period with effect from the commencement of the business up to and including the last day of February of the following year.

[S 82(1A) ins by s 29(b) of Act 61 of 1997.]

- (2) If an employer carries on business at more than one place or if he carries on more than one class of business, the commissioner may require a separate return for each place or class of business from him.

- (3) If in a return referred to in subsection (1) the amount shown as earnings, excluding earnings exceeding the maximum contemplated in subsection 83(8), is less than the amount actually paid, the Director-General may impose upon and recover from the employer a fine not exceeding 10 per cent of the difference between the amount shown and the actual amount.

[S 82(3) subs by s 29(c) of Act 61 of 1997.]

- (4) The Director-General may reduce any fine referred to in subsection (3).

- (5) If an employer fails to furnish a return or if the estimate of the earnings which an employer expects to pay during a particular period is in the opinion of the Director-General too low, the Director-General may himself estimate the earnings concerned.
- (6) An employer who fails to comply with the provisions of this section shall be guilty of an offence.

83. Assessment of employer

- (1) Subject to the provisions of this section, an employer shall be assessed or provisionally assessed by the Director-General according to a tariff of assessment calculated on the basis of such percentage of the annual earnings of his, her or its employees as the Director-General with due regard to the requirements of the compensation fund for the year of assessment may deem necessary.

[S 83(1) subs by s 30(a) of Act 61 of 1997.]

- (2) Notwithstanding subsection (1), the Director-General may—
 - (a) assess a particular employer or category of employers on such other basis as he may deem equitable;
 - (b) levy a minimum assessment in respect of a particular employer or category of employers.
- (3) In determining the tariff of assessment the Director-General shall provide for the capitalised value of pensions.
- (4) For the purposes of this section earnings shall be calculated in the prescribed manner.
- (5) If the earnings actually paid by an employer in respect of a particular period differ from the earnings shown in respect of that period in the return concerned, the Director-General shall adjust his assessment accordingly.
- (6) If an employer fails to furnish the Director-General within the prescribed period with a return in terms of section 82 in respect of a particular period, the Director-General may—
 - (a) assess the employer on the basis of the earnings estimated in accordance with section 82(5);
[S 83(6)(a) subs by s 30(b) of Act 61 of 1997.]
 - (b) impose upon and recover from the employer a fine not exceeding 10 per cent of the amount so assessed.
 - (c) where it later appears that the actual earnings were more than the earnings estimated under paragraph (a), recover the difference in the assessment from the employer, and may impose and recover a fine on such difference as contemplated in paragraph (b); and

[S 83(6)(c) ins by s 30(c) of Act 61 of 1997.]

- (d) where it later appears that the actual earnings were less than the earnings estimated under paragraph (a), make the necessary adjustment.

[S 83(6)(d) ins by s 30(c) of Act 61 of 1997.]

- (7) An assessment of an employer shall be paid at such time and in such manner as the Director-General may determine.

- (8) The Minister may, on the recommendation of the Director-General and after consultation with the Board, prescribe by notice in the *Gazette* a maximum amount of earnings on which an assessment of an employer shall be calculated by the Director-General.

[S 83(8) subs by s 30(d) of Act 61 of 1997.]

84. Certain employers exempt from assessment

- (1) No assessment in favour of the compensation fund shall be payable in respect of employees—

- (a) in the employ of—

- (i) the national and provincial spheres of government, including Parliament and provincial legislatures;

[S 84(1)(a)(i) subs by s 31(a) of Act 61 of 1997.]

- (ii) a local authority which has obtained a certificate of exemption in terms of section 70(1)(a)(ii) of the Workmen's Compensation Act and has notified the Director-General in writing within 30 days after the commencement of this Act that it desires to continue with the arrangements according to the said certificate of exemption;

- (iii) a municipality contemplated in section 10B of the Local Government Transition Act, 1993 (Act 209 of 1993), to which exemption has been granted in terms of subsection (2);

[S 84(1)(a)(iii) ins by s 31(b) of Act 61 of 1997.]

- (b) whose employer has with the approval of the Director-General obtained from a mutual association a policy of insurance for the full extent of his potential liability in terms of this Act to all employees employed by him, for so long as he maintains such policy in force.

- (2) The Director-General may upon application exempt any local authority referred to in subsection (1)(a)(ii) or any municipality referred to in subsection (1)(a)(iii) from the obligations of an employer in terms of this Act on such conditions as he or she may think fit.

[S 84(2) subs by s 31(c) of Act 61 of 1997.]

