

WORKERS COMPENSATION ORDINANCE 1964  
1964, No. 2

An Ordinance of the Legislative Assembly of the Cook Islands to make provision for compensation to injured workers. (25 January 1965.)

1. Short Title and Commencement - (1) This Ordinance may be cited as The Cook Islands Workers Compensation Ordinance 1964.

(2) This Ordinance shall come into force on the first day of April 1965.

2. Interpretation - (1) In this Ordinance, unless the context otherwise requires -

"Compensation" means compensation as provided by this Ordinance:

"Cook Islands" means the Cook Islands as defined in Part I of the Cook Islands Amendment Act 1957:

"Court" means the High Court of the Cook Islands as constituted in Part III of the Cook Islands Act 1915:

"Dependents" means those members of the family of a worker 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 worker, 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 dependent of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class or position and provided further that, if any child is born to a worker after his death, that child shall be deemed to be a dependent of the worker in the same manner as if born in the lifetime of the deceased worker:

"Earnings" include wages paid to the worker by the employer and the value of any food, fuel, or quarters supplied to the worker by the employer if as a result of the accident the worker 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 a constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, or casual payments of a non-recurring nature, or of 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 to a worker to cover any special expenses entailed on him by the nature of his employment:

"Employer" includes Her Majesty the Queen in right of her Government of the Cook Islands, and any body of persons corporate or unincorporate and the legal representatives of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Ordinance, be deemed to continue to be the employer of the worker whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation or paid through a club, the manager, or members of the managing committee of the club shall, for the purposes of this Ordinance, be deemed to be the employer:

Provided that "employer" shall not include an ariki nominating or engaging a worker in accordance with the usages and customs of the Cook Islands people; and "employer" shall have a corresponding meaning:

"Insurer" means the Treasurer of the Cook Islands acting on behalf of the Cook Islands Legislative Assembly:

"Medical Officer" includes any person permitted to practise medicine and surgery in terms of Section 23 of the Cook Islands Amendment Act 1957:

"Partial incapacity" means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a worker 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 employment which he was capable of undertaking at that time:

Provided that every injury specified in the second Schedule to this Ordinance, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred per centum or more, shall be deemed to result in permanent partial incapacity:

"Total incapacity" means such incapacity, whether of a temporary or permanent nature as incapacitates a worker for any employment which he was capable of undertaking at the time of the accident resulting from such incapacity:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the second Schedule where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per centum or more:

"Worker" means any person who has either before or after the commencement of this Ordinance,

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: Provided that the following persons are exempted from the definition of "worker" -

- (a) A member of an employer's family or a guardian or ward of the employer;
- (b) Any person employed or rendering service in accordance with Native or Cook Islands customs;
- (c) Any person employed in plantation work for an employer who regularly employs three or less employees in any year;
- (d) A person whose employment is of a casual nature not included in the First Schedule 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
- (e) Any class or persons whom the [High Commissioner] may, by notice in the Cook Islands Gazette declare not to be workers for the purpose of this Ordinance:

"Member of an employer's family" means wife, husband, mother, father, son, daughter, brother, sister, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, half-brother, half-sister, legally adopted son, legally adopted daughter, illegitimate son or grandson, illegitimate daughter or granddaughter, parent or grandparent of illegitimate child, and brothers and sisters of illegitimate person whether by same father and mother:

"Cook Islands Ship" means:-

- (a) Any ship which is owned by a person or body corporate whose chief office or place of business in respect of the management of the ship is in the Cook Islands, or any ship which is in the possession of any such person or body corporate by virtue of a charter;
- (b) Any ship which is owned by a body corporate established by the laws of the Cook Islands or having its principal office or place of business in the Cook Islands, 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 the Crown in respect of the Government of the Cook Islands or which is in the possession of the Crown in that respect by virtue of charter.

"Trade or Business" includes any trade, business,

or work carried on temporarily or permanently by or on behalf of an employer.

(2) If in any proceedings for the recovery of compensation under this Ordinance 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 purpose of section seventeen of this Ordinance 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 dependents or any of them, or such officer as the court may appoint to act on behalf of the dependents of the worker.

3. Administration of Ordinance - The [High Commissioner] may from time to time appoint such persons being members of the Cook Islands Public Service as he thinks fit to administer this Ordinance.

