

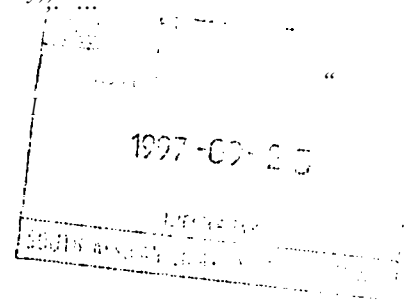
REPUBLIC OF SOUTH AFRICA

**COMPENSATION FOR
OCCUPATIONAL INJURIES AND
DISEASES AMENDMENT BILL**

(As amended by the Portfolio Committee on Labour (National Assembly))

(MINISTER OF LABOUR)

[B 59B—97]



REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
VERGOEDING VIR
BEROEPSBESERINGS EN
-SIEKTES**

(Soos gewysig deur die Portefeuljekomitee oor Arbeid (Nasionale Vergadering))

(MINISTER VAN ARBEID)

[w 59B—97]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Compensation for Occupational Injuries **and** Diseases Act, 1993, so as to define, substitute or delete certain expressions; to **transfer** certain functions to the Director-General and to make the Director-General accountable for the compensation fund; to allow the Director-General to delegate his or her powers; to alter the commissioner's functions; to provide for the payment of compensation to assessor's dependants; to further regulate the composition of the Compensation Board; to remove the duty on employers to provide first aid; to further regulate the assessment of employers; to provide for the payment of interest on overdue assessments; to further regulate objections and appeals against decisions of the Director-General; to provide that the Minister must consult with the Compensation Board before he or she makes regulations; to further regulate the manner in which compensation is calculated; and to effect certain textual alterations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 130 of 1993

1. Section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (hereinafter referred to as the principal Act), is hereby amended- 5
- (a) by the substitution for the definition of "accident" of the following definition:
" '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;";
 - (b) by the substitution for the definition of "commissioner" of the following definition:
" 'commissioner' means the Compensation Commissioner appointed under section [2] 2(1)(a);";
 - (c) by the substitution for the definition of "compensation" of the following definition: 10
" 'compensation' means compensation in terms of this Act and, where applicable, medical aid or payment of the cost of such medical aid;";
 - (d) by the substitution for the definition of "dependant of an employee" of the following definition:

“dependant of an employee’ means—

- (a) a widow or widower who at the time of the [accident] 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 or custom, if neither the husband nor the wife was a party to a subsisting civil marriage; 5
- (c) if there is no widow or widower referred to in paragraph (a) or (b), a [woman or man] person with whom the employee was [in the opinion of the commissioner] at the time of the [accident] employee’s death living as [wife or] husband and wife; 10
- (d) a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, step-child, an adopted child and [an illegitimate] 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, 15
- (f) a parent of the employee or any person who in the opinion of the commissioner was acting in the place of the parent] 20
and who was in the opinion of the [commissioner] Director-General at the time of the [accident] employee’s death wholly or partly financially dependent upon the employee;”;
- (e) by the insertion after the definition of “dependant of an employee” of the following definition: 25
“ ‘Director-General’ means the Director-General of the Department of Labour;”;
- (f) by the substitution for the definition of “disablement” of the following definition: 30
“ ‘disablement’ means [disablement for employment, or permanent injury] temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement, as the case may be;”;
- (g) by the substitution for the definition of “earnings” of the following definition: 35
“ ‘earnings’ means the remuneration of an employee at the time of the accident or the commencement of the occupational disease as calculated [under section 63] in terms of this Act;”;
- (h) by the substitution for the definition of “Minister” of the following definition: 40
“ ‘Minister’ means the Minister of [Manpower, Labour;”;
- (i) by the insertion after the definition of “mutual association” of the following definition: 40
“ ‘National Revenue Fund’ means the fund established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);”;
- (j) by the substitution for the definition of “occupational disease” of the following definition: 45
“ ‘occupational disease’ means any disease [mentioned in the first column of Schedule 3 arising out of and contracted in the course of an employee’s employment] contemplated in section 65(1)(a) or (b);”;
- (k) by the insertion after the definition of “periodical payment” of the following definition: 50
“ ‘permanent disablement’, in relation to an employee and subject to section 49, means the permanent 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 the commencement of such occupational 55
disease;”;