- (3) Notwithstanding the provisions of this section, the Director-General may on application by an employer referred to in subsection (1) permit such employer to pay assessments to the compensation fund in respect of his employees, and thereafter the provisions of this section shall cease to apply to such an employer.

85. Variation of tariff of assessment

- (1) If in the opinion of the Director-General the business of an employer is designed, equipped, organised or conducted in a manner which is calculated to prevent accidents and the number of accidents and the expenditure in connection therewith are or are likely to be less than those usually occurring in comparable businesses, the Director-General may assess that employer at a lower tariff of assessment than the tariff of assessment for employers in like businesses.
- (2) If the accident record of an employer during a particular period is in the opinion of the Director-General less favourable than those of employers in comparable businesses and the Director-General is of the opinion that such state of affairs will probably continue, the Director-General may assess such employer at a higher tariff of assessment than the tariff of assessment for employers in like businesses.
- (3) If the accident record of an employer during a particular period is in the opinion of the Director-General more favourable than those of employers in comparable businesses, the Director-General may give such employer a rebate on any assessment paid or payable by him.

86. Assessment to be paid by employer to commissioner

- (1) An assessment shall be paid by an employer to the commissioner within 30 days after the date of the notice of assessment or, with the approval of the commissioner, in such instalments and at such times and on such conditions as the commissioner may determine.
- (2) Interest is payable on an overdue assessment at a rate determined by the Director-General, which shall not exceed the prevailing standard rate of interest as defined in section 1 of the Exchequer Act, 1975 (Act 66 of 1975).

[S 86(2) ins by s 32 of Act 61 of 1997.]

87. Failure to pay assessment or other moneys

- (1) If an employer fails to pay an assessment in accordance with section 86, the Director-General may impose a fine at the prescribed percentage on the outstanding amount upon him.
- (2) (a) If an employer fails to comply with the provisions of section 80(1) and an employee in his employ meets with an accident, the Director-General may, in addition to any other penalty to

which such employer may be liable, impose a fine not exceeding the full amount of the compensation payable in respect of such accident upon him.

(b) If the Director-General is of the opinion that such failure was not wilful or was due to some cause over which the employer had no control, or that payment of the full amount of the capitalised value of a pension payable as compensation to the employee would probably lead to the insolvency of that employer or, in the case where the employer is a company, to its liquidation, the Director-General may—

(i) waive in whole or in part any fine imposed by him;

(ii) allow the employer to pay the penalty in such instalments as he may determine.

(3) An employer who refuses or fails to pay any assessment, instalment or fine referred to in this section or any other money payable in terms of this Act, shall be guilty of an offence.

(4) (a) If an employer fails to pay any amount due to the commissioner, the commissioner may issue an order in the prescribed form for the payment thereof.

(b) The commissioner shall send a certified copy of the order referred to in paragraph (a) to the clerk of the magistrate's court of the district in which that employer is resident or where he has his place of business, and thereupon such order shall have the effect of a civil judgment of that magistrate's court, and the commissioner shall have all the powers of a judgment creditor.

(5) For the purposes of this section compensation includes the cost of medical aid as well as any amount paid or payable in terms of section 28, 54(2) or 72(2) and, in the case of a pension, the capitalised value as determined by the Director-General of the pension, irrespective of whether a lump sum in lieu of the pension or a portion thereof is at any time paid under section 52 or 60, and periodical payments or allowances, as the case may be.

88. Contributions by employers individually liable and mutual associations

(1) Notwithstanding any provision to the contrary contained in this Act, the employers individually liable and the mutual associations shall pay annually to the Director-General in such manner and at such times as he may determine, such portion of the expenditure incurred by him in the administration of the provisions of this Act as he may deem equitable.

(2) (a) The Director-General shall as soon as possible after the end of each financial year estimate the loss suffered during that year as a result of compensation that became payable out of the compensation fund in respect of employees with regard to whom their employers failed to pay assessments.

- (b) Such loss shall be estimated on the basis of the difference between the compensation referred to in paragraph (a) as calculated by, the Director-General, together with any expenditure incurred or likely to be incurred in connection therewith, and the amounts recovered from the employers concerned or likely to be recovered whether by way of compensation, fines or otherwise.
 - (c) The loss for any particular financial year may be revised by the Director-General in subsequent years in the light of the amounts actually paid or recovered.
 - (d) The employers individually liable and the mutual associations shall pay to the Director-General, in such manner and at such times as he may determine, such portion of the said loss as he may deem equitable.
- (3) The provisions of this Act with regard to the recovery of assessments shall apply *mutatis mutandis* to the recovery of an amount owing by an employer or mutual association in terms of this section.
 - (4) For the purposes of this section compensation includes the cost of medical aid as well as any amount paid or payable in terms of section 28, 54(2) or 72(2) and, in the case of a pension, the capitalised value as determined by the Director-General of the pension, irrespective of whether a lump sum in lieu of the pension or a portion thereof is at any time paid under section 52 or 60, and periodical payments or allowances, as the case may be.

