

CHAPTER 11:16

WAR VICTIMS COMPENSATION ACT

Acts 22/1980, 31/1983 (s. 25), 33/1984 (s. 8), 24/1987 (s. 15), 13/1988, 18/1989 (s. 30), 20/1994 (s. 17), 12/1997, (s. 8), 6/2000 (s. 151), 22/2001 (s. 4); 6/2005 (s. 17); S.Is. 241/1982 (s. 7), 174/1984.

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AN ACT to provide for the payment of compensation in respect of injuries to or the death of persons caused by the war; and to provide for matters incidental to or connected with the foregoing.

[Date of Commencement: 14th November, 1980.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the War Victims Compensation Act [*Chapter 11:16*].

2 Interpretation

(1) In this Act—

“appeal” means an appeal to the Minister in terms of section *twenty-nine*;

“child”, in relation to a disabled person or deceased person, means an unmarried legitimate or legitimated son or daughter of that person, including a posthumous child, a step-child or a child legally adopted, which son or daughter—

(a) has not attained the age of nineteen years and is or was at the date of the injury to or death of that person dependent upon him for support; or

(b) is, in terms of a declaration made in terms of subsection (2), a child for the purposes of this Act;

“claimant” means a person by whom or on whose behalf a claim for compensation is made in terms of section *five*;

“Commissioner” means the Commissioner of War Victims Compensation referred to in section *three*;

“compensation” means any compensation, pension, allowance or other benefit, including medical aid, which is payable or provided for under this Act;

“deceased person” means a deceased person in respect of whose death compensation is payable in terms of this Act;

“degree of disablement” means the degree of disablement due to an injury expressed as a percentage of total disablement which shall be taken as one hundred *per centum*;

“dependant”, in relation to a deceased person, means—

(a) a child or widow of that deceased person; or

(b) any person not referred to in paragraph (a) who was wholly or partly maintained by that deceased person at the date of his death or of the injury which caused his death and for a reasonable period before that date;

“disabled person” means a person suffering from disablement in respect of which compensation is payable in terms of this Act;

“disablement” means disablement for employment or permanent injury or disfigurement;

“disablement pension” means a pension payable in terms of section *eight*;

“earnings”, in relation to a deceased person or disabled person, means the annual rate of earnings of that person as assessed by the Commissioner in terms of section *twenty-four* or *twenty-eight* as the case may be;

“injury” means—

(a) ill-health, physical or mental incapacity or personal injury; or

(b) an aggravation to a material extent of pre-existing ill-health, physical or mental incapacity or personal injury;

“medical board” means a medical board appointed in terms of section *twenty-seven*;

“medical practitioner” means—

- (a) a person who is registered under the Health Professions Act [*Chapter 27:19*] as a medical practitioner; or

[Paragraph as amended by section 4 of Act 22 of 2001]

- (b) in the case of a person who practises outside Zimbabwe, a person who is qualified in medicine and approved by the Secretary of the Ministry responsible for health for the purposes of this Act;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“occupation” —

- (a) includes a profession, calling or trade; or

- (b) means service as a combatant that qualifies the combatant as a war veteran in terms of the War Veterans Act [*Chapter 11:15*];

[Definition substituted by section 17 of Act 6 of 2005]

“pension” means an annual pension payable during the lifetime of the recipient unless, in terms of this Act, it is payable for a shorter period;

“repealed law” mean the Victims of Terrorism (Compensation) Act [*Chapter 340 of 1974*] or the Indemnity and Compensation Act, 1975 (No. 45 of 1975);

“the war” means the armed conflict which occurred in Zimbabwe and in neighbouring countries between the 1st January, 1962, and the 29th February, 1980, in connection with the bringing about of, or resistance to, political and social change in Zimbabwe.

(2) The Commissioner may declare any unmarried person who—

- (a) is an apprentice or artied clerk or otherwise undergoing training and has not attained the age of twenty-one years; or

- (b) is incapable of earning a livelihood through mental or physical infirmity which arose before he or she attained the age of nineteen years;

and who is the legitimate or legitimated son or daughter, including a posthumous child, a step-child or a child legally adopted, of a disabled person or a deceased person to be a child for the purposes of this Act, and such son or daughter shall be regarded for the purposes of this Act as a child of the disabled person or the deceased person until such time as—

- (i) in the case of a person referred to in paragraph (a), he or she attains the age of twenty-one years or ceases to undergo the training, as the case may be; or

- (ii) the Commissioner revokes his declaration; whichever is the earlier.