4. Application to workers employed by or under the Crown - This Ordinance shall apply to workers employed by or under the Crown in respect of the Cook Islands Government and the Government of New Zealand in the same way and to the same extent as if the employer was 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 otherwise than in Her Majesty's Government of the Cook Islands and of New Zealand.

#### PART I - COMPENSATION

5. Employer's liability for compensation for death or incapacity - (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the provisions of this Ordinance:  
Provided that:-

- (a) The employer shall not be liable under this Ordinance in respect of any injury which does not incapacitate the worker for a period of at least four days from earning full wages at the work at which he was employed; and
- (b) If it is proved that the injury to a worker is attributable to the serious and wilful misconduct of that worker any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(2) For the purposes of this Ordinance, an accident resulting in the death or serious and permanent incapacity of a worker shall be deemed to arise out of and in the course of his employment, notwithstanding that the worker was at the time when the accident happened acting in contravention of any statutory or other regulations 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 worker for the purposes of and in connection with his employer's trade or business.

(3) No compensation shall be payable under this Ordinance in respect of any incapacity or death resulting from a deliberate self-injury.

(4) No compensation shall be payable under this Ordinance in respect of any incapacity or death resulting from personal injury, if the worker 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.

6. Compensation in fatal cases - Where death results from the injury -

- (a) If the worker leaves any dependents wholly dependent on his earnings, the amount of compensation shall be a sum equal to thirty months' earnings or seven hundred and fifty pounds whichever is less:

Provided that in no case shall the amount of compensation under this paragraph be less than two hundred and fifty pounds:

Provided further that where in respect of the same accident compensation has been paid under the provisions of section five, section seven, or section eight there shall be deducted from the sum payable under this paragraph any sums so paid as compensation;

- (b) If the worker does not leave any dependents wholly dependent on his earnings, but leaves any dependents in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a) of this section, 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 worker leaves no dependants, the reasonable expenses of the burial of the deceased worker and the reasonable expenses of medical attendance on the deceased worker, not exceeding in all the sum of twenty pounds shall be paid by the employer.

7. Compensation in the case of permanent total incapacity - Where permanent total incapacity results from the injury the amount of compensation

shall be a sum equal to thirty six months' earnings or one thousand pounds which ever is less:

Provided that in no case shall the amount of compensation in respect of permanent total incapacity be less than two hundred and fifty pounds.

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 Second Schedule to this Ordinance 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 said 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 one 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 the degree of the incapacity.

Such periodical payments shall be, or shall be at the rate proportionate to, a weekly payment of two thirds the difference between the weekly earnings which the worker was earning at the time of the accident and the weekly earnings which he is earning or is capable of earning in some suitable employment or business after the accident:

Provided that:

- (a) No periodical payment under the provisions of this section shall be at a higher rate than eight pounds per week;
- (b) If the incapacity lasts more than four days, compensation shall be payable in respect of the total period of incapacity;
- (c) Neither the aggregate of the periodical payments, nor the lump sum payable under this sub-section shall exceed the lump sum which would be payable in respect of

the same degree of incapacity under the provisions of section seven or section eight, as the case may be, if the incapacity were permanent.

(2) In fixing the amount of the periodical payment the court shall have regard to any permanent allowance or benefit which the worker may receive from the employer during the incapacity.

(3) 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.

(4) Where a worker in receipt of periodical payments under the provisions of this section intends to leave the neighbourhood in which he was employed for the purposes of residing elsewhere he shall give notice of such intention to the employer who may agree with the worker for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments. If the employer and worker are unable to agree, the periodical payments shall continue.

(5) If a worker in receipt of periodical payments under the provisions of this section leaves the neighbourhood in which he was employed for the purposes of residing elsewhere without giving notice as provided in sub-section four of this section, he shall not be entitled to any benefits under this Ordinance during or in respect of the period of his absence. If the period of such absence exceeds six months, the worker shall cease to be entitled to any benefits under this Ordinance.