89. Mandators and contractors

- (1) (a) If a person (the mandator) in the course of or for the purposes of his business enters into an agreement with any other person (the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the mandator, the contractor shall, in respect of his employees employed in the execution of the work concerned, register as an employer in accordance with the provisions of this Act and pay the necessary assessments.
 - (b) If a contractor fails so to register or pay any assessment, the said employees of the contractor shall be deemed to be the employees of the mandator, and the mandator shall pay the assessments in respect of those employees.
- (2) If a mandator has paid an assessment or compensation for which he would not have been liable but for the provisions of subsection (1), such mandator may recover that assessment or compensation from the contractor.
 - (3) If a mandator has in terms of this section paid an assessment or compensation to the commissioner, he may set off the amount so paid by him against his debt to the contractor.

- (4) Notwithstanding the provisions of this section, the Director-General may recover compensation from the contractor instead of from the mandator, and if the full amount cannot be recovered from the one, the shortfall can be recovered from the other.
- (5) A mandator shall not be liable in terms of this section in respect of any accident which happened at a place which is not on or about the premises on which the mandator undertook to execute the work, or which is not otherwise under his control or management.

CHAPTER X

Legal procedures

90. Review of decisions by Director-General

- (1) The Director-General may after notice, if possible, to the party concerned and after giving him an opportunity to submit representations, at any time review any decision in connection with a claim for compensation or the award of compensation on the ground—
 - (a) that the employee has not submitted himself to an examination referred to in section 42;
 - (b) that the disablement giving rise to the award is prolonged or aggravated by the unreasonable refusal or failure of the employee to submit himself to medical aid;
 - (c) that compensation awarded in the form of a periodical payment or a pension is excessive or insufficient because of existing or changed circumstances;
 - (d) that the decision or award was based on an incorrect view or misrepresentation of the facts, or that the decision or award would have been otherwise in the light of evidence available at present but which was not available when the Director-General made the decision or award.
- (2) The Director-General may, after he has considered the evidence and representations submitted to him and made such inquiry as he may deem necessary, confirm, amend or set aside his decision, and may suspend, discontinue, reduce or increase compensation awarded.
- (3) For the purposes of this section compensation shall include medical aid.

91. Objections and appeal against decisions of Director-General

- (1) Any person affected by a decision of the Director-General or a trade union or employers' organisation of which that person was a member at the relevant time may, within 180 days after such decision, lodge an objection against that decision with the commissioner in the prescribed manner.

[S 91(1) subs by s 33(a) of Act 61 of 1997.]

(2)

- (a) An objection lodged in terms of this section shall be considered and decided by the presiding officer assisted by two assessors designated by him, of whom one shall be an assessor representing employees and one an assessor representing employers.
- (b) If the presiding officer considers it expedient, he may, notwithstanding paragraph (a), call in the assistance of a medical assessor.
- (c) The provisions of sections 6, 7, 45 and 46 shall apply *mutatis mutandis* in respect of the consideration of an objection.

[S 91(2) am by s 33(b) of Act 61 of 1997.]

- (3) (a) After considering an objection the presiding officer shall, provided that at least one of the assessors, excluding any medical assessor, agrees with him, confirm the decision in respect of which the objection was lodged or give such other decision as he may deem equitable.
- (b) If neither of the assessors agrees with the view of the presiding officer, the presiding officer shall submit the dispute in terms of section 92 to the Supreme Court for decision.

[S 91(3) am by s 33(b) of Act 61 of 1997.]

- (4) The presiding officer may in connection with proceedings in terms of this section make such order as to costs and the payment thereof as he may deem equitable.

[S 91(4) am by s 33(b) of Act 61 of 1997.]