(f) by the insertion after the definition of “prescribed” of the following definition:

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

(m) by the deletion of the definition of “State Revenue Fund”;

(n) by the substitution for the definition of “temporary partial disablement” of the following definition:

“ ‘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;”; and

(o) by the substitution for the definition of “temporary total disablement” of the following definition:

“ ‘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;”.

Substitution of section 2 of the Act 130 of 1993

2. The following section is hereby substituted for section 2 of the principal Act:

“Staff to assist Director-General

2. (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.”.

Substitution of section 3 of Act 130 of 1993

3. The following section is hereby substituted for section 3 of the principal Act:

“Delegation of powers and assignment of duties by Director-General

3. (1) The [commissioner] 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(2)] 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 [commissioner] 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 [commissioner] Director-General himself or herself.”.

Amendment of section 4 of Act 130 of 1993

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to the provisions of this Act, the [commissioner] Director-General shall—”;

(b) by the deletion of paragraph (a) of subsection (1);

(c) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) decide whether a person is a **dependant** of an employee and, if so, the [extent of dependency upon the **employee**] 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;”;

(d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The [commissioner] Director-General may-”;

(e) by the deletion of paragraph (e) of subsection (2).

Insertion of section 6A in Act 130 of 1993

5. The following section is hereby inserted in the principal Act after section 6: 20

“Functions of commissioner

6A. 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; 25
- (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.”. 30

Amendment of section 8 of Act 130 of 1993

6. Section 8 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The Minister may [after consultation with the Minister for National Health and Welfare] in addition to the assessors referred to in subsection (1) appoint one or more medical practitioners, including a medical practitioner appointed under section [2(2)] 2(1)(b), as medical assessors.”. 35

Substitution of section 9 of Act 130 of 1993

7. The following section is hereby substituted for section 9 of the principal Act:

“Compensation payable to assessors 40

9.(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. 45

(2) Compensation in terms of this section shall be paid by the Director-General out of the compensation fund.”.

Substitution of section 11 of Act 130 of 1993

8. The following section is hereby substituted for section 11 of the principal Act:

“Composition of Board

11. (1) The Board shall consist of—
- (a) the [commissioner] Director-General or an officer contemplated in section 2(1)(a) or (b) designated by him or her, who shall act as [chairman] chairperson; 5
 - (b) two persons [nominated] appointed by the Minister, one of whom shall be [nominated] appointed after consultation with the Minister [for National] of Health [and Welfare]; 10
 - (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 Tbc Rand Mutual Assurance Company Limited; 15
 - (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; 20
 - (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; 25
 - (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 [ten] 16 persons nominated in order of preference by employees' organisations. 30
- (2) An assessor [shall not be eligible for appointment] 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.” 35

Amendment of section 16 of Act 130 of 1993

9. Section 16 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph: 40

“(d) the reimbursement of the [State] National Revenue Fund in respect of remuneration paid in terms of section [2(3)] 2(2).”

Amendment of section 20 of Act 130 of 1993

10. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) The [**commissioner**] Director-General shall keep such accounts, including an account with a bank contemplated in the Banks Act, 1990 (Act No. 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.” 50

Amendment of section 30 of Act 130 of 1993

11. Section 30 of the principal Act is hereby amended—

(a) by the substitution for the proviso to subsection (1) of the following proviso:

“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 No. 27 of 1943), and the Workmen’s Compensation Act, securities considered by the [commissioner] Director-General to be sufficient to cover the liabilities of ~~the mutual association in terms of this Act~~ be deposited with the ~~the~~ [commissioner] Director-General or his or her nominee.”; and

(b) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) If an association has deposited with the [commissioner] 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 [commissioner] Director-General for the purpose of the liabilities of the association in terms of this Act.

