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SAMOA

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2003, No.7**AN ACT to amend the Accident Compensation Act 1989.***[17th June 2003]***BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Accident Compensation Amendment Act 2003 and shall be read with and form part of the Accident Compensation Act 1989 (the Principal Act).

(2) This Act may come into force in stages and shall commence on the day or days nominated by the Minister.

(3) Notices of commencement of the various provisions of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation - Section 2(1) of the Principal Act is amended:

(1) By deleting the definition of "Board" and inserting the following definition in correct alphabetical order:

""Corporation" means the Accident Compensation Corporation continued under section 4 of this Act and formerly known as the Accident Compensation Board;".

(2) By inserting the following definitions in correct alphabetical order:

""minimum wage" means the minimum wage for an industry prescribed pursuant to section 19 of the Labour and Employment Act 1972:

"relevant earnings" means the amount which in the opinion of the Corporation would fairly and reasonable represent the person's normal average weekly wages at the time of the accident:

"weekly wages" means:

(a) Where employment is by the hour, wages for a 40 hour week; or

(b) Where employment is by the day, wages for a 5 day week, and for both (a) and (b) such wages shall be calculated at the ordinary rate of pay for the work which the person was employed at the time of the accident notwithstanding that the person may not have worked or that any employment may not have continued for a full week;".

(3) By deleting the definition of "Specified Conveyance" and substituting the following:

"Specified Conveyance" means:

- (a) A motor vehicle (including a motor cycle or other means of conveyance on land which is propelled by means of a motor or engine); or
- (b) A seagoing vessel which is propelled by means of a motor or engine where such vessel is traveling between two or more points in Samoa or which is intended to return to its point of departure in Samoa without calling at any point or place outside Samoa during the course of its journey."

3. Change of name of the Accident Compensation Board

(1) The Principal Act is amended by deleting from the headings to all parts and sections and from all sections the word "Board" and substituting the word "Corporation".

(2) Section 4 of the Principal Act is amended by deleting subsection (1) and substituting the following:

"(1) There shall continue to be a body corporate called the Accident Compensation Corporation which shall be the same body corporate as the Accident Compensation Board and a reference to the Accident Compensation Board in any law, instrument or document shall be a reference to the Accident Compensation Corporation unless the context otherwise requires."

4. Annual Report, Audit and Consolidation of Accounts

(1) Subsection (2) of section 48 of the Principal Act is deleted and the following substituted:

"(2) The Corporation shall apply its funds as follows:

- (a) All levies paid pursuant to sections 52 and 53 shall be pooled and used to pay such compensation and rehabilitation as provided by this Act (save

for compensation and rehabilitation payable pursuant to section 64) together with the costs incurred by the Corporation in carrying out all functions and powers conferred on the Corporation by this Act save for the costs incurred by the Corporation in carrying out all functions and powers concerning section 64 of this Act;

- (b) All premiums or levies paid by self-employed persons under any scheme established pursuant to section 64 shall be used to pay compensation and rehabilitation together with the costs of the Corporation in carrying out all functions and powers concerning section 64;
- (c) All other monies received by the Corporation shall be used to meet the costs of the Corporation in carrying out all functions and powers conferred on the Corporation by this Act as the Corporation deems fit."

(2) Section 49 of the Principal Act is amended by inserting the following after the words "assets, liabilities and funds":

"in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001".

(3) Section 50 of the Principal Act is deleted and the following substituted:

"50. Annual Report and accounts-(1) The Corporation shall prepare an Annual Report and annual accounts in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(2) The Controller and Chief Auditor will audit the annual accounts of the Corporation in accordance with the

provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(3) The Corporation shall provide its Annual Report, annual accounts and the audit report of those accounts to the Responsible Minister in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001 (these Acts) and, upon receipt of the Annual Report, annual accounts and audit report on those accounts, the Responsible Minister shall table such reports and accounts in accordance with the provisions of these Acts."