(5)

- (a) Any person affected by a decision referred to in subsection (3)(a), may appeal to any provincial or local division of the Supreme Court having jurisdiction against a decision regarding—
 - (i) the interpretation of this Act or any other law;
 - (ii) the question whether an accident or occupational disease causing the disablement or death of an employee was attributable to his or her serious and wilful misconduct;
[S 91(5)(a)(ii) subs by s 33(c) of Act 61 of 1997.]
 - (iii) the question whether the amount of any compensation awarded is so excessive or so inadequate that the award thereof could not reasonably have been made;
 - (iv) the right to increased compensation in terms of section 56.
- (b) Subject to the provisions of this subsection, such an appeal shall be noted and prosecuted as if it were an appeal against a judgment of a magistrate's court in a civil case, and all rules

applicable to such an appeal shall *mutatis mutandis* apply to an appeal in terms of this subsection.

- (6) Except where the presiding officer orders otherwise, no obligation to pay any assessment, compensation or any other payment to the Director-General or to the compensation fund, or to pay any periodical payments to or on behalf of an employee under a decision of the presiding officer, shall be suspended or deferred by reason of the fact that an objection has been lodged against such decision in terms of subsection (1), or that an appeal has been noted in terms of subsection (5).

[S 91(6) subs by s 33(d) of Act 61 of 1997.]

(7)

- (a) If during the hearing of an objection the presiding officer dies or becomes unable to act as presiding officer—

(i) the hearing may, with the consent of the person, trade union or employers' organisation contemplated in subsection (1), proceed before another presiding officer and the assessors concerned; or

(ii) the hearing shall start *de novo* if the consent contemplated in subparagraph (i) is not given.

- (b) If during the hearing of an objection an assessor dies or becomes unable to act as assessor—

(i) the hearing may, with the consent of the person, trade union or employers' organisation contemplated in subsection (1), proceed before the presiding officer concerned and the remaining assessor or assessors; or

(ii) the hearing shall start *de novo* if the consent contemplated in subparagraph (i) is not given.

[S 91(7) ins by s 33(e) of Act 61 of 1997.]

92. Director-General may state case for Supreme Court

- (1) If any question of law arises in the performance of the functions of the Director-General, the Director-General may of his or her own motion or at the request of a party with a sufficient interest in any matter or proceedings before the Director-General, state a case for decision by a High Court having jurisdiction.

[S 92(1) subs by s 34 of Act 61 of 1997.]

- (2) The Director-General shall set out in the stated case—

(a) the facts that he found proved; and

- (b) the view of the law which he has adopted in relation to those facts.
- (3) If the Director-General has any doubt as to the correctness of a decision given by any provincial or local division of the Supreme Court regarding a question of law in connection with the application of this Act, he may submit such decision to the Appellate Division of the Supreme Court and cause the question of law to be argued so that the Appellate Division may decide such question of law for the future guidance of all courts.

93. Evidence

- (1) The record of any decision or award made by the Director-General, and a copy of or extract from a record or document kept by the Director-General or lodged with him, which purports to be certified by the Director-General as a true copy or extract shall upon its mere production in a court of law be *prima facie* evidence of the content of such record or document.
- (2) In any proceedings in terms of this Act, or in any court of law, any document purporting to be a sworn statement made by the Director-General or an authorised person referred to in section 7(2), and in which it is stated—
 - (a) that any person is an employer, a mandator, a contractor, an employee or a dependant of an employee in terms of this Act;
 - (b) that any person is or was required in terms of this Act to pay an amount to the Director-General or to an employee or other person specified in the statement;
 - (c) that an amount referred to in paragraph (b), or any portion thereof, has or has not been paid on a date specified in the statement;
 - (d) that he has exercised a power under this Act,

shall upon its mere production be *prima facie* evidence of the facts stated therein.

- (3) The person presiding at the court or other proceedings referred to in subsection (1) or (2) may cause the person who has made a sworn statement referred to in subsection (2) to be subpoenaed to give *viva voce* evidence or cause written interrogatories to be sent to him for answering, and a document purporting to be a sworn statement with the answers of that person shall upon its mere production be *prima facie* evidence of the facts stated therein.

CHAPTER XI

General

94. Arrangements with foreign states regarding compensation

The Minister may by notice in the *Gazette* issue directions to give effect to the provisions of any agreement between the Republic and any other state in which provision is made for reciprocity in matters regarding compensation to employees for accidents resulting in disablement or death, including directions—

- (a) to determine in any case where an employee is entitled to compensation both in terms of this Act and in terms of the law of any such state under the law of which party such employee or his dependants shall be entitled to recover compensation;
- (b) to authorise the Director-General to allow evidence taken in any such state, and to obtain and take evidence for use in such state or for the facilitation of proceedings for the recovery of compensation in terms of the law of any such state.