(3) Any reference in this Act to the date of injury of a disabled person or deceased person means the date upon which the disabled person or deceased person received the injury which caused his disablement or death or the date upon which the injury first manifested itself, as the case may be:

Provided that, if that date is not established to the satisfaction of the Commissioner, the Commissioner shall, having regard to all the evidence submitted and, if the Commissioner considers it to be necessary or desirable, after considering the report of a medical board, determine the date of injury of the disabled or deceased person, as the case may be, for the purposes of this Act.

(4) For the purposes of this Act, pre-existing ill-health, physical or mental incapacity or personal injury of a person shall be deemed to have been aggravated to a material extent by a subsequent injury if, where the degree of disablement which would have been applicable had the whole of the condition of the person concerned been caused by that subsequent injury (hereafter in this subsection called his full degree of disablement) is—

- (a) less than twenty *per centum* the aggravation in his condition constitutes a degree of disablement of five *per centum* or more which is not less than one-half of his full degree of disablement;

- (b) twenty *per centum* or more, the aggravation in his condition constitutes a degree of disablement of not less than ten *per centum*.

(5) For the purposes of this Act, persons shall be deemed to be married or to have been married if—

- (a) during the war and either inside or outside Zimbabwe they entered into a marriage, form of marriage or intended marriage and were prevented by circumstances arising as a result of the war from having their marriage, form of marriage or intended marriage registered, recorded or solemnized by any governmental or religious authority in the country in which it was entered into; or

- (b) their marriage, form of marriage or intended marriage was entered into according to customary law, notwithstanding that it was not a valid marriage in terms of section 3 of the Customary Marriages Act [*Chapter 5:07*];

and any children born of such marriage, form of marriage or intended marriage shall be deemed to be legitimate.

PART II

COMMISSIONER OF WAR VICTIMS COMPENSATION

3 Commissioner of War Victims Compensation and his powers

(1) There shall be a Commissioner of War Victims Compensation whose office shall be a public office and shall form part of the Public Service.

(2) The Commissioner shall have the powers and perform the duties conferred or imposed upon him by this Act.

(3) For the purpose of investigating any claim for compensation or any matter in connection therewith, the Commissioner shall have the power—

- (a) to subpoena witnesses to give evidence before him or to produce any document to him;
- (b) to administer oaths and take evidence on oath, and make such other investigations as he considers necessary;
- (c) to examine or cause to be examined by such person as he may authorize thereto any records or documents kept by a claimant or a disabled person.

(4) The Commissioner may, with the consent of the Minister, delegate to officers in the Public Service, either absolutely or subject to conditions, such of the powers and duties conferred or imposed upon him by this Act as he thinks fit, and may withdraw any such delegation.

(5) Where the Commissioner has delegated any power or duty to an officer in terms of subsection (4)—

- (a) subject to any conditions fixed by the Commissioner, the officer may exercise the power or, as the case may be, shall perform the duty, in all respects as if he were the Commissioner; and
- (b) the Commissioner may, notwithstanding the delegation, himself exercise the power or perform the duty.

PART III

APPLICATION OF ACT AND CLAIMS FOR AND ENTITLEMENT TO COMPENSATION

4 Application of Act

This Act shall apply in respect of—

- (a) any injury to a person the date of which was before the 1st March, 1980;
- (b) the death of a person caused by an injury referred to in paragraph (a);

where—

- (i) such injury was caused directly or indirectly by the war; and
- (ii) such person was, at the time he sustained such injury, a citizen of Zimbabwe;

Provided that if the Minister by written notice to the Commissioner so directs, this Act shall apply to such a person even if he was not a citizen of Zimbabwe at the time he sustained the injury.

[Proviso inserted by section 8 of Act 12 of 1997]

5 Claims for compensation

(1) A claim for compensation may be made by or on behalf of any person who—

- (a) has sustained an injury referred to in section *four*; or
- (b) was a dependant of a person whose death was caused by an injury referred to in section *four*.

(2) Any person who claims compensation shall apply therefor in the prescribed manner and shall submit such evidence and information in support of his claim as may be prescribed or required by the Commissioner.

6 Consideration of claims and entitlements to benefits

(1) The Commissioner shall consider all claims for compensation made to him in terms of section *five* and, if he finds that the claimant—

- (a) is suffering from disablement which was caused by an injury referred to in section *four*; or
- (b) was a dependant of a person whose death was caused by an injury referred to in section *four*;

then, subject to this Act, the claimant shall be entitled to compensation.