10. Compensation for occupational diseases - (1) If a worker within the twelve 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 worker 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 Ordinance 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 worker if that incapacity begins or that death happens as the case may be, more than twelve months after worker 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 sub-section shall not apply to the death of a worker 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 purpose of calculating the earnings of the worker in a claim for compensation under this section, the commencement of the incapacity of the

worker, 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 Ordinance the commencement of the incapacity of the worker, 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 two 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 anthrax, lead poisoning, mercury poisoning, phosphorous poisoning, arsenic poisoning, silicosis, X-ray radiation and any other diseases the [High Commissioner] may declare to be diseases within the operation of this Ordinance.

(7) Nothing in this section shall affect the right of any person to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this Ordinance.

11. Method of calculating earnings - (1) For the purpose of this Ordinance the weekly earnings of a worker shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated during the previous twelve 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 worker has been in the employment of his employer or 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 weekly amount which, during the twelve 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 weekly earnings of a casual worker employed as a stevedoring labourer, such worker shall be deemed to have been employed for not less than two full working shifts per week 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 sub-section, employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the accident, uninterrupted by absence from work due to illness of any other unavoidable cause.

(3) Where the worker had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his weekly 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 worker under the concurrent contracts shall be taken into account only so far as the worker is incapacitated from performing the concurrent contract.

(4) Upon request of the worker to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the weekly 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 worker, the employer shall furnish in writing the average weekly amount which, during the twelve 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 not 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 worker is at the time of the accident under the age of twentyone years, or is an apprentice or learner, and this incapacity, whether total or partial, is permanent, his weekly earnings at the time of the accident shall be deemed to be the weekly sum which he would probably have been able to earn if he had then attained the age of twentyone years or had completed his apprenticeship, or had ceased to be learner, as the case may be, being in no case less than three pounds ten shillings per week:

Provided that nothing in this sub-section shall extend to the compensation payable on the death of a worker.

12. Persons entitled to compensation - (1) The compensation shall be payable to or for the benefit

of the worker, or, where death results from the injury, to or for the benefit of his dependents as provided by this Ordinance.

(2) Where there are both total and partial dependents nothing in this Ordinance shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

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

13. Distribution of compensation - (1) Compensation payable where the death of a worker 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 worker or any of them in such proportion as the Court thinks fit, or, in the discretion of the Court, to be allotted to any one such dependent, and the sum so allotted to any dependent 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 Ordinance, it appears to the Court that, on account of the variation of the circumstances of the various dependents, or of any other sufficient cause, an order made under this sub-section 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 seven or section eight and lump sums payable under the provisions of section nine or ten shall be paid to the Court, and any sums 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) Any other compensation payable under this Ordinance may be paid to the worker or to the Court and when paid to the Court shall be paid by the Court to the person entitled thereto.

(5) The receipt of the Registrar of the Court shall be a sufficient discharge in respect of any amount paid to the Court under the provisions of this Ordinance.

(6) Any order or direction of the Court under this section shall be final and binding on the dependents of the deceased worker.

14. Requirements as to notice of accident and application for compensation - (1) Proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless

notice of the accident has been given by or on behalf of the worker as soon as practicable after the happening thereof and before the worker 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 the six months from the occurrence of the accident causing the injury or in the case of death, within six months from the time of death: 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 Ordinance shall be given as prescribed.

15. Employer to report the death of a worker -

(1) When the death of a worker from any cause whatever is brought to the notice of or comes to the knowledge of his employer the employer shall, as soon as practicable after the occurrence of the death, give notice thereof to the insurer. Such notice shall state circumstances of the death of the worker if they are known to the employer.

(2) An employer who fails to comply with the provisions of sub-section one of this section without reasonable cause shall be liable to a fine not exceeding fifty pounds.

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

16. Medical examination and treatment - (1) Where a worker has given notice of an accident the employer shall before the expiry of three days from the time at which notice has been given, have him examined free of charge by a medical practitioner. The worker must submit himself for such examination, and any worker who is in receipt of a periodical payment under section nine of this Ordinance shall, if so required, submit himself for such examination from time to time.

(2) The worker shall, when required, attend upon the medical officer at the time and place noti-

fied to the worker by the employer, insurer or that medical officer, provided such time and place is reasonable.

