



**Tuvalu**

# **WORKMEN'S COMPENSATION ACT**

**2022 Revised Edition**

**CAP. 40.72**





Tuvalu

## WORKMEN'S COMPENSATION ACT

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Tuvalu

## WORKMEN'S COMPENSATION ACT

### AN ACT TO MAKE PROVISIONS FOR COMPENSATION TO INJURED WORKMEN<sup>1</sup>

Commencement [25th July 1949]

#### 1 Short title

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

#### 2 Meaning of "workmen"

- (1) In this Act, unless the context otherwise requires, the expression "**workman**", subject to section 4 and the proviso to this subsection, means any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing and includes any person under training (hereinafter referred to as a trainee) who is required to perform work which would if not performed by the trainee have had in the ordinary course of events to be performed by a workman as otherwise defined by this subsection:

Provided that the following persons are excepted from the definition of "workman" —

- (a) any person employed otherwise than by way of manual labour whose earnings exceed \$25,000 a year;<sup>2</sup> or
- (b) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or
- (c) an outworker; or

- (d) a tributer; or
  - (e) a member of the employer's family dwelling in his house; or
  - (f) any class of persons whom the Minister may by order declare not to be workmen for the purposes of this Act.
- (2) If in any proceedings for the recovery of compensation under this Act it appears to the court that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.
- (3) Except for the purposes of section 17 any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his legal personal representative, or to his dependants or any of them or the Commissioner of Labour or such other officer as he may appoint to act on behalf of the dependants of the workman.

### 3 Interpretation

- (1) In this Act, unless the context otherwise requires —
- “**adopted**” means adopted under the authority of an adoption order made by a court of competent jurisdiction;
- “**child**” includes adopted child, grandchild, adopted grandchild, stepson and stepdaughter;
- “**Tuvalu ship**” means —
- (a) any ship which is registered in Tuvalu under the Merchant Shipping Act;<sup>3</sup>
  - (b) any ship which is owned by a body corporate established under the laws of Tuvalu or having its principal office or place of business in Tuvalu or any ship which is in the possession of any such body corporate by virtue of a charter;
  - (c) any ship which is owned by any person whose chief office or place of business in respect of the management of that ship is in Tuvalu or any ship which is in the possession of any such person by virtue of a charter;
  - (d) any ship which is owned by the Government of Tuvalu or which is in the possession of the Government in that respect by virtue of a charter;
- “**Commissioner of Labour**” means the Commissioner of Labour appointed under section 4 of the Employment and Employment Relations Act,<sup>4</sup> and includes a Deputy Commissioner of Labour or an Assistant Commissioner of Labour under the said section;

“**compensation**” means compensation as provided by this Act;

“**court**” means a magistrate's court;

“**dependants**” means those members of the family of a workman who were wholly or in part dependent upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent, and, where the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent on his earnings, shall include such an illegitimate child or parent or grandparent respectively:

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

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

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

“**insurer**” includes any insurance society, association, company or underwriter;

“**medical practitioner**” means a medical practitioner or medical officer registered, or conditionally registered, as such under the provisions of the Health Professionals Act;<sup>5</sup>

“**member of a family**” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter;

stepson, stepdaughter, brother, sister, half-brother, half-sister, niece or nephew and shall include any child or children, not specifically mentioned, living with the deceased at the time of his death and wholly or mainly dependent upon his earnings and such other person as was at the time of the injury living in the household of the worker and was wholly or mainly dependent upon his earnings;

“**outworker**” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

“**partial incapacity**” means where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every paid employment which he was capable of undertaking at that time:

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

“**seaman**” means any workman employed as master, officer, pilot, seaman, engineman, apprentice, stevedoring labourer, or in any other capacity whatsoever on board a ship by the owner or charterer thereof;

“**territorial waters**” means that part of the sea adjacent to any island of Tuvalu which is within 3 geographical miles measured from low water mark of the seaward side of the reef fronting such coast, or, where a reef is not present, from the low water mark of the coast itself;

“**total incapacity**” means such incapacity, whether of a temporary or permanent nature, as in practice is likely to prevent a workman obtaining any paid employment which he was capable of undertaking at the time of the accident resulting in such incapacity;

“**tributer**” means a person who is granted permission to win minerals, receiving a proportion of the minerals won by him or the value thereof.