(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 [and no appeal shall lie against his decision].”.

Amendment of section 32 of Act 130 of 1993

12. Section 32 of the principal Act is hereby amended by the deletion of paragraph (c) of subsection (1).

Amendment of section 36 of Act 130 of 1993

13. Section 36 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) In awarding damages in an action referred to in subsection (1)(a) the court shall have regard to the [amount to which the employee is entitled] compensation paid in terms of this Act.”.

Amendment of section 39 of Act 130 of 1993

14. Section 39 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) the [State and the provincial authorities] national and provincial spheres of government, the respective heads of departments referred to in section [6] ~~7(3)~~ of the [Public Service Act, 1984 (Act No. 111 of 1984)] Public Service Act, 1994 (Proclamation No. 103 of 1994).”;

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) a provincial legislature, the Secretary of the provincial legislature in question.”;

(c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) An employer [individually liable] 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’).”;

(d) by the substitution for subsection (6) of the following subsection:

“(6) An employer, excluding an employer referred to in section 84(1)(a)(i), [and] (ii) and (iii), who fails to comply with subsection (1) shall be guilty of an offence.”; and

(e) by (he substitution for subsection (8) of the following subsection:

“(8) If an employer, excluding an employer referred to in section 84(1)(u)(i), [and] (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 5 thereof in some other manner, the [commissioner] 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.”.

Amendment of section 41 of Act 130 of 1993

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15. Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to section 62, an employer shall within [14] seven days after having received a claim, medical report or other documents or information concerning such claim send such claim, [and any relevant information and documents] 15 report, documents or information to the commissioner.”.

Amendment of section 46 of Act 130 of 1993

16. Section 46 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) The [commissioner] Director-General may of his or her own motion or on 20 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 25 costs, against such client.”.

Amendment of section 47 of Act 130 of 1993

17. Section 47 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following 30 paragraph:

“(a) Compensation for temporary total disablement shall be calculated on the basis set out in item 1 of Schedule 4 subject to [a] the minimum and maximum [amount prescribed by the Minister by notice in the *Gazette*, after consultation with the Board] amounts.”;

(b) by the deletion of paragraph (b) of subsection (1); 35

(c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) After the expiry of the said three months, compensation so paid by such [employee] employer shall be repaid to the employer by the [commissioner] Director-General or mutual association concerned, as 40 the case may be.”;

(d) by the addition to subsection (3) of the following paragraph:

“(c) An employer who fails to comply with paragraph (a) shall be guilty of an offence.”; and

(e) by the substitution for paragraph (a) of subsection (5) of the following 45 paragraph:

“(u) Periodical payments shall take place for so long as the temporary total disablement continues, but not for a period exceeding [12] 24 months.”.

Amendment of section 49 of Act 130 of 1993

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18. Section 49 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following subsection:

“(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 [a] the 55 minimum and maximum [amount prescribed by the Minister by notice in the *Gazette*, after consultation with the Board] amounts.”;

(b) by the deletion of paragraph (b) of subsection (1); and

(c) by the addition to subsection (2) of the following paragraph:

“(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.” 5

Amendment of section 50 of Act 130 of 1993

19. Section 50 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words:

“The Minister may on the recommendation of the [commissioner] 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” 10

Amendment of section 52 of Act 130 of 1993

20. Section 52 of the principal Act is hereby amended by the substitution for 15 paragraph (a) of subsection (2) of the following paragraph:

“(a) If a pension exceeds the prescribed amount, the [commissioner] 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 [not exceeding the prescribed amount].” 20

Amendment of section 54 of Act 130 of 1993

21. Section 54 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) If the employee leaves a dependant referred to in paragraph (a), 25 (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 [subject to a maximum amount prescribed by the Minister by notice in the *Gazette*];” 30