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

(4) If the worker fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place, and if such failure extends for a period of fifteen days from the date when the worker was required to submit himself for examination under sub-section two or sub-section three of this section, as the case may be, no compensation shall be payable, unless the Court is satisfied that there was reasonable cause for such failure.

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

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

(7) 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 worker for failure to attend on the medical officer.

(8) Notwithstanding the previous provisions of this section, where a claim for compensation is made in respect of the death of a worker, then if the worker failed to submit to examination by a medical officer when so required under the provisions of this section, or failed to submit himself for treatment by a medical officer when so required under the provisions of this section, or having submitted himself for such treatment disregarded the instructions of such medical officer, and if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the death of the worker 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.

(9) Where the employer has not at his own expense made suitable arrangements for medical or surgical attendance in respect of an injured workman, the worker shall, in addition to the compensation payable under section seven, eight, nine or ten of this Ordinance, be entitled to a sum equal to the reasonable expenses incurred by him for medical or surgical attendance in respect of his injury, but not exceeding twelve pounds.

17. Agreement as to compensation - (1) The insurer and worker, may, 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 insurer. Such agreement shall be in duplicate, one copy to be kept by the insurer and one copy to be kept by the worker:-

- (a) The compensation agreed upon shall not be less than the amount payable under the provisions of this Ordinance; and
- (b) Where the worker is unable to read the agreement and to appreciate the effect thereof the agreement shall not be binding against him unless it is endorsed by a certificate of a Registrar or Deputy Registrar of the Court to the effect that he read over and explained to the worker the terms thereof and that the worker appeared fully to understand and approved of the agreement.

(2) Any agreement made under sub-section one of this section 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 sub-section, on application by any party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the Court may think just, if it is proved that the agreement was entered into in ignorance of or under a mistake as to the true nature of the injury.

18. Determination of claims - If the insurer on whom notice of the accident has been served under section fourteen does not within fourteen days after the receipt of the notice agree in writing with the worker as to the amount of compensation to be paid, the worker may, in the prescribed form and manner, make an application for enforcing his claim to compensation to the Court.

19. Review - (1) Any periodical payment payable under this Ordinance, 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 insurer or of the worker:

Provided that where the application for review is based on a change in the condition of the worker, any

such application shall be supported by a certificate of a medical practitioner.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Ordinance, 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 seven or section eight, as the case may be, less any amount which he has already received by way of periodical payments.

(3) Where application is made by the insurer 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 insurer 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 worker as affected by the accident.

20. Limitation of power of insurer to end or decrease periodical payments - Subject to the provisions of sub-section five of section nine, sub-section four of section sixteen, and sub-section three of section nineteen the insurer 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 worker resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or

(ii) Where a worker dies:

(b) To diminish periodical payments except -

(i) Where a worker in receipt of periodical payments in respect of total incapacity has actually returned to work; or

(ii) Where the earnings of a worker in receipt of periodical payments in respect of partial incapacity have actually been increased.

21. Jurisdiction of the Court - Save as is provided in this Ordinance 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 jurisdictions exercisable by it in or in connection with civil actions 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.

22. Remedies against both employer and stranger -  
Where the injury in respect of which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof -

- (a) The worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Ordinance for such compensation but shall not be entitled to recover both damages and compensation, and
- (b) If the worker has recovered compensation under this Ordinance, the person by whom the compensation was paid shall be entitled to be indemnified as regards the amount of compensation including costs, by the person so liable to pay damage 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.

23. Proceedings independently of the Ordinance -

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

Provided that -

- (a) A judgment in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom or on whose behalf such proceedings were taken in respect of the same injury under this Ordinance;
- (b) A judgment in proceedings under this Ordinance whether for or against the employer shall be a bar to proceedings at the suit of any person by whom or on whose behalf such proceedings were taken in respect of the same injury independently of this Ordinance;
- (c) An agreement come to between the insurer and the worker under the provisions of sub-section one of section seventeen shall be a bar to proceedings by the worker in respect of the same injury independently of this Ordinance.

(2) If in proceedings independently of this Ordinance it is determined that the employer is not liable under such proceedings, the Court in which such proceedings are taken shall, if the plaintiff so chooses, proceed to determine whether compensation under this Ordinance 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 have been incurred by the employer by reason of the proceedings having been taken independently of this Ordinance.