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

#### 4 Application to workmen employed under the Crown

This Act shall apply to workmen employed by or under the Crown in the same way and to the same extent as if the employer were a private person, except in the case of

persons in the naval or military or air service of the Crown and persons in the civil employment of Her Majesty otherwise than in Her Government of Tuvalu:

Provided that this Act shall not apply in the case of a workman in the service of the Government of Tuvalu where, in consequence of injury received by any such workman in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise, is paid to him, or, in the case of his death, to any of his dependants as defined in this Act, under any Act or regulation providing for the grant of such pension or gratuity.

## **5 Employer's liability for compensation for death or incapacity resulting from accident**

- (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter provided, be liable to pay compensation in accordance with the provisions of this Act; and for the purposes of this Act, an accident arisen out of the employment shall be deemed, in the absence of evidence to the contrary, to have arisen in the course of the employment and an accident arising in the course of the employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of the employment:

Provided that —

- (a) the employer shall not be liable under this Act in respect of any injury, other than an injury which results in partial incapacity of a permanent nature, which does not incapacitate the workman for a period exceeding 3 days from earning full wages at the work at which he was employed; and
  - (b) if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent incapacity, be disallowed.
- (2) For the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.
  - (3) No compensation shall be payable under this Act in respect of any incapacity or death resulting from a deliberate self-injury.
  - (4) No compensation shall be payable under this Act in respect of any incapacity or death resulting from personal injury, the workman has at any time represented to the employer that he was not suffering or had not previously

suffered from that or a similar injury, knowing that the representation was false.

- (5) An accident happening to a workman in or about any premises at which he is for the time being employed for the purposes, his employer's trade or business shall be deemed to arise out of and in the course of his employment and the employer shall be liable to pay compensation if the accident happens while he is taking steps on an actual or supposed emergency at those premises to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.
- (6) An accident happening to a workman while he is travelling to or from his place of work as a passenger by any vehicle, ship, vessel or aircraft provided by his employer or operated in the ordinary course of public transport service shall be deemed to arise out of and in the course of his employment.
- (7) An accident happening to a workman travelling to or from his place of work as a passenger by any other vehicle, ship, vessel or aircraft shall not be deemed to arise out of and in the course of his employment unless the employer has given express or implied permission to use such other transport.

## 6 Compensation in fatal cases

Where death results from the injury —

- (a) if the workman leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum equal to 36 months' earnings or \$25,000 whichever is less:<sup>6</sup>

Provided that in no case shall the amount of compensation under this paragraph be less than \$1,000:

And provided further that where in respect of the same accident compensation has been paid under the provisions of section 7 or section 8 there shall be deducted from the sum payable under this paragraph any sums so paid as compensation;

- (b) if the workman does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be agreed upon or, in default of agreement, as may be determined by the court to be reasonable and proportionate to the injury to the said dependants;
- (c) if the workman leaves no dependants, the reasonable expenses of the burial of the deceased workman and the reasonable expenses of medical attendance on the deceased workman, not exceeding in all the sum of \$50, shall be paid by the employer.

**7 Compensation in the case of permanent total incapacity**

- (1) Where permanent total incapacity results from the injury the amount of compensation shall be a sum equal to 36 months' earnings or, \$10,000 whichever is less:

Provided that in no case shall the amount of compensation in respect of permanent total incapacity be less than \$1,000.

- (2) Notwithstanding the provisions of subsection (1), where an injury results in permanent total incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation shall be paid amounting to one-quarter of the amount which is otherwise payable under the provisions of this section.

**8 Compensation in the case of permanent partial incapacity**

- (1) Where permanent partial incapacity results from the injury the amount of compensation shall be —
  - (a) in the case of an injury specified in the Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and
  - (b) in the case of an injury not specified in the Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury.
- (2) Where more injuries than 1 are caused by the same accident, the amount of compensation payable under the provisions of this section shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

**9 Compensation in the case of temporary incapacity**

- (1) Where temporary incapacity, whether total or partial, results from the injury, the compensation shall be the periodical payments hereinafter mentioned payable at such intervals as may be agreed upon or as the court may order, or a lump sum calculated accordingly, having regard to the probable duration and probable changes in degree of the incapacity. Such periodical payments shall be based on the following scales —
  - (a) where the workman's earnings do not exceed \$40 a month, 100 per cent of such earnings;
  - (b) where the workman's earnings exceed \$40 a month but do not exceed \$60 a month, 75 per cent of such earnings with a minimum of \$40;