5. Extension of compensation and rehabilitation cover for workers - Section 16 of the Principal Act is amended by inserting the following after subsection (1):

"(1A) Subject to the provisions of this Act, a worker who suffers an injury or death, other than an injury or death arising out of and in the course of the worker's employment, and the worker's dependants shall be entitled to the same compensation and rehabilitation as they are respectively entitled to under subsection (1)."

6. Self inflicted injuries, suicide and criminal conduct - Section 19 of the Principal Act is deleted and the following substituted:

"19. Self inflicted injuries, suicide and criminal conduct-(1) Subject to subsection (4), no compensation or other benefit shall be payable or due under this Act:

- (a) In respect of any personal injury that a person willfully inflicts upon himself or with intent to injure himself, causes to be inflicted upon himself, except being a personal injury which was the result of a state of mind which itself was the result of an accident covered by this Act; or

- (b) In respect of the death of any person where the death was due to suicide not being suicide which was the result of a state of mind which itself was the result of an accident covered by this Act; or
- (c) To a dependant of a person by reason of the death of that person where the dependant has been convicted by a Court in Samoa or elsewhere of the murder or manslaughter of that person; or
- (d) Where a person suffers personal injury in the course of committing any criminal offence and the injured person is convicted of the offence concerned.

(2) Where the Corporation has reason to suspect that the death of any person is due to murder or manslaughter and that a dependant of the deceased person was criminally involved in the death of the person, the Corporation may refuse or delay payment of compensation or other benefit to that dependant until the investigation of the death of the person and any prosecution of the dependant for the murder or manslaughter of the person have been completed.

(3) Where the Corporation has paid compensation or other benefit to a dependant and such compensation or benefit was paid by reason of the death of a person the Corporation may recover such compensation or other benefit as a debt in the event that at any time the dependant is convicted by a Court in Samoa or elsewhere of the murder or manslaughter of the person.

(4) The Corporation, in its absolute discretion, may pay compensation and other benefits to a person who is not entitled to compensation or other benefit by reason of subsection (1)(d) if the Corporation forms the view that the person's culpability for such criminal offence was minor and that in all of the circumstances it would be unjust not to pay such compensation and other benefits.

7. Compensation for temporary incapacity resulting in economic loss - Section 23 of the Principal Act is deleted and the following substituted:

"23. Compensation for temporary incapacity resulting in economic loss-(1) Where as a result of an accident covered by this Act a person suffers temporary total or partial incapacity for work, compensation shall be payable pursuant to this section.

(2) Subject to subsections (3), (4), (6) and (7) of this section -

- (a) During any period of total incapacity, the weekly payment of compensation shall be an amount equal to 70% of the person's relevant earnings;
- (b) During any period of partial incapacity, the weekly payment of compensation shall be an amount equal to 70% of the difference between the person's relevant earnings and the amount which the person actually earns;

Provided that -

(i) if the Corporation considers, having regard to the medical and other evidence before it, that the person is not endeavouring to work in paid employment to the extent of the person's capacity, the Corporation may determine the amount of the weekly compensation at such figure as it considers appropriate; and

(ii) in no case shall the compensation payable exceed \$400 per week; and

(iii) in no case shall the Corporation be required for any period to pay any amount which, when added to any money or money's worth received by the person from any employer, would exceed 100% of the person's relevant earnings for that period.

(3) Notwithstanding any other provision of this section or of this Act, if at any time, whether before or after the expiry of the time referred to in subsection (4) of this section, the Corporation is of opinion that the degree of incapacity suffered by a person to whom this section applies

is likely to be permanent, weekly payments under this section shall (if they have not already ceased by virtue of subsection (4)) thereupon cease and the person shall be paid compensation pursuant to section 24 of this Act.

(4)(a) Subject to paragraph (b) of this subsection weekly payments of compensation shall not be payable in respect of any period after the expiry of five years from the date of the accident;

(b) Notwithstanding the provisions of paragraph (a) of this subsection, where in the opinion of the Corporation special circumstances in any case make it just to do so, the Corporation may in its unfettered discretion (whether before or after the expiry of the period of five years referred to in that paragraph) from time to time extend the period in respect of which compensation is paid under this section to any person.