24. Bankruptcy of employer - (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Ordinance to any worker, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up 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 debenture 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 worker, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the worker than they would have been under to the employer.

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

25. Contracting out - Any contract or agreement, whether made before or after the commencement of this Ordinance, whereby a worker 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 Ordinance:

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

26. Compensation not to be alienable - Compensation payable under this Ordinance 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.

27. Indemnity of employer in certain cases - Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the employer to



pay damages in respect thereof, the person by whom the compensation is paid or payable, whether directly or by way of an indemnity, shall be entitled to be indemnified by the person so liable to pay damages to the extent of his liability to pay the same.

PART II - EMPLOYERS LIABILITY INSURANCE

28. Compulsory insurance - (1) Every person being the employer of any worker or workers shall insure against his liability to pay compensation under this Ordinance.

(2) Every contract of insurance shall be made with the insurer defined in this Ordinance.

(3) The insurer may undertake the settlement of any claim arising from injury to or the death of a worker and may take over and have the conduct and control on behalf of the employer of any proceedings to enforce any such claim or for the settlement of any question arising with reference thereto, and may defend or conduct any such proceedings in the name of the employer and on his behalf, and shall indemnify the employer against all costs and expenses of and incidental to any such proceedings.

(4) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made by the [High Commissioner] under this section for all of the following purposes:

- (a) Prescribing forms for the purposes of this Ordinance, the particulars to be inserted therein, and the method of completing and delivering the same;
- (b) Prescribing modes of giving notices of assessments and other notices and of delivering or serving other documents;
- (c) Providing for the payment, collection and enforcement of premiums;
- (d) Providing for the records to be kept and the returns to be made by employers and prescribing particulars to be inserted therein.

(5) Every person who commits an offence against this section of the Ordinance shall be liable on summary conviction to a fine not exceeding one hundred pounds.

29. Workers Compensation Fund - (1) The Treasurer of the Cook Islands shall keep an account of the premiums and levies imposed under this Ordinance in a separate account known as the Workers Compensation Fund.

(2) The fund shall be administered and applied by the [High Commissioner] in accordance with this Ordinance.

30. Provision where insurer contests claim - Where the insurer indemnifies an employer against his liability for accidents to workers under this Ordinance and has used or uses the employer's name or

has acted on his behalf in any action or proceedings in Court, that insurer shall be bound by the decision of the Court in the same manner and to the same extent as the employer, and shall indemnify him accordingly:

Provided that the liability of the insurer shall be limited by the terms and conditions of the indemnity.

31. Uninsured employers deemed to be insured -

(1) Where any employer is not insured against his liability to pay compensation under this Ordinance the employer shall be deemed to be insured by the insurer.

(2) In addition to any other liability, every employer who makes default in insuring against his liability to pay compensation under this Ordinance shall be liable to repay to the insurer all amounts paid by the insurer as the insurer of the employer and any costs or expenses incurred in connection therewith.

32. Employers to keep records - Every employer shall in respect of all his workers keep records of wages and time worked, and such other particulars as may be prescribed by regulations.

33. Production of books and documents - Every person shall from time to time as required by the insurer, furnish in writing any information or produce any books or documents relating to any wages paid, or any statement of wages, or any assessment, or any claims made by workers or their dependents (whether paid or outstanding), which may be in the knowledge, possession, or control of that person.

34. Offences - (1) Every person commits an offence against this Part of this Ordinance who:

- (a) Refuses or fails to deliver or furnish or give any statement, return, notice, or information as and when required by this Part of this Ordinance or any regulations made for the purposes thereof, or as and when reasonably required by his insurer; or
- (b) Fails to keep records as required by this Part of this Ordinance or any regulations made for the purposes thereof; or
- (c) Wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead his insurer in relation to any matter or thing affecting his own or any other person's liability to pay premiums under this Part of this Ordinance, or in relation to any matter or thing affecting any claim which is being made or which has been made, whether by himself or by any other person, against an employer and in respect of which the employer is insured under this Part of this Ordinance;
- (d) Refuses or fails without lawful justification to attend and give evidence as

and when required by his insurer or to answer any question put to him or to produce any book or document required by him; or

- (e) Resists or obstructs any person acting in the discharge of his duties or in the exercise or attempted exercise of his powers under this Part of this Ordinance; or
- (f) Commits any offence against regulations made for the purposes of this Part of this Ordinance; or
- (g) Aids, abets, or incites any other person to commit any offence against this Part of this Ordinance or against any regulations made for the purposes thereof.