- (c) where the workman's earnings exceed \$60 a month, 66 2/3 per cent of such earnings with a minimum of \$50:

Provided that —

- (i) no periodical payment shall in any case exceed the difference between the amount of the monthly earnings which the workman was earning at the time of the accident and the amount of the monthly earnings which he is earning or is capable of earning during the period of incapacity in some suitable employment or business after the accident;
  - (ii) no periodical payment under the provisions of this section shall be at a higher rate than \$330 a month;
  - (iii) if the period of incapacity exceeds 3 days, compensation shall be payable in respect of the total period of incapacity;
  - (iv) neither the aggregate of the periodical payments nor the lump sum payable under this subsection shall exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of section 7 or section 8, as the case may be, if the incapacity were permanent;
  - (v) where a medical practitioner certifies as necessary on account of the injury any period spent by the workman in hospital or absent from his work such period shall be regarded as a period of total temporary incapacity irrespective of the outcome of the injury.
- (2) In fixing the amount of the periodical payments the court shall have regard to any payment, allowance, ration or benefit which the workman may receive from the employer during the incapacity.
  - (3) In the event of death or permanent incapacity following after temporary incapacity, no deductions shall be made from any lump sum payment under the provisions of section 6, section 7 or section 8 by reason of periodical payments or a lump sum payment having been made under the provisions of this section.
  - (4) On the ceasing of the incapacity before the date on which any periodical payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.
  - (5) Where a workman in receipt of periodical payments under the provisions of this section intends to leave the neighbourhood in which he was employed for the purpose of residing elsewhere, he shall give notice of such intention to the employer who may agree with the workman for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments; and if the employer and the workman are unable to agree, either party may apply to the court, which shall have jurisdiction to order such redemption and to determine the amount to be paid or to order the continuance of the periodical payments:

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the workman shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under section 7(1), or section 8, as the case may be, if the incapacity were permanent.

- (6) If a workman in receipt of periodical payments under the provisions of this section leaves the neighbourhood in which he is employed for the purpose of residing elsewhere without giving notice as provided in subsection (5) or having given such notice leaves the neighbourhood as aforesaid without having come to an agreement with his employer for the redemption or continuance of such periodical payments, or without having made an application to the court under subsection (5), he shall not be entitled to any benefits under this Act during or in respect of the period of his absence; and if the period of such absence exceeds 6 months, the workman shall cease to be entitled to any benefits under this Act.

## **10 Artificial limbs and apparatus**

- (1) Where an accident arising out of and in the course of his employment has caused loss of a limb or other mutilation and the supply of an artificial member or members or apparatus (including dental appliances and artificial eyes) will improve the earning capacity of an injured workman, such artificial member or members or apparatus shall be provided at the expense of the employer and the rate of compensation payable shall be reduced in proportion to the improvement in earning capacity resulting from the use of artificial member or members or apparatus.
- (2) The court may order an employer to pay for the replacement or repair of any artificial member or members or apparatus damaged as a result of an accident arising out of and in the course of a workman's employment by that employer.

## **11 Compensation for occupational diseases**

- (1) If a workman, within the 12 months previous to the date of the disablement, contracts any disease to which this section applies, and the disease is due to the nature of the employment, and the incapacity or death of the workman results from that disease, compensation shall be payable as if the disease was a personal injury by accident arising out of and in the course of that employment and all the provisions of this Act shall apply accordingly, subject however to the provisions of this section.
- (2) No compensation shall be payable under this section in respect of the incapacity or death of a workman if that incapacity begins or that death happens, as the case may be, more than 12 months after the workman has ceased to be employed, in any employment to the nature of which the disease is due, by the employer from whom the compensation is claimed:

Provided that this subsection shall not apply to the death of a workman when his death has been preceded, whether immediately or not, by any period of incapacity in respect of which the employer is liable under this section.

- (3) For the purposes of calculating the earnings of the workman in a claim for compensation under this section, the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident, if he is then employed in any employment to the nature of which the disease is due by the employer from whom the compensation is claimed, and if he is not then so employed, the last day on which he was so employed shall for this purpose be treated as the date of the happening of the accident.
- (4) For all the other purposes of this Act the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident.
- (5) If the disease has been contracted by a gradual process so that 2 or more employers are severally liable to pay compensation in respect thereof under this section, the aggregate amount of compensation recoverable shall not exceed the amount that would have been recoverable if those employers had been a single employer, and in any such case those employers shall, in default of agreement, be entitled as between themselves to such rights of contribution as the court thinks just, having regard to the circumstances of the case, in any action brought or application made by any of them for this purpose.
- (6) The diseases to which this section applies are such as are declared by the Minister to be diseases within the operation of this Act.