(5) The proportion of the weekly payment of compensation payable in of incapacity for part of a week shall be the proportion that the number of the person's working hours or days of incapacity during the week (exclusive of overtime) bears to such person's normal working hours or days for the week (excluding overtime).

(6) The Corporation shall not be liable under this Act in respect of any injury which does not totally or partially incapacitate a person from work for a period of at least five consecutive days (which may be the day of the accident and the four days next following) at the work at which the person was employed.

Provided however that if the incapacity lasts more than five consecutive days compensation shall (subject to the provisions of subsection (5) of this section) be payable in respect of the total period.

(7) For the purposes of the assessment of weekly compensation pursuant to this Act -

- (a) The amount of a person's relevant earnings shall be such amount as in the opinion of the Corporation would at the time of the accident fairly and reasonably represent that person's normal average weekly wages; and
 - (b) The weekly wages of any person shall be deemed to be the wages for a full 40 hour week where employment is by the hour, or for a 5 day working week where employment is by the day, calculated in either case at the ordinary rate of pay for the work in which the person was employed at the time of the accident notwithstanding that the person may not have actually worked or that any employment may not have continued for a full week.
- (8) In calculating the relevant earnings of any person, except to the extent that the Corporation in its discretion may in any case direct, no account shall be taken of -
- (a) Any sum that was paid to cover any special expenses imposed on the person by the nature of the person's employment; and
 - (b) Overtime payments.
- (9) Notwithstanding the provisions of the foregoing subsections of this section the weekly compensation payable to any person pursuant to this section shall be not less than 70 percent of the minimum wage applicable to that person at the time of the accident or an amount equal to the person's relevant earnings, whichever is the less."

8. Permanent injury compensation - Section 24 of the Principal Act is deleted and the following substituted:

"24. Permanent injury compensation-(1) Where a person suffers personal injury by accident in respect of which the person is or, but for the provisions of section 36 of this Act, would be entitled to compensation under this Act and the injury involves the permanent loss or

impairment of any bodily function (including the loss of any part of the person's body) there shall be paid to the person by the Corporation in addition to all other compensation and assistance to which the person is entitled under this Act -

- (a) In any case where the loss or impairment is less than 80% of total bodily function a lump sum or lump sums not exceeding in the aggregate \$8,000 in respect of such loss or impairment representing the appropriate percentage of \$8,000 specified in the First Schedule to this Act; or
 - (b) In any case where the loss or impairment is 80% of total bodily function or more weekly compensation in accordance with subsection (2) this section for the whole of the person's life, or until the person fully or substantially recovers from the loss or impairment.
- (2) The amount of weekly compensation payable pursuant to subsection (1)(b) of this section shall be determined by application of the following formula -

$$\frac{70}{100} \times \mathbf{RE} \times \mathbf{L}$$

Where **RE** represents the relevant earnings of the injured person and **L** is the percentage of loss or impairment specified in the First Schedule to this Act.

PROVIDED THAT in any case the total amount payable shall not in any case exceed \$400 per week.

(3) The lump sum or weekly compensation to which a person becomes entitled under this section shall be payable, or as the case may be, commence to be payable -

- (a) In the case of a person who is entitled to compensation under section 23 of this Act, when the entitlement (or any extended entitlement granted pursuant to subsection (4)(b) of section 23) ceases; or

(b) In any other case, when the Corporation is satisfied that the loss or impairment of bodily function is permanent.

(4) Where a person suffers by the same accident more than one of the injuries specified in the First Schedule to this Act the percentage of loss shall be aggregated but shall not exceed 100%.

(5) Where a person suffers the loss of or permanent physical injury to any part of the body or any permanent impairment of bodily function there may be taken into account in assessing compensation payable under this section the amount or any part of the amount previously paid or continuing to be payable to that person in respect of the loss of or any injury to that part of the body or any portion thereof under this section or under any corresponding former provision.