95. Certain documents exempt from stamp duty

Notwithstanding any provision to the contrary contained in any other law, any sworn statement, certificate, receipt or other document required or issued under this Act, shall be exempt from stamp duty.

96. Disclosure of information

- (1) No person shall disclose any information obtained by him in the performance of his functions in terms of this Act, except—
 - (a) to the extent to which it may be necessary for the proper administration of a provision of this Act;
 - (b) for the purposes of the administration of justice; or
 - (c) at the “request of the Minister or any other person entitled thereto.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

97. Regulations

- (1) The Minister may make regulations, after consultation with the Board, regarding—
[Words preceding s 97(1)(a) subs by s 35(a) of Act 61 of 1997.]

- (a) the place of meeting and the procedure to be followed at any meeting of the Director-General and assessors or at any proceedings in terms of this Act with which the assessors are concerned, or at any investigation in terms of this Act;
 - (b) subject to section 76, the fees payable to medical practitioners or chiropractors in respect of services rendered in terms of this Act;
 - (c) the procedure to be followed in paying assessments and fines to the Director-General;
 - (d) the persons to whom, the places where and the manner in which payment of assessments in terms of this Act shall be made;
 - (e) the determination of the amount and the conditions and manner of payment of benefits to assessors or classes of assessors;
 - (f) the disposal of moneys payable in terms of this Act to any person other than the Director-General and not claimed within the prescribed period by the person entitled thereto;
 - (g) any matter which shall or may be prescribed by regulation in terms of this Act;
 - (h) any other matter, whether or not connected with any matter mentioned in paragraphs (a) to (g), which he may deem necessary or expedient to prescribe in order to further the objects and purposes of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different classes of employers and employees and of different areas, and the Minister may, after consultation with the Board, in respect thereof differentiate in such manner as he or she may deem expedient.

[S 97(2) subs by s 35(b) of Act 61 of 1997.]

- (3) Any person who contravenes or fails to comply with any regulation made under subsection (1) shall be guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding six months.

[S 97(3) subs by s 35(b) of Act 61 of 1997.]

98. False statements

Any person who in connection with a claim for compensation in terms of this Act, or in any return, notice, report or statement to be given, made or furnished in terms of this Act, makes or causes to be made any statement which is false in a material respect, knowing it to be false, shall be guilty of an offence.

99. Penalties

Any person who is convicted of an offence in terms of this Act shall be liable to a fine, or to imprisonment for a period not exceeding one year.

100. Repeal of laws

- (1) Subject to the provisions of this section, the laws specified in Schedule 1 are hereby repealed to the extent set out in the third column thereof.
- (2) Any regulation made, any direction, order or directive issued, any request made or any requirement prescribed and any other thing done under a provision of the Workmen's Compensation Act, and which could be made, issued, prescribed or done under a provision of this Act, shall be deemed to have been made, issued, prescribed or done under the last-mentioned provision.
- (3) Any claim for compensation or medical aid under a law repealed by subsection (1) in respect of an accident that happened or a scheduled disease contracted prior to the commencement of this Act shall be dealt with in terms of the repealed law as if this Act had not been passed and any right or privilege acquired or accrued under such repealed law shall not be affected by such repeal.

101. Short title

- (1) This Act shall be called the Compensation for Occupational Injuries and Diseases Act, 1993.

Schedule 1 LAWS REPEALED

No. and year of law	Title	Extent of repeal
Act 30 of 1941	Workmen's Compensation Act, 1941	The whole
Act 27 of 1945	Workmen's Compensation Amendment Act, 1945	The whole
Act 36 of 1949	Workmen's Compensation Amendment Act, 1949	The whole
Act5 of 1951	Workmen's Compensation Amendment Act, 1951	The whole
Act 51 of 1956	Workmen's Compensation Amendment Act, 1956	The whole
Act7 of 1961	Workmen's Compensation Amendment Act, 1961	The whole
Act 21 of 1964	Workmen's Compensation Amendment Act, 1964	The whole
Act 58 of 1967	Workmen's Compensation Amendment Act, 1967	The whole
Act9 of 1970	Workmen's Compensation Amendment Act, 1970	The whole
Act 27 of 1970	Second Black Laws Amendment Act, 1970	Section 2
Act 60 of 1971	Workmen's Compensation Amendment Act, 1971	The whole
Act 11 of 1974	Workmen's Compensation Amendment Act, 1974	The whole
Act 28 of 1977	Workmen's Compensation Amendment Act, 1977	The whole
Act8 of 1979	Workmen's Compensation Amendment Act, 1979	The whole