(2) Payment of compensation in terms of this Act—

- (a) may be refused in any case where it is found by the Commissioner that the injury concerned was caused or aggravated or the death was caused by any serious negligence or serious misconduct on the part of the person in respect of whom the claim is made; and
- (b) shall be refused in respect of any injury or death which constitutes a valid claim in terms of the National Social Security Authority Act [*Chapter 17:04*] or any regulations regulating the conditions of service of employees of the State, or in respect of which a claim has been made in terms of a repealed law.

PART IV
COMPENSATION FOR DISABLEMENT

7 Assessment of degree of disablement

(1) The degree of disablement resulting from an injury shall, for the purposes of assessing compensation in terms of this Act, be assessed by the Commissioner and shall be—

- (a) in the case of a disability specified in the First Schedule, not less than the percentage specified in that Schedule in respect of that disability;
- (b) in the case of a disability not specified in the First Schedule, such percentage as may be assessed after considering the report of a medical practitioner employed by the State.

(2) In making a report for the purposes of paragraph (b) of subsection (1), the medical practitioner shall make a comparison of the condition of the disabled person with the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity in his disabled condition of the disabled person in his own or any other occupation.

(3) Where the disabled person has two or more disabilities which are the result of one or more injuries in respect of which compensation is payable, the degree of disablement shall be determined in relation to the combined disabilities and shall in no case exceed one hundred *per centum*.

(4) Notwithstanding subsection (1), if the Commissioner, by reason of the particular consequences of an injury in relation to the special nature of the occupation of a particular disabled person, considers the degree of disablement as determined in terms of subsection (1) or (3) to be inadequate, the Commissioner may increase the degree of disablement to such percentage, being not more than one hundred *per centum*, as he considers to be equitable in the special circumstances:

Provided that, if there is subsequently any material improvement in the earning capacity of the disabled person, the Commissioner may reduce or vary the assessment made under this subsection, but in no case shall the degree of disablement be reduced or varied to such an extent that it is less than the degree of disablement as determined in terms of subsection (1) or (3), as the case may be.

(5) If a disabled person is aggrieved by the determination of the Commissioner as to his degree of disablement, he may apply in writing to the Commissioner, within six months of the determination having been communicated to him, for the determination to be reviewed by a medical board.

(6) On receipt of an application in terms of subsection (5), the Commissioner may allow the application or refuse to allow the application, and it shall not be necessary for the Commissioner to give any reason for his decision.

(7) If the Commissioner allows an application in terms of subsection (6), he shall refer the matter to a medical board and—

- (a) the decision of the medical board shall be final;
- (b) the award of any disablement pension shall be adjusted accordingly with effect from such date and for such period as may be fixed by the medical board.

8 Disablement pension

(1) Subject to subsections (3) and (4) and section *nine*, a disabled person whose degree of disability is one hundred *per centum* shall be entitled to a disablement pension calculated as follows—

- (a) if the person carries on his normal occupation, an amount equal to the aggregate of—
 - (i) forty-five *per centum* of his earnings immediately prior to the date of his injury which are not in excess of seven thousand three hundred and ninety-three dollars per annum; and
 - (ii) thirty *per centum* of his earnings immediately prior to the date of his injury which are in excess of seven thousand three hundred and ninety-three dollars per annum and which are not in excess of fourteen thousand seven hundred and eighty dollars per annum;
- (b) if, in the opinion of the Commissioner, the person is compelled as a result of his disablement to change his normal occupation or to follow a lower standard of occupation, an amount equal to the aggregate of—
 - (i) ninety *per centum* of his earnings immediately prior to the date of his injury which are not in excess of three thousand seven hundred and sixty dollars per annum; and
 - (ii) sixty *per centum* of his earnings immediately prior to the date of his injury which are in excess of three thousand seven hundred and sixty dollars per annum and which are not in excess of seven thousand three hundred and ninety-three dollars per annum; and
 - (iii) fifty *per centum* of his earnings immediately prior to the date of his injury which are in excess of seven thousand three hundred and ninety-three dollars per annum and which are not in excess of fourteen thousand seven hundred and eighty dollars per annum;

Provided that—

- (i) where the person changes his normal occupation or follows a lower standard of occupation for reasons other than his disablement, the annual rate of pension shall be calculated in accordance with paragraph (a);
- (ii) where the person has not changed his normal occupation or followed a lower standard of occupation but has a reduced earning capacity as a result of his disablement, the Commissioner may vary the rate of pension to such rate not exceeding that calculated in terms of paragraph (b) as the Commissioner considers equitable in the circumstances.