(6) For the purpose of eliminating doubt, it is declared that where a person in receipt of weekly payments under subsection (2) of this section suffers the loss of or permanent physical injury to any part of the body or any permanent impairment of bodily function as a result of a further accident the person may be entitled to a lump sum or, as the case may be, weekly payments, as a result of such further accident but in calculating weekly payments the aggregate of the losses or impairments shall be deemed not to exceed 100%.

(7) For the purposes of the First Schedule the permanent loss of the sight of one eye by a person who is already without the sight of the other eye shall be deemed to be the permanent loss of both eyes provided that there may be taken into account any payment by way of compensation which has previously been received by the person under this section or under any corresponding former provision in respect of the permanent loss of the sight of the other eye.

(8) Where as a result of an accident covered by this Act any person suffers a permanent physical injury or impairment that is not specified in the First Schedule to this

Act, the Corporation may in its discretion after consulting one or more registered medical practitioners allot an appropriate percentage to such injury or impairment and apply the provisions of this Act as if the injury or impairment had been specified in the said First Schedule, and such injury or impairment shall be deemed to be a loss or impairment specified in the First Schedule.

(9) No payment shall be made under this section after the death of the injured person.

(10) For the purposes of this section where the injured person has no relevant earnings, or relevant earnings less than the minimum wage, the minimum wage applying at the time of the accident shall be deemed to be the relevant earnings of that person."

9. Compensation in the case of death - Section 26 of the Principal Act is deleted and the following substituted:

"26. Compensation in the case of death-(1) Where the death of a person eligible under Part III of this Act results from the injury, compensation shall be payable in accordance with this section.

(2) If the deceased person leaves any total dependant or dependants, or the deceased person leaves both total dependants and partial dependants, who were dependent upon the deceased at the time of the accident (or where subsection (6) of this section is applied by the Corporation, at the date of death) such dependants shall be paid -

(a) Where the deceased person was a worker at the time of the accident, weekly compensation at the rate of 70% of the relevant earnings of the deceased person but not exceeding \$200 per week, which compensation shall be paid in accordance with subsection (9) of this section; and

(b) Whether or not the deceased person was a worker, a lump sum in accordance with subsections (7) and (9) of this section.

(3) Where no person was totally dependent on the deceased person at the date of the accident (or where subsection (6) of this section is applied by the Corporation, at the date of death) then any dependant or dependants who were partially dependent at the date of the accident (or at the date of death as the case may be) shall be paid -

(a) Where the deceased person was a worker at the date of the accident, weekly compensation at the rate of 70% of the relevant earnings of the deceased person but not exceeding \$200 per week, which compensation shall be paid as is reasonable and proportionate to the loss sustained by those dependants provided that the weekly amount payable to any partially dependent person may be varied from time to time by the Corporation;

(b) Whether or not the deceased person was a worker, a lump sum in accordance with subsections (7) and (9) of this section.

(4) Where in the opinion of the Corporation a person who was totally dependent on the deceased person at the time of the deceased person's accident (or where subsection (6) of this section applies, at the time of the deceased person's death) would at any time after the death of the deceased person have become partially dependent upon the deceased person had the deceased person remained alive the Corporation may reduce the amount of the weekly payments to that person to an amount which is reasonable having regard to the reduced level of dependency, and may restore that person's full entitlement if such total dependency reoccurs.

(5) Weekly payments of compensation under this section shall be paid to a dependent person during such time or times as in the opinion of the Corporation dependency exists, provided that in no case shall any payment extend beyond the fourth anniversary of the date of death of the deceased person.

(6) Where in the opinion of the Corporation special circumstances exist it may pay weekly compensation in accordance with this section to a person who not being dependent on the deceased at the time of the accident was dependent upon the deceased at the time of the deceased's death and may in like circumstances decline or reduce compensation to a person who being dependent upon the deceased at the date of the deceased's accident was not or not to the same extent dependent upon the deceased at the date of the deceased's death.

(7) The lump sum to be paid in accordance with subsection (2) of this section shall be the sum of \$20,000, or in accordance with subsection (3) of this section shall be such sum not exceeding \$16,000 as the Corporation shall determine.