(2) Every person who commits an offence against this Part of this Ordinance shall be liable on summary conviction to a fine not exceeding one hundred pounds.

35. Penalties for evasion - (1) If any person evades, or attempts to evade, or does any act with attempt to evade, or makes default in the performance of any duty imposed on him by this Part of this Ordinance or any regulations made for the purposes of this Part of this Ordinance with attempt to evade, the liability for any sum properly payable by him as premium or otherwise to his insurer (which sum is in this section referred to as the deficient premium), he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and he shall also be chargeable with an additional sum (in this section referred to as the penal charge) not exceeding twice the amount of the deficient premium.

(2) An assessment of the penal charge may be recoverable at any time, whether before or after the deficient premium has been assessed or has been paid.

(3) The penal charge shall for all purposes be deemed to be of the same nature as the deficient premium and shall be assessed by the employer's insurer in the same manner, as far as may be, as the deficient premium but separately therefrom.

#### PART III - MISCELLANEOUS

36. Offences - Every person commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding twelve months who, for the purpose of obtaining any payment or benefit or avoiding any obligation for himself or for any other person under this Ordinance, makes any false statement to or otherwise misleads or attempts to mislead any other person, whether or not that other person is concerned in the administration of this Ordinance.

37. Regulations - The [High Commissioner] may from time to time by notice in the Cook Islands Gazette, make all such regulations as may, in his opinion be

necessary or expedient for giving full effect to the provisions of this Ordinance and for the due administration thereof.

[The Employers' Liability Insurance Regulations 1965 have been printed verbatim immediately after this Ordinance]

[In this Ordinance the words "High Commissioner" were substituted for the words "Resident Commissioner" by S.3(4) of the Cook Islands Amendment Act 1965.]

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## S C H E D U L E S

### FIRST SCHEDULE - OCCUPATIONS

#### S.2(1)

The making of any excavation in which on any one day of the preceding twelve months explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet; the cutting of standing timber including the cutting of scrub and clearing land of stumps and logs; the construction or demolition of any building or of any structure which is ten feet or more in height from its lowest to its highest point; the manufacture or handling or use of any explosives; the charge or use of any machinery in motion and driven by steam or other mechanical power; the driving of any vehicle including a tractor drawn or propelled by horse-power or mechanical power; domestic service in which the employment or engagement is for a period of not less than fourteen days; pearl diving; ship-loading and lightering of passengers and cargo; any occupation in which a worker incurs a risk of falling any distance exceeding twelve feet; spraying with toxic sprays.

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### SECOND SCHEDULE

#### S.2(1) and S.8(1)

Injury	Percentage of Incapacity.
Loss of two limbs	} 100
Loss of both hands or of all fingers, and thumbs	
Loss of both feet	
Total loss of sight	
Total paralysis	
Injuries resulting in being permanently bedridden	
Any other injury causing permanent total disablement	

SECOND SCHEDULE (Continued)

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 four fingers and thumb of one hand	42½
Loss of four fingers	35
Loss of thumb - both phalanges	35
One phalanx	10
Loss of index finger - Three phalanges	10
Two phalanges	8
One phalanx	4
Loss of middle finger - Three phalanges	6
Two phalanges	4
One phalanx	2
Loss of ring finger - Three phalanges	5
Two phalanges	4
One phalanx	2
Loss of little finger - Three phalanges	4
Two phalanges	3
One phalanx	2
Loss of metacarpals - First or second (additional)	3
Third, fourth, or fifth (additional)	2
Loss of leg - At or above knee	70
Below knee	40
Loss of foot	40
Loss of toes - All of one foot	15
Great, both phalanges	5
One phalanx	2
Other than great, if more than one toe lost, each	1
Loss of sight of one eye	30
Total loss of hearing	50

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

In the case of a right-handed workman, an injury to the left arm or hand and in the case of a left-handed workman, to the right arm or hand shall be rated at ninety per cent of the above percentages.