Act 24 of 1981	Workmen's Compensation Amendment Act, 1981	The whole
Act 29 of 1984	Workmen's Compensation Amendment Act, 1984	The whole
Act 35 of 1987	Workmen's Compensation Amendment Act, 1987	The whole
Act 40 of 1990	Workmen's Compensation Amendment Act, 1990	The whole

Schedule 2

Injury	Percentage of permanent disablement
Loss of two limbs	100
Loss of both hands, or of all fingers and both thumbs.....	100
Total loss of sight.....	100
Total paralysis.....	100
Injuries resulting in employee being permanently bedridden	100
Any other injury causing permanent total disablement.....	100
Loss of arm at shoulder	65
Loss of arm between elbow and shoulder	65
Loss of arm at elbow.....	55
Loss of arm between wrist and elbow	55
Loss of hand at wrist.....	50
Loss of four fingers and thumb of one hand.....	50
Loss of four fingers	40
Loss of thumb- both phalanges	25
one phalanx	15
Loss of index finger- three phalanges	10
two phalanges.....	8
one phalanx	5
Loss of middle finger- three phalanges	8
two phalanges.....	6
one phalanx	4
Loss of ring finger- three phalanges	6
two phalanges.....	5
one phalanx	3
Loss of little finger- three phalanges	4
two phalanges.....	3
one phalanx	2
Loss of metacarpals- first, second or third (additional)	4
fourth or fifth (additional).....	2
Loss of leg- at hip	70
between knee and hip.....	45 to 70
below knee.....	35 to 45
Loss of toes- all	15

	big, both phalanges	7
	big, one phalanx	3
	toes other than big toes-	
	four toes	7
	three toes	5
	two toes	3
	one toe	1
Loss of eye-	whole eye	30
	sight	30
	sight except perception of light	30
Loss of hearing-	both ears	50
	one ear	7

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

Any injury to the left arm or hand and, in the case of a left-handed employee, to the right arm or hand, may in the discretion of the Director-General be rated at ninety per cent of the above percentage.

If there are two or more injuries the sum of the percentages for such injuries may be increased, in the discretion of the Director-General.

Schedule 3

In this Schedule the following general concepts have been defined and clarified as set out below.

General

1. **Schedule 3** deals with the List of Occupational Diseases which depicts diseases that are occupational and compensable on the benefits of an explicit presumption referred to in terms of section 66 of the Compensation for Occupational Injuries and Diseases Act, 1993.
2. The amended Schedule 3 is issued to align the list of diseases mentioned in the first column of Schedule 3 of the Compensation for Occupational Injuries and Diseases Act, 1993 with the list of occupational diseases appended to International Labour Organisation R194 List of Occupational Diseases Recommendation, 2002.
3. The amended Schedule 3 is issued in conformity with section 65(a) and 66 of the Compensation for Occupational Injuries and Diseases Act, 1993

4. The List of Occupational Diseases appended to this amended Schedule 3 shall supersede the list of diseases mentioned in the first column of Schedule 3 in terms of 65(a) of the Compensation for Occupational Injuries and Diseases Act, 1993.
5. **Work** shall be defined as—
 - All work involving the handling of and / or exposure to any agent(s) mentioned in the List of Occupational Diseases; and / or
 - Any occupation involving the handling of and / or exposure to specified agent / work processes mentioned in the List of Occupational Diseases.
6. Work as defined in the amended Schedule 3 shall supersede all previous work(s) mentioned in Schedule 3 and in section 66 of the Compensation for Occupational Injuries and Diseases Act, 1993.

A. LIST OF OCCUPATIONAL DISEASES

1. DISEASES CAUSED BY AGENTS

1.1. Diseases caused by chemical agents

- 1.1.1. Diseases caused by beryllium or its toxic compounds
- 1.1.2. Diseases caused by cadmium or its toxic compounds
- 1.1.3. Diseases caused by phosphorus or its toxic compounds
- 1.1.4. Diseases caused by chromium or its toxic compounds
- 1.1.5. Diseases caused by manganese or its toxic compounds
- 1.1.6. Diseases caused by arsenic or its toxic compounds
- 1.1.7. Diseases caused by mercury or its toxic compounds
- 1.1.8. Diseases caused by lead or its toxic compounds
- 1.1.9. Diseases caused by fluorine or its toxic compounds
- 1.1.10. Diseases caused by carbon disulphide