## **12 Methods of calculating earnings**

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

Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average monthly amount which, during the 12 months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same district:

Provided further that for the purposes of computing the monthly earnings of a casual worker employed as a stevedoring labourer, such worker shall be deemed to have been employed for not less than 8 full working shifts per month at the usual rate of pay for the work upon which he was employed at the time of the accident.

- (2) For the purposes of the preceding subsection, employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.
- (3) Where the workman had entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one such employer and at another time for another such employer, his monthly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident:

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

- (4) Upon request of the workman to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that workman upon which the amount of the monthly earnings may be calculated for the purposes of this section, or, if owing to the casual nature or the terms of the employment it is impracticable to furnish a list of the earnings of that particular workman, the employer shall furnish in writing the average monthly amount which, during the 12 months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same district.
- (5) When a workman is at the time of the accident under the age of 21 years, or is an apprentice, trainee or learner, and his incapacity, whether total or partial, is permanent, his monthly earnings at the time of the accident shall be deemed to be the monthly sum which he would probably have been able to earn if he had then attained the age of 21 years or had completed his apprenticeship, or had ceased to be a trainee or learner, as the case may be, being in no case less than \$30 per month:

Provided that nothing in this subsection shall extend to the compensation payable on the death of a workman.

### **13 Persons entitled to compensation**

- (1) The compensation shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependants as provided by this Act.
- (2) Where there are both total and partial dependants nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.
- (3) Where a dependant dies before a claim in respect of death is made under this Act, or, if a claim has been made, before an order for the payment of compensation has been made, the legal personal representative of the dependant shall have no right to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before the workman.

### **14 Distribution of compensation**

- (1) Compensation payable where the death of a workman has resulted from an injury shall be paid to the court, and the court may order any sum so paid in to be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or, in the discretion of the court, to be allotted to any such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.
- (2) Where, on application being made in accordance with rules made under this Act, it appears to the court that, on account of the variation of the circumstances of the various dependants, or of any other sufficient cause, an order made under this subsection ought to be varied, the court may make such order as to the apportionment for the variation of the former order as in the circumstances of the case the court may think just.
- (3) Compensation payable under the provisions of section 7 or section 8 and lump sums payable under the provisions of section 9 shall be paid to the court, and any sum so paid shall be paid to the person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.
- (4) Nothing in this section shall prevent an employer from making any payment to a workman pending the settlement or determination of the claim and the court may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to him under the provisions of this section.
- (5) Any other compensation payable under this Act may be paid to the workman or to the court and when paid to the court shall be paid by the court to the person entitled thereto.

- (6) The receipt of the clerk of the court shall be a sufficient discharge in respect of any amount paid to the court under the provisions of this Act.
- (7) Any order or directions of the court under this section shall be final and shall not be questioned in, nor shall any appeal lie therefrom to any other court whatsoever.

## **15 Requirements as to notice of accident and application for compensation**

- (1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such accident has been made within 6 months from the occurrence of the accident causing the injury or, in the case of death, within 6 months from the time of death:

Provided that —

- (a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;
  - (b) the failure to make an application within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.
- (2) Notice in respect of an injury under this Act may be given orally or in writing.
  - (3) Notice in respect of an injury under this Act may be given to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer and shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened.
  - (4) The notice, if in writing, may be given by delivering the same or sending it by post in a registered letter addressed to the residence or place of business of the person to whom it is to be given.
  - (5) Where the employer is a body of persons, corporate or unincorporate, the notice, if in writing, may also be given by delivering it or sending it by post in

a registered letter addressed to the employer at the office or, if there be more than one office, any one of the offices of such body.

- (6) The workman shall, if so required by his employer, supply to him such further particulars of the accident and of the injury, as the employer may reasonably require.