(2) Subject to subsections (3) and (4) and section *nine*, a disabled person whose degree of disability is less than one hundred *per centum* shall be entitled to a disablement pension which bears the same proportion to the pension which would have been payable in terms of subsection (1) had his degree of disablement been one hundred *per centum* as his actual degree of disablement bears to one hundred *per centum*.

(3) If a disabled person is suffering from an injury which consists of an aggravation to a material extent of pre-existing ill-health, physical or mental incapacity or personal injury, the pension payable to him shall be assessed in respect of such aggravation only.

(4) Where the degree of disablement of a disabled person has not, in the opinion of the Commissioner, reached a final and stationary condition, the disablement pension payable to that person shall be assessed on the degree of disablement as determined from time to time by the Commissioner after considering the report of a medical practitioner employed by the State, and such assessment shall be effective—

- (a) from the first day of the month immediately following that on which the medical practitioner examined the disabled person; and
- (b) for such period, being not less than six months, as the medical practitioner may fix in each particular case.

9 Date of accrual of disablement pension

(1) Subject to subsection (2), where the degree of disablement of a disabled person has, in the opinion of the Commissioner, reached a final and stationary condition, the disablement pension shall be payable with effect from the 1st July, 1980:

Provided that, where the disabled person has been discharged from his employment or is compelled as a result of his disablement to change his normal occupation or to follow a lower standard of occupation before the 1st January, 1982, his disablement pension shall be payable in accordance with the degree of disablement as assessed on or after the date of that discharge or compulsion.

(2) Where the degree of disablement of a disabled person has not, in the opinion of the Commissioner, reached a final and stationary condition before the 1st January, 1982, the disablement pension—

- (a) shall be payable in accordance with the degree of disablement as assessed on or after the 1st January, 1982, with effect from the 1st July, 1980; and
- (b) shall be subject to variation or withdrawal according to the degree of disablement as assessed from time to time with effect from the date referred to in subsection (4) of section *eight*.

10 Commutation of disablement pension

(1) Where—

- (a) the degree of disablement of a disabled person has been accepted by the Commissioner as having reached a final and stationary condition and—
 - (i) the degree of disablement has been assessed at less than twenty *per centum*; or
 - (ii) the disablement pension payable to the disabled person is less than three hundred dollars per annum; or

(b) in the opinion of the Minister, the special circumstances of a disabled person so require it; the Minister may direct that the disablement pension be commuted at the appropriate rate set out in the Third Schedule:

Provided that where the disabled person concerned notifies the Minister that he does not wish to have his pension commuted, the commutation shall not be made or, if made, shall be cancelled.

(2) Notwithstanding the commutation of a pension in terms of subsection (1), if—

- (a) the degree of disablement of a disabled person deteriorates by five *per centum* or more of total disablement; or
- (b) the Commissioner allows an application in terms of subsection (6) of section *seven*;

the disablement pension shall be adjusted accordingly and the Minister shall direct that—

- (i) the pension so adjusted be commuted in terms of subsection (1); or
- (ii) in addition to the pension already commuted and taking into account the adjustment made in terms of this section, the disabled person be paid such further pension as the Commissioner may determine.

11 Medical examination and treatment

(1) A disabled person may be required by the Commissioner to undergo such reasonable medical examination or treatment as the Commissioner considers necessary or desirable in the circumstances.

(2) If a disabled person fails or refuses to undergo any medical examination or treatment required in terms of subsection (1) and does not, within a period of six weeks from the date upon which he was required to undergo that examination or treatment, furnish to the Commissioner a satisfactory explanation for his failure or refusal to do so, his right to his disablement pension shall be suspended with effect from the expiration of such period or such later date as the Commissioner may determine.