(b) by the substitution in subsection (1) for the words preceding the proviso to paragraph (b) of the following words:

“if the employee leaves a widow or widower and a [**dependant**] child referred to in paragraph (d) of the said definition [of ‘**dependant** of an employee’ in section 1 J, compensation to the widow or widower 35 calculated in accordance with paragraph (a) of this subsection and in respect of the [dependant referred to in paragraph (d) of the said definition] child a pension calculated in accordance with paragraph (c) of this subsection”;

(c) by the substitution in subsection (1) for the words preceding the proviso to 40 paragraph (c) of the following words:

“if the employee leaves a [dependant] child referred to in paragraph (d) of the said definition [of ‘**dependant** of an employee’ in section (1)], or a child referred to in paragraph (e) of the said definition who in the opinion of the [Commissioner] Director-General is unable to earn an 45 income owing to a physical or mental disability, a pension as set out in item 8 of Schedule 4 [subject to a maximum amount prescribed by the Minister by notice in the *Gazette*];”

(d) by the substitution in subsection (1) for paragraphs (iv) and (v) of the proviso to paragraph (c) of the following paragraphs, respectively: 50

“(iv) the pension payable to a [dependant] child referred to in paragraph (d) of the said definition shall lapse at the end of the month in which such [**dependant**] 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; 5
- (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 [commissioner] 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;” 10
- (e) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
- “(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 [of the definition of ‘dependant of an employee’ in section (1)] who is unable to earn an income owing to a physical or mental disability, and— 15
- (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 [commissioner] Director-General it may reasonably have been expected that the employee would have contributed to the maintenance of that person; or 20
- (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.”; and 25
- (g) by the deletion of paragraph (e) of subsection (1). 30

Amendment of section 55 of Act 130 of 1993

22. Section 55 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words:

“The Minister may on the recommendation of the [commissioner] 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”. 35

Amendment of section 56 of Act 130 of 1993

23. Section 56 of the principal Act is hereby amended by the substitution in subsection (6) for the word “commissioner” of the expression “presiding officer”. 40

Amendment of section 65 of Act 130 of 1993

24. Section 65 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 45

“(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 [commissioner] Director-General— 45

(a) that [an] the employee has contracted [an occupational] 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 50

(b) that [an] the employee has contracted a disease other than [an occupational disease] a disease contemplated in paragraph (a) and that such disease has arisen out of and in the course of his or her employment.”; and

(b) by the substitution for subsection (6) of the following subsection: 55

“(6) [Subject to the provisions of this Chapter, the] The provisions

of this Act regarding [compensation in respect of] an accident shall apply *mutatis mutandis* to [a **claim** for compensation for] a disease referred to in subsection (1), except where such provisions are clearly inappropriate.”.

Amendment of section 69 of Act 130 of 1993

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25. Section 69 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words:

“The Minister [after consultation with the Minister for National Health and Welfare] may on the recommendation of the [commissioner] 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 diseases and work”.

Amendment of section 70 of Act 130 of 1993

26. Section 70 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“The [commissioner] Director-General may [after consultation with the Director-general: National Health and Population Development] on a regional basis appoint medical advisory panels which shall consist of as many members as he or she may deem necessary to-”.

Repeal of section 71 of Act 130 of 1993

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27. Section 71 of the principal Act is hereby repealed.

Amendment of section 81 of Act 130 of 1993

28. Section 81 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) An employer shall [in respect of all of his employees] keep a register or other record of [wages, time worked, payment for piece work and overtime and all] the earnings and other prescribed particulars of all the employees, and [he] 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.”; and

(b) by the addition of the following subsection:

“(4) A health and safety representative elected in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), and a trade union representative elected in terms of section 14 of the Labour Relations Act, 1995 (Act No. 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.”.