## **16 Medical examination and treatment**

- (1) Where a workman has given notice of an accident he shall, if the employer, before the expiry of 7 days from the time at which notice has been given, offers to have him examined free of charge by a medical practitioner named by the employer, submit himself for such examination, and any workman who is in receipt of a periodical payment under section 9 shall, if so required, submit himself for such examination from time to time.
- (2) The workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer or that medical practitioner, provided such time and place is reasonable.
- (3) In the event of the workman being, in the opinion of any medical practitioner, unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the medical practitioner so named shall fix a reasonable time and place for a personal examination of the workman and shall send him notice accordingly.
- (4) If the workman fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place; and if such failure extends for a period of 15 days from the date when the workman was required to submit himself for examination under subsection (2) or subsection (3), as the case may be, no compensation shall be payable, unless the court is satisfied that there was reasonable cause for such failure.
- (5) The workman shall be entitled to have his own medical practitioner present at such examination, but at his own expense.
- (6) Where the workman is not attended by a medical practitioner he shall, if so required by the employer, submit himself for treatment by a medical practitioner without expense to the workman.
- (7) If the workman has failed to submit himself for treatment by a medical practitioner when so required under the provisions of subsection (6), or having submitted himself for such treatment has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself for treatment by, and duly, carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly.

- (8) Where under this section a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension save where the court is satisfied that there was reasonable cause on the part of the workman for failure to attend on the medical practitioner.
- (9) Notwithstanding the previous provisions of this section, where a claim for compensation is made in respect of the death of a workman, then if the workman failed to submit to examination by a medical practitioner when so required under the provisions of this section, or failed to submit himself for treatment by a medical practitioner when so required under the provisions of this section, or having submitted himself for such treatment disregarded the instructions of such medical practitioner, and if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the death of the workman was caused thereby, the death shall not be deemed to have resulted from the injury and no compensation shall be payable in respect of the injury.
- (10) Where the employer has not at his own expense made suitable arrangements for medical or surgical attendance in respect of an injured workman, the workman shall, in addition to the compensation payable under sections 7, 8, 9 or 11, be entitled to a sum equal to the reasonable expenses incurred by him for medical or surgical attendance in respect of his injury.

## 17 Agreement as to compensation

- (1) The employer and workman may, with the approval of the Commissioner of Labour, after the injury in respect of which the claim to compensation has arisen, agree in writing as to the compensation to be paid by the employer; and such agreement shall be in triplicate, 1 copy to be kept by the employer, 1 copy to be kept by the workman and 1 copy to be sent by the employer to the Commissioner of Labour:

Provided that —

- (a) the compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and
  - (b) where the workman is unable to read and understand writing in the language in which the agreement is expressed, the agreement shall not be binding against him, unless it is endorsed by a certificate of the Commissioner of Labour to the effect that he read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve the agreement.
- (2) Any agreement made under subsection (1) may on application to the court be made an order of the court.
  - (3) Where compensation has been agreed the court may, notwithstanding that the agreement has been made an order of the court under the previous subsection, on application by any party within 3 months after the date of the agreement,

cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the court may think just, if it is proved —

- (a) that the sum paid or to be paid was or is not in accordance with the provisions of subsection (1); or
  - (b) that the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury; or
  - (c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.
- (4) No stamp duty shall be leviable or payable on any agreement under this section.

## 18 Determination of claims

- (1) If an employer on whom notice of the accident has been served under section 15 does not within 14 days after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may, in the prescribed form and manner, make an application for enforcing his claim to compensation to the magistrate's court having jurisdiction where the accident giving rise to the claim occurred.
- (2) All claims for compensation under this Act, unless determined by agreement, and any matter arising out of proceed thereunder, shall be determined by the court whatever may be the amount involved, and the court may, for that purpose, call upon any government officer or any, independent medical practitioner to give evidence, if the court is of opinion that such officer or practitioner is, by virtue of his expert knowledge, able to assist the court.

## 19 Review

- (1) Any periodical payment payable under this Act, either under agreement between the parties or under an order of the court, may be reviewed by the court on the application either of the employer or of the workman:

Provided that where the application for review is based on a change in the condition of the workman any such application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

- (2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum, or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the workman is entitled under the provisions of section 7 or section 8,

as the case may be, and such lump sum shall be dealt with in accordance with section 14(3).

- (3) Where application is made by an employer under this section for any periodical payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay into court the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the court made on a review under this section.
- (4) In making a review under this section the court shall have regard only to the capacity for work of the workman as affected by the accident.