(8) In every case where a lump sum or weekly payments of compensation have been paid to a person in the person's lifetime in respect of an accident which subsequently causes the person's death the amount of such lump sum and weekly payments shall be deducted from the compensation payable pursuant to paragraphs (a) and (b) of subsection (2) or paragraphs (a) and (b) of subsection (3) of this section but except as aforesaid no part of any amount paid to a person by way of compensation under this Act shall be deducted from the amount of compensation payable in respect of the person's death.

(9) Where more than one person was dependent upon the deceased the Corporation shall, subject to the provisions of subsections (2) and (3) of this section, determine as to whom and in what proportions weekly compensation and the lump sum shall be paid.

(10) Where the relevant earnings of a deceased worker are less than the minimum wage, the relevant earnings for the purposes of this section shall be deemed to be the minimum wage in force at the time of the person's accident."

10. Medical and funeral expenses - Section 27 of the Principal Act is deleted and the following substituted:

"27. Medical and funeral expenses-(1) Where as a result of an accident covered by this Act a person suffers injury there shall be payable a sum equal to the reasonable expenses incurred in respect of the person's medical or surgical attendances, including first aid, maintenance as a patient in any hospital, and physiotherapy.

(2) Where the death of a person results from an accident covered by this Act -

- (a) There shall be payable in addition to any other compensation payable under the Act the sum of \$2,000 by way of funeral grant;
- (b) Subject to paragraphs (c) and (d) of this subsection the Corporation shall determine the person or persons to whom such grant is to be paid and may apportion it between different persons;
- (c) Where a parent or spouse of the deceased person survives the deceased person the funeral grant shall be paid to such one or more of the parents and spouse as the Corporation may determine of them and shall give preference to any surviving spouse of the deceased person;
- (d) Where no such parent or spouse survives the deceased person the Corporation shall determine the person or persons to whom the grant shall be paid."

11. Provision of artificial limb or aid - Section 28 of the Principal Act is amended by inserting after the words "normal repair or renewal" the following words:

", provided that the total amount payable under this section shall not exceed \$15000".

12. Treatment overseas in special cases - Section 33 of the Principal Act is amended by deleting the amount "\$4000" and substituting the amount "\$15,000".

13. Notification of accidents - Section 37 of the Principal Act is amended by inserting after subsection (2) the following:

"(3) Whenever a worker has an accident, other than an accident referred to in subsections (1) and (2), which causes personal injury to or the death of the worker, the worker or where the worker is unable by reason of the accident a relative or dependant of the worker, shall within 5 days of the date of the accident or within such further period as may be allowed by the Corporation give notice in writing to the Corporation stating:

- (a) The name, address and age of the worker;
- (b) The name and address of the worker's employer;
- (c) The wages paid to the worker;
- (d) The place, time and circumstances of the accident;
- (e) Particulars of the worker's injury and probable duration of any disablement resulting from the accident; and
- (f) Such other particulars as may be prescribed by regulations."

14. Review - Section 43 of the Principal Act is amended:

(1) by deleting subsection (2) and inserting the following:

"(2) In hearing an application for review under this section the Corporation:

- (a) May delegate its powers and duties of review to a single Corporation Member or the General Manager where the matter the subject of review involves a claim for less than \$10,000; and
- (b) Shall itself hear the application in all other cases."

(2) By inserting the following after subsection (10):

"(11) Where the Corporation delegates its powers and duties of review under this section the person to whom such powers and duties of review are delegated shall be entitled

to exercise the powers and duties of the Corporation under this section and any decision, direction, action or omission by such person shall be taken for all purposes as a decision, direction, action or omission of the Corporation."

15. Levies - Section 52(1) of the Principal Act is deleted and the following substituted:

- "(1) Every employer shall pay a levy as follows:
- (a) By way of contribution by the employer a levy of 1 sene for every complete tala of wages paid by the employer to the employer's workers; and
 - (b) By way of contribution by the employee a levy of 1 sene out of every complete tala of wages received by the employer's workers."