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Amendment of section 82 of Act 130 of 1993

29. Section 82 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) [An] Subject to subsection (1A), an employer, excluding an employer referred to in section 84(1)(u) and (b), shall [before] not later than the thirty-first day of March in each year [or, if he began carrying on business after that date, within one month after so beginning] furnish the commissioner with a return in the prescribed form, certified by him, her or it as correct, showing—

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(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

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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 [commissioner] Director-General may require.”; 5

(b) by the insertion of the following subsection after subsection (1):

“(I A) 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.”; and 10

(c) by the substitution for subsection (3) of the following subsection:

“(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 [commissioner] 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.”. 15 20

Amendment of section 83 of Act 130 of 1993

30. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of this section, an employer shall be assessed or provisionally assessed by the [commissioner] Director-General according to [the] a tariff of assessment calculated on the basis of such percentage of the annual earning of his, her or its employees as the [commissioner] Director-General with due regard to the requirements of the compensation fund for the year of assessment may deem necessary.”; 25 30

(b) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) assess the employer on the basis of the earnings estimated in accordance with section [82(4), and such assessment shall not be subject to adjustment; and] 82(5);”; 35

(c) by the addition to subsection (6) of the following paragraphs:

“(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 40

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

(d) by the substitution for subsection (8) of the following subsection:

“(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 [commissioner] Director-General”. 45

Amendment of section 84 of Act 130 of 1993

31. Section 84 of the principal Act is hereby amended— 50

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) the [State] national and provincial spheres of government, including Parliament and [the provincial authorities and the government of a territory which in terms of any law is a self-governing territory within the Republic; and] provincial legislatures;” 55

(b) by the addition to paragraph (a) of subsection (1) of the following subparagraph:

“(iii) a municipality contemplated in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993), to which exemption has been granted in terms of subsection (2);” and
 (c) by the substitution for subsection (2) of the following subsection:
 “(2) The [commissioner] Director-General may upon application 5
 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.”

Amendment of section 86 of Act 130 of 1993 10

32. Section 86 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):
 “(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 No. 66 of 1975).” 15

Amendment of section 91 of Act 130 of 1993

33. Section 91 of the principal Act is hereby amended—
 (a) by the substitution for subsection (1) of the following subsection:
 “(1) Any person affected by a decision of the [commissioner] Director-General or a trade union or employer’s organization of which that person was a member at the relevant time may, within [90] 180 days after such decision, lodge an objection against that decision with the commissioner in the prescribed manner.”; 20
 (b) by the substitution in subsections (2), (3) and (4) for the word “commissioner” wherever it occurs of the expression “presiding officer”; 25
 (c) by the substitution in subsection (5) for subparagraph (ii) of paragraph (a) of the following subparagraph:
 “(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;” 30
 (d) by the substitution for subsection (6) of the following subsection:
 “(6) Except where the [commissioner] presiding officer orders otherwise, no obligation to pay any assessment, compensation or any other payment to the [commissioner] 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 [commissioner] 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);” and 35
 (e) by the addition of the following subsection: 40
 “(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’ organization contemplated in subsection (1), proceed before another presiding officer and the assessors concerned; or 45
 (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’ organization contemplated in subsection (1), proceed before the presiding officer concerned and the remaining assessor or assessors; or 50
 (ii) the hearing shall start *de novo* if the consent contemplated in subparagraph (i) is not given.” 55

Amendment of section 92 of Act 130 of 1993

34. Section 92 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If any question of law arises in the performance of the functions of the [commissioner] Director-General, the [commissioner] 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 [commissioner] Director-General, state a case for decision by a [provincial or local division of the Supreme Court] High Court having jurisdiction.”

Amendment of section 97 of Act 130 of 1993

3s. Section 97 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may make regulations, after consultation with the Board, regarding—”; and

(b) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(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,

(3) Any person who contravenes or fails to comply with any regulation made under subsection (1) [**may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of**] shall be guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding six months.”