## **20 Limitations of power of employer to end or decrease periodical payments**

Subject to the provisions of section 9(6), section 16(4), and section 19(3), an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the court —

- (a) to end periodical payments except —
  - (i) where a workman resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or
  - (ii) where a workman dies;
- (b) to diminish periodical payments, except that, where the earnings of a workman in receipt of periodical payments, together with such payments, exceed the amount of his earnings at the date of the accident the employer may diminish the payments to such workman by an amount equal to such excess.

## **21 Jurisdiction of the court**

- (1) Save as is provided in this Act and any rules made thereunder, the court shall, upon or in connection with any question to be investigated or determined thereunder, have, all the powers and jurisdiction exercisable by the High Court in or in connection with civil actions in such court and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the court shall *mutatis mutandis* apply.
- (2) Where in any proceedings under this Act on a claim for compensation in respect of the death of a workman, the court is satisfied that other or sufficient evidence as to the dependency on the deceased workman of a person claiming to be a dependant, or as to the degree of such dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant signed by the president of the council of

the island on which the claimant resides, shall be *prima facie* proof of the facts stated therein; and the signature of the president shall be admitted without proof unless the court shall have reason to doubt the genuineness thereof.

- (3) If in such proceedings any evidence is adduced which in the opinion of the court traverses the facts set out in such a statement, or if for any other reason the court thinks fit, the court may request a court having jurisdiction in the island on which a person claiming to be a dependant resides to investigate the fact of the dependency and the degree of the dependency of such person; and the record of any such investigation including the finding of the court thereon shall be receivable as evidence in the proceedings, and a certificate signed by an island magistrate shall be sufficient proof of such record and such signature shall be admitted without proof unless the court shall see reason to doubt the genuineness thereof.
- (4) Where a request is received by an island court from a magistrate's court, for an investigation of any matter arising out of proceedings for compensation instituted in the magistrate's court under this Act, the island court shall have jurisdiction to conduct such investigation, and shall transmit to the magistrate's court the record of such investigation, including its findings thereon, duly certified by the island magistrate or by an officer of the court.

## **22 Power of the court to submit questions of law**

The court may, if it thinks fit, submit any question of law for the consideration of the High Court by way of case stated and the provisions of section 41 of the Magistrates' Courts Act shall apply.

## **23 Appeals**

- (1) Subject to the provisions of this section and of section 14, an appeal shall lie to the High Court from an order of the court.
- (2) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the court or in which the order of the court gives effect to an agreement come to by the parties.
- (3) No appeal shall lie after the expiration of 30 days from the date of the order of the court:

Provided that the High Court may, if it thinks fit, extend the time for appealing under this section notwithstanding that the time for appealing has elapsed.

**24 Liability in case of workmen employed by contractors**

- (1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person otherwise than as a tributer (which other person is in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been employed immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.
- (2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.
- (3) Where a claim or application for compensation is made under this section against a principal, the principal shall give notice thereof to the contractor who shall thereupon be entitled to intervene in any application made against the principal.
- (4) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.
- (5) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

**25 Remedies against both employer and stranger**

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

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation:

Provided that —

- (i) if the workman has recovered compensation under this Act before damages have been awarded in such proceedings, then the amount of such compensation shall be deducted from the damages to be so awarded;
- (ii) if the workman has recovered damages in such proceedings before compensation under this Act has been paid, then,

notwithstanding the provisions of this Act, the amount of such compensation shall be abated by the amount of damages so recovered; and

- (b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the provisions of section 24 relating to liability in case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid, and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act.<sup>7</sup>

## **26 Act to apply to accidents to seamen employed on Tuvalu ships**

- (1) This Act shall apply to an accident happening to any seaman employed on a Tuvalu ship whether the accident happens in Tuvalu or elsewhere or on board the said ship or elsewhere.
- (2) The application of this Act in respect of accidents happening to any seaman shall be subject to the following modifications —
- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give notice of the accident;
- (b) in the case of the death of the seaman, the claim for compensation shall be made within 6 months after the news of the death has been received by the claimant;
- (c) in the case of the death of a seaman leaving no dependants, no compensation shall be payable if the owner of the ship is, under the Merchant Shipping Act 1894, liable to pay the expenses of burial;
- (d) where incapacity for work results from the injury, the owner of the ship may deduct from the payments due to the injured seaman under this Act any expenses of maintenance which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray and has, in fact defrayed;
- (e) any sum payable under this Act shall be paid in full notwithstanding anything in the Merchant Shipping Act, but any limitation of the owner's liability imposed by or under that Act shall apply to the amount receivable by way of indemnity under section 25 as if the indemnity were damages for loss of life or personal injury;
- (f) the Merchant Shipping Act shall apply as respects proceedings for the recovery of compensation by the dependants of a seaman lost with his

ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

- (3) This Act does not apply in respect of accidents to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.
- (4) When an action is commenced for the recovery of compensation in respect of an accident happening out of Tuvalu, the action shall, on the application of the defendant, be stayed until the plaintiff has, given to the defendant a sufficient undertaking not to institute any proceedings for the recovery of compensation or damages from the defendant in any country in respect of the same accident.
- (5) In any action for the recovery of compensation it shall be a good defence that proceedings for the recovery of compensation or damages in respect of the same accident have been instituted by or on behalf of the same person against the same defendant in any country other than Tuvalu or that any claim by or on behalf of the same person against the same defendant for compensation or damages in respect of the same accident under the laws of any country other than Tuvalu, has been settled by agreement or fully satisfied.
- (6) For the purposes of this Act an accident shall be deemed to happen in Tuvalu if it happens within territorial waters and shall be deemed to happen out of Tuvalu if it happens elsewhere.
- (7) For the purposes of this section “fishing vessel” and “Tuvalu waters” have the meanings given in Schedule 1 to the Merchant Shipping Act<sup>8</sup> and a reference to that Act includes regulations made under that Act.

## **27 Proceedings independently of the Act**

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

Provided that —

- (a) if damages are awarded after compensation has been paid the amount of damages awarded in such proceedings shall take into account the compensation paid in respect of the same injury under this Act;
- (b) a judgment against the employer in such proceedings shall be a bar to proceedings under this Act in respect of the same injury at the suit of any person by whom or on whose behalf the proceedings against the employer were taken.

- (2) If in proceedings independently of this Act or on appeal it is determined that the employer is not liable under such proceedings, the court in which such proceedings are taken or the appellate tribunal shall, if the plaintiff so choose, proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and shall assess the amount, of compensation so payable, but may deduct from such compensation any extra costs which in the opinion of the court or appellate tribunal; live been incurred by the employer by reason of the proceedings; living been taken independently of this Act.

## **28 Compulsory insurance**

- (1) The Minister may, by order, require any employer or class of employers to insure and keep himself or themselves insured, with such insurers as may be approved by the Minister, in aspect of any liability which they may incur under the provisions of this Act to any workman employed by them.
- (2) Any employer who acts in contravention of any order made under the provisions of subsection (1) shall be guilty of an offence and liable to a fine of \$10 for every day during which the default continues.

## **29 Provisions as to case of bankruptcy of employer**

- (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company business or undertaking having been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vested in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.
- (2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

### **30 Contracting out**

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

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

### **31 Compensation not to be assigned charged or attached**

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

### **32 Regulations**

- (1) The Minister may make regulations not inconsistent with this Act for the purpose of giving better effect to the purposes and provisions thereof and, without prejudice to the generality of the foregoing power, he may make regulations —
  - (a) prescribing procedure, forms and fees;
  - (b) prescribing anything which is to be or may be prescribed under this Act; and
  - (c) requiring employers and insurers carrying on in Tuvalu the, business of insuring employers against their liabilities under this Act to make periodic or other returns as to such matters as he may think fit, and prescribing a time limit for the making of such returns.
- (2) Any person required to make a return by virtue of any regulation made under subsection (1) who —
  - (a) fails to make such return within the time within which he is required to make it;
  - (b) makes or causes to be made a return which he knows to be false in any material particular; or
  - (c) on being so required fails to give any information or explanation respecting the return which it is in his power to give, shall be guilty of an offence and liable to a fine of \$10 for every day during which the default continues.

- (3) Where a person convicted of an offence under this section is a company, the chairman and every director and every officer of the company shall be guilty of a like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

### **33 Rules of court**

The Chief Justice may make rules of court for regulating proceedings before the court under this Act, and for the fees payable in respect thereof.