- 1.1.11. Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons
- 1.1.12. Diseases caused by benzene or its toxic homologues
- 1.1.13. Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues
- 1.1.14. Diseases caused by nitroglycerine or other nitric acid esters
- 1.1.15. Diseases caused by alcohols, glycols or ketones
- 1.1.16. Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide
- 1.1.17. Diseases caused by acrylonitrile
- 1.1.18. Diseases caused by oxides of nitrogen
- 1.1.19. Diseases caused by vanadium or its toxic compounds
- 1.1.20. Diseases caused by antimony or its toxic compounds
- 1.1.21. Diseases caused by hexane
- 1.1.22. Diseases of teeth caused by mineral acids
- 1.1.23. Diseases caused by pharmaceutical agents
- 1.1.24. Diseases caused by thallium or its compounds
- 1.1.25. Diseases caused by osmium or its compounds
- 1.1.26. Diseases caused by selenium or its compounds
- 1.1.26 . Diseases caused by copper or its compounds
[**Editor Note:** Numbering as per original *Gazette*.]
- 1.1.28. Diseases caused by tin or its compounds
- 1.1.29. Diseases caused by zinc or its compounds
- 1.1.30. Diseases caused by ozone, phosgene

- 1.1.31. Diseases caused by benzoquinone
- 1.1.32. Diseases caused by chlorine
- 1.1.33. Diseases caused by pesticides and / or herbicides
- 1.1.34. Diseases caused by oxides of sulphur

1.2 Diseases caused by physical agents

- 1.2.1. Hearing impairment caused by noise
- 1.2.2. Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)
- 1.2.3. Diseases caused by work in compressed air / abnormal atmospheric or water pressure
- 1.2.4. Diseases caused by ionising radiations
- 1.2.5. Diseases caused by extreme temperatures (cold and hot)
- 1.2.6. Diseases caused by ultraviolet radiation

1.3. Diseases caused by biological agents

- 1.3.1 Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination
- 1.3.2 Toxic / inflammatory syndromes (inhalation fever, toxic pneumonitis, organic dust toxic syndrome) associated with exposure to bacterial and fungal contaminants (endotoxin, mycotoxins, (1->3)-B-D-glucans, volatile organic compounds)

2. DISEASES BY TARGET ORGAN SYSTEMS

2.1 Occupational respiratory diseases

- 2.1.1 Pneumoconiosis-fibrosis of the parenchyma of the lung caused by fibrogenic dust
- 2.1.2 Pleural thickening caused by asbestos dust exposure

- 2.1.3 Silicotuberculosis
- 2.1.4 Bronchopulmonary diseases caused by hard-metal dust
- 2.1.5 Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust (byssinosis)
- 2.1.6 Occupational asthma caused by one of the following recognised sensitising agents or irritants inherent to the work process—
 - 2.1.6.1 isocyanates
 - 2.1.6.2 platinum, nickel, cobalt, vanadium or chromium salts
 - 2.1.6.3 hardening agents, including epoxy resins
 - 2.1.6.4 acrylic acids or derived acrylates
 - 2.1.6.5 soldering or welding fumes
 - 2.1.6.6 substances from animals or insects
 - 2.1.6.7 fungi or spores
 - 2.1.6.8 proteolytic enzymes
 - 2.1.6.9 organic dust
 - 2.1.6.10 vapours or fumes of formaldehyde, anhydrides, amines
 - 2.1.6.11 latex
- 2.1.7 Extrinsic allergic alveolitis caused by the inhalation of the following organic dusts and chemicals inherent to the work process: moulds, fungal spores or any other allergenic proteinaceous material, 2,4 toluene-di-isocyanates
- 2.1.8 Siderosis
- 2.1.9 Chronic obstructive pulmonary diseases
- 2.1.10 Diseases of the lung caused by aluminium
- 2.1.11 Upper airways disorders caused by recognised sensitising agents or irritants inherent to the

work process

2.1.12 Diseases caused by chronic or repetitive exposure to products of combustion

2.2 Occupational skin diseases

2.2.1 Allergic or irritant contact dermatitis caused by physical, chemical or biological agents

2.2.2 Occupational vitiligo

2.3 Occupational musculo-skeletal disorders

2.3.1 Musculo-skeletal diseases caused by specific work activities or work environment where particular risk factors are present. Examples of such activities or environment include—

- (a) rapid or repetitive motion
- (b) forceful exertion
- (c) excessive mechanical force concentration.
- (d) awkward or non-neutral postures
- (e) vibration