Amendment of Schedule 4 to Act 130 of 1993

36. Schedule 4 to the principal Act is hereby amended—

(a) by the substitution in item 1 for the words in column (v) of the following words:

“75% of an employee’s monthly earnings at the time of the accident to a maximum compensation of R6 064,50 per month”;

(b) by the substitution in item 2 for the words in column (v) of the following words:

“15 times the monthly earnings of the employee at the time of the accident to a minimum and a maximum compensation of R12375,00 and R67 950, 00, respectively”;

(c) by the substitution in item 4 for the words in column (v) of the following words:

“75% of an employee’s monthly earnings at the time of the accident to a minimum and a maximum compensation of R618, 75 and R6 064, 50 per month, respectively”; and

(d) by the substitution in item 10 for the words in column (v) of the following words:

“A reasonable amount for funeral costs to a maximum [R4 000] R5 350,00 or the actual amount, whichever is the lesser”.

Substitution for “commissioner” of “Director-General” in Act 130 of 1993

37. The principal Act is hereby amended by the substitution for the word “commissioner” wherever it occurs of the word “Director-General”, except where it occurs in the definition of “commissioner” in section 1 and where it occurs in section 38(1), section 39(1), (3) and (12), section 41, section 43, section 44, paragraph (b) of the proviso to section 50, paragraph (b) of the proviso to section 55, section 56(1) and (3), paragraph (b) of the proviso to section 57(1), section 64, section 65(4), section 68, paragraph (b) of the proviso to section 69, section 74, section 80(1), (2), (3) and (5), section 82(1) and (2), section 86, section 87(4) and section 89(3).

Transitional provision

38. Any claim for compensation in respect of any accident that happened before the commencement of this Act shall be dealt with in terms of the principal Act as it was in force immediately before the commencement of this Act.

Short title and commencement .

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39. This Act shall be called the Compensation for **Occupational Injuries and Diseases Amendment Act, 1997**, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE COMPENSATION ‘
FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT
BILL, 1997**

The main object of the Bill is to bring the administration of the **Compensation** for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) (“the Act”), into line with that of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966). In terms of the Act, the Compensation Commissioner is charged with the administration of the Act and the accountability for the compensation fund. The Bill seeks to transfer the decision making and accountability from the Compensation Commissioner to the Director-General of the Department of Labour. Such amendment will also bring the Compensation Commissioner and his staff under the control of the Director-General. The Compensation Commissioner does, however, still have the functions set out in the sections which deal with the receipt of documents and payments, and the keeping of records. It is also proposed that the Director-General be empowered to delegate his or her functions in terms of the Act to the Compensation Commissioner and the staff appointed in terms of the Act.

The Bill also seeks to achieve the following:

1. Although section 9 of the Act provides that certain benefits may be paid to assessors who sustain disablement as a result of an accident arising out of and in the course of the performance of their functions, there is at present no provision in the **Act for the payment of medical expenses** and benefits to dependants in the event of a fatal injury to assessors. The Bill seeks to amend section 9 of the Act in order to make such provision.
2. The Compensation Board plays an important role in the administration of the Act. However, the proper functioning of the Board depends on the attendance of meetings by members of the Board. There is no provision in the Act for the appointment of alternate members. The Bill seeks to make such provision.
3. The Act does not make provision for situations where a presiding officer or an assessor becomes unable to continue with a hearing in terms of the Act. The lack of such a provision causes problems in practice. The Bill seeks to make such provision.
4. Since the coming into operation of the Act, certain textual inconsistencies were identified. The Bill seeks to effect textual alterations where these inconsistencies were found and also to bring the Act into line with the Constitution.

The Department of Labour and the State Law Advisers are of the opinion that the Bill must be dealt with in terms of the procedure set out in section 75 of the Constitution.

INSTITUTIONS/PERSONS CONSULTED OR APPROACHED:

- * The Compensation Board
- * Nedlac