16. Financial functions and powers - Section 56 of the Principal Act is amended:

- (a) By deleting all words following the words "be economically appropriate." in subsection (2)(e); and
- (b) In subsection (7) by deleting the amount "\$5000" and substituting the amount "\$20,000"; and
- (c) By deleting subsection (8) and substituting the following:

"(8) For the purposes of this section "approved bank" includes ANZ Bank, National Bank of Samoa, Westpac Bank and any bank or lending institution approved by the Corporation."

17. General Manager - Section 58 of the Principal Act is amended by deleting the word "Manager" wherever it appears and substituting the words "General Manager".

18. Staff Benefits - Section 59 of the Principal Act is deleted and the following substituted:

"59. Staff Benefits - The Corporation may, with the approval of the Minister responsible for the Corporation and the Financial Secretary, provide assistance and other benefits (other than salaries and remuneration provided for in section 58) for officers, employees and directors of the Corporation."

19. Secrecy - Section 60 of the Principal Act is amended by deleting the number "56" and substituting the number "58".

20. Unclaimed compensation - Section 69 of the Principal Act is amended by deleting the number "12" wherever it appears and substituting the number "6".

21. Penalties - The Principal Act is amended as follows:

- (a) By deleting the figure "\$200" from section 31 (3) and substituting the words "10 penalty units";
- (b) By deleting the figure "\$500" from section 42(3) and substituting the words "10 penalty units";
- (c) By deleting the figure "\$1000" from section 46(3) and (5) and substituting the words "20 penalty units";
- (d) By deleting the figure "\$2000" from section 52(4) and (6) and substitute the words "50 penalty units";
- (e) By deleting the words "6 months or to a fine not exceeding \$500" from section 60(2) and substituting the words "12 months or to a fine not exceeding 20 penalty units, or both."; and
- (f) By deleting the figure "\$1000" wherever it occurs in section 72 and substituting the words "60 penalty units".

22. Further savings and transitional arrangements - The Principal Act is amended by inserting the following after section 74:

"75. Further savings and transitional arrangements-

(1) All things lawfully done by or in the name of the Accident Compensation Board as at the date of commencement of the Accident Compensation Amendment Act 2003 are saved.

(2) The Corporation shall be entitled to the benefit of and be subject to all laws, contracts, entitlements, agreements, actions, prosecutions, legal proceedings, liabilities, obligations and other arrangements which the Accident Compensation Board was lawfully entitled to or subject to, as the case may be, as at the commencement of the Accident Compensation Amendment Act 2003.

(3) All criminal and civil proceedings involving or affecting the Accident Compensation Board as at the commencement of the Accident Compensation Amendment Act 2003 are saved and, despite the provisions of this Act and the Accident Compensation Amendment Act 2003, such proceedings may continue and be completed in accordance with the provision of this Act as if the Accident Compensation Amendment Act 2003 had not commenced.

(4) All levies, charges, debts and other monies lawfully owing to the Accident Compensation Board as at the commencement of the Accident Compensation Amendment Act 2003 are saved and shall be recoverable by and in the name of the Corporation under the provisions of this Act.

(5) All accidents and other compensable events which occurred prior to the date of commencement of the Accident Compensation Amendment Act 2003 shall be dealt with and decided in accordance with the provisions of the Accident Compensation Act 1989 as if the Accident Compensation Amendment Act 2003 had not become law and all accidents and other compensable events which occur from the date of commencement of the Accident Compensation Amendment Act 2003 shall be dealt with and decided in accordance with the provisions of the Accident Compensation Act 1989 as amended by the Accident Compensation Amendment Act 2003."

23. Schedule - The First Schedule of the Principal Act is amended by:

- (a) Deleting the amount "\$4000" and substituting the amount "\$8000"; and
 - (b) By deleting from item 3 Total loss of a thumb the figure "52" and substituting the figure "38"; and
 - (c) By deleting from item 3 Total loss of distal segment of a thumb the figure "35" and substituting the figure "25".
-