3. OCCUPATIONAL CANCER

3.1. Cancer caused by the following agents

3.1.1 Asbestos

3.1.2 Benzidine and its salts

3.1.3 Bis chloromethyl ether (BCME)

3.1.4 Chromium and chromium compounds

3.1.5 Coal tars, coal tar pitches or soots

3.1.6 Beta-naphthylamine

3.1.7 Vinyl chloride

- 3.1.8 Benzene or its toxic homologues
- 3.1.9 Toxic nitro- and amino-derivatives of benzene or its homologues
- 3.1.10 Ionising radiations
- 3.1.11 Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances
- 3.1.12 Coke oven emissions
- 3.1.13 Compounds of nickel
- 3.1.14 Wood dust
- 3.1.15 Crystalline silica
- 3.1.16 Mycotoxins
- 3.1.17 Arsenic

4. OTHER DISEASES

- 4.1. Miners' nystagmus

[Sch 3 subs by GoN 552 in G. 26302.]

Schedule 4 MANNER OF CALCULATING COMPENSATION

Item	Section	Nature and degree of disablement	Nature of benefits	Manner of calculating benefits	Recommended maximum compensation	Recommended minimum compensation
1.	47(1)(a)	Temporary total disablement	Periodical payments	75% of an employee's monthly earnings at the time of the accident	R28, 658	R4,012
2.	49(1)	Permanent	Lump	15 times the	R320,985	R80,250

Item	Section	Nature and degree of disablement	Nature of benefits	Manner of calculating benefits	Recommended maximum compensation	Recommended minimum compensation
		disablement of 30%	sum	monthly earnings of the employee at the time of the accident		
3.	49(1)	Permanent disablement of less than 30%	Lump sum	An amount which bears to a lump sum calculated under Item 2 the same proportion as the degree of permanent disablement to 30% Using the formula $25 \times \text{earning} \times \text{PD}\%$	R320,985	R80,250
4.	49(1)	Permanent disablement of 100%	Monthly pension	75% of and employee's monthly earnings at the time of the accident	R28,658	R4,012
5.	49(1)	Permanent disablement of less than 100% but more than 30%	Monthly pension	A monthly pension which bears to a pension calculated under item 4 the same proportion as the degree of permanent disablement to 100%	R28,658	R4,012
6.	54(1)(a)	Fatal	Lump sum	Twice the employee's monthly pension	R57,316	R8,024

Item	Section	Nature and degree of disablement	Nature of benefits	Manner of calculating benefits	Recommended maximum compensation	Recommended minimum compensation
				that would have been payable to the employee under item 4 had he been totally permanently disabled		
7.	54(1)(b)	Fatal	Monthly pension	40% of the monthly pension that would have been payable to the employee under item 4 had he been totally permanently disabled	R10, 774	R1, 508
8.	54(1)(c)	Fatal	Monthly pension	20% of the monthly pension that would have been payable to the employee under item 4 had he been totally permanently disabled, to each child	R5, 387	R754
9.	54(1)(d)(ii)	Fatal	Lump sum	Percentage dependence as portion of R155, 183	R155, 183	
10.	54(2)	Fatal	Funeral costs	R18 251 per claim	R18, 251	
11.	63(1)(a)	Minimum for free food and quarters	To be included in earnings	Minimum for free food R268 per month and minimum for free		R268 per month for free food R120 per month

Item	Section	Nature and degree of disablement	Nature of benefits	Manner of calculating benefits	Recommended maximum compensation	Recommended minimum compensation
				quarters R120 per month		for free quarters
12.	28	Constant attendance allowance	Monthly allowance	Minimum amount of R1, 990 per month		R1, 990

[Sch 4 subs by GoN 222 in G. 16271, GoN 127 in G. 16957, GoN 292 in G. 17803, s 36 of Act 61 of 1997; GoN 554 in G. 20012, GoN 73 in G. 20843, GoN 77 in G. 22005, GoN 68 in G. 23046, GoN 141 in G. 24294, GoN 89 in G. 25954, GoN 201 in G. 27375, GoN 423 in G. 28808, GoN 86 in G. 29582, GoN 497 in G. 31015, GoN 694 in G. 32339, GoN 304 in G. 33118, GoN 382 in G. 34251, GoN 448 in G. 35432, GoN 212 in G. 36273, GoN 138 in G. 37379, GoN 473 in G. 37735, GoN 274 in G. 38643, GoN 349 in G. 40782, GoN 816 in G. 41026, GoN 17 in G. 41382; GeN 334 in G. 41701, GeN 627 in G. 42431.]