### **34 Instructions as to transfer of funds**

- (1) Where an arrangement has been made whereby sums awarded under the law relating to workmen's compensation in Tuvalu to beneficiaries resident or becoming resident in the United Kingdom or in any other part of Her Majesty's dominions, and sums awarded under the law relating to workmen's compensation in the United Kingdom or in such other part of Her Majesty's dominions to beneficiaries resident or becoming resident in Tuvalu, may, at the request of the authority by which the award is made, be transferred to and administered by a competent authority in the United Kingdom or in such other part of Her Majesty's dominions or in Tuvalu, as the case may be, the Minister may give instructions —
- (a) for the transfer, in such manner as may be provided by the arrangement, to the United Kingdom or that part of Her Majesty's dominions with which the arrangement is made of any money in the disposition of the court applicable for the benefit of any person resident in or about to reside in the United Kingdom or such other part of Her Majesty's dominions;
  - (b) for the receipt and administration by an officer appointed by the Minister for this purpose of any money which under any such arrangement has been transmitted from the United Kingdom or the part of Her Majesty's dominions with which the arrangement has been made as money applicable for the benefit of any person resident or about to reside in Tuvalu.
- (2) For the purposes of this section, "Her Majesty's dominions" includes British protectorates and protected states and territories in respect of which a mandate has been accepted by Her Majesty.

**SCHEDULE**

*(Section 3(1) and 8(1))*

<b>Injury</b>	<b>Percentage of incapacity</b>
Loss of 2 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 being bedridden permanently.....	100
Any other injury causing permanent total disablement.....	100
Loss of remaining eye by 1-eyed workman.....	100
Loss of remaining arm by 1-armed workman.....	100
Loss of arm at shoulder.....	60
Loss of arm between elbow and shoulder.....	50
Loss of arm at elbow.....	47½
Loss of arm between wrist and elbow.....	45
Loss of hand at wrist.....	42½
Loss of 4 fingers and thumb of 1 hand.....	42½
Loss of 4 fingers.....	35
Loss of thumb —	
both phalanges.....	35
1 phalanx.....	10
Loss of index finger —	
3 phalanges.....	10
2 phalanges.....	8
1 phalanx.....	4

<b>Injury</b>	<b>Percentage of incapacity</b>
Loss of middle finger —	
3 phalanges.....	6
2 phalanges.....	4
1 phalanx.....	2
Loss of ring finger —	
3 phalanges.....	5
2 phalanges.....	4
1 phalanx.....	2
Loss of little finger —	
3 phalanges.....	4
2 phalanges.....	3
1 phalanx.....	2
Loss of metacarpals —	
first or second (additional).....	3
third, fourth or fifth (additional).....	2
Loss of leg at or above knee.....	70
Loss of leg below knee.....	40
Loss of foot.....	40
Loss of toes —	
all.....	20
great, both phalanges.....	20
great, 1 phalanx.....	5
Loss of eye —	
eye out.....	30
sight of.....	30

<b>Injury</b>	<b>Percentage of incapacity</b>
lens of .....	30
sight of, except perception of light.....	30
Loss of hearing —	
both ears.....	50
1 ear .....	7

Total permanent loss of use of member shall be treated as loss of member.

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

Where there is a loss of 2 or more parts of the hand, the percentage of incapacity shall not be more than for the whole hand.

Where there are 2 or more injuries, the sum of the percentages for such injuries may be increased, and where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely —

- (a) where 2 digits have been injured, the sum total of the percentages shall be increased by 20 per cent of such sum total;
- (b) where 3 digits have been injured the sum total of the percentages shall be increased by 30 per cent of such sum total;
- (c) where 4 digits have been injured, the sum total of the percentages shall be increased by 40 per cent of such sum total.

A 1-eyed workman who on entering employment has failed to disclose to his employer the fact that he is 1-eyed shall, if he loses his remaining eye, be entitled to compensation in respect of a degree of disablement of 30 per cent only.

For the purposes of this Schedule, a 1-eyed workman means a workman who has lost the sight of 1 eye.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 83 – Acts 6 of 1949, 11 of 1966, 8 of 1968, 2 of 1969, 8 of 1971, 28 of 1974, 11 of 1987, LN 28/66

Amended by Act 6 of 2021, commencement 31 August 2021

<sup>2</sup> Amended by Act 6 of 2021

<sup>3</sup> Cap. 48.28

<sup>4</sup> Cap. 40.28

<sup>5</sup> Cap. 28.12

<sup>6</sup> Amended by Act 6 of 2021

<sup>7</sup> Cap. 7.04

<sup>8</sup> Cap. 48.28