(3) If a disabled person whose disablement pension is suspended in terms of subsection (2) subsequently undergoes the medical examination or treatment, as the case may be—

- (a) within a period of six months from the date on which his disablement pension was suspended, and the medical examination reveals or the treatment produces, as the case may be—
 - (i) no change in the degree of disablement, his disablement pension shall be restored with effect from the date on which it was suspended;
 - (ii) a reduction in the degree of disablement, his disablement pension shall be restored with effect from the date upon which it was suspended at the rate appropriate to such reduced degree of disablement;
 - (iii) an increase in the degree of disablement, his disablement pension shall be restored with effect from the date upon which it was suspended at the rate at which it was payable immediately before it was so suspended and shall be adjusted with effect from the first day of the month following that in which the disabled person undergoes the medical examination or treatment to the rate appropriate to the degree of disablement as so increased;
- (b) after a period of six months from the date upon which the disablement pension was suspended, the disablement pension shall be restored with effect from the first day of the month following that in which the disabled person undergoes the medical examination or treatment at the rate appropriate to the degree of disablement determined as a result of such medical examination or treatment.

(4) If a disabled person is aggrieved at being required by the Commissioner to undergo a medical examination or treatment in terms of subsection (1), he may apply to the Commissioner in writing to refer to a medical board the question of whether or not the medical examination or treatment he is required to undergo is reasonable in the circumstances, and the Commissioner shall refer the matter to a medical board.

(5) The opinion of a medical board as to whether or not any medical examination or treatment which a disabled person is required to undergo in terms of subsection (1) is reasonable shall be final, and if such board is of the opinion that—

- (a) the examination or treatment is not reasonable; or
 - (b) the treatment will not have the effect of reducing the degree of disablement of the disabled person;
- the disablement pension of the disabled person shall not be suspended by virtue of his refusal to undergo the medical examination or treatment and, if it has already been suspended, it shall be restored with effect from the date on which it was suspended.

12 Refund of medical expenses

(1) Subject to this section, a disabled person shall be entitled to be paid a refund of any expenses reasonably and necessarily incurred by him as a result of his injury in respect of—

- (a) dental, medical, surgical or hospital treatment; or
- (b) skilled nursing services; or
- (c) the supply of medicines or surgical dressings; or
- (d) the supply, maintenance, repair or renewal of artificial limbs or apparatus.

(2) The question whether or not any expenses referred to in subsection (1) have been reasonably and necessarily incurred shall be determined by the Commissioner.

(3) In the case of a disabled person who has suffered an injury which consists of an aggravation to a material extent of pre-existing ill-health, physical or mental incapacity or personal injury, the Commissioner may authorize payment of all or part of the expenses referred to in subsection (1) as he considers equitable in the circumstances of the particular case.

13 Vocational training

(1) In this section—

“vocational training” includes any form of education or training which, in the opinion of the Commissioner, will permit a disabled person to support himself and his dependants or will increase his capacity to do so.

(2) If—

- (a) a disabled person has applied therefor; or
- (b) the Commissioner considers it to be desirable;

the Commissioner may investigate any case of a disabled person to determine whether or not that disabled person should receive vocational training in a hospital or elsewhere.

(3) If the Commissioner considers that a disabled person should, in consequence of his disablement, receive vocational training in a hospital or elsewhere, he may order the disabled person to undergo such training and may

award him, in addition to any other benefits to which he is entitled under this Act, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of pension which would have been paid to him under paragraph (b) of subsection (1) of section *eight* had his degree of disablement been one hundred *per centum*.

(4) A temporary allowance awarded in terms of subsection (3) shall be paid for such period and subject to such conditions and deductions in respect of the earnings of the disabled person while he is undergoing vocational training, as the Commissioner may determine.

(5) The Commissioner may grant to a disabled person a refund of the whole or any part of the charges, fees or expenses incurred by him in respect of the vocational training, subject to such conditions as the Commissioner may determine.

(6) At the termination of any period of vocational training undergone in terms of this section, the Commissioner may grant to the disabled person such sum as the Commissioner considers to be reasonable for the purchase of tools or other equipment required by him in the vocation for which he has been trained.

(7) If a disabled person refuses to undergo any vocational training ordered under this section, the Commissioner may reduce or withdraw any disablement pension payable to him under this Act.

14 Benefits for financial loss

Where a disabled person sustains a financial loss as a result of undergoing a medical examination or treatment in a hospital or otherwise on account of his disability, the Commissioner may, if the disabled person—

- (a) is in receipt of a disablement pension, increase his pension;
- (b) is not in receipt of a disablement pension, award him such pension as the Commissioner considers equitable:

Provided that any disablement pension increased in terms of paragraph (a) or awarded in terms of paragraph (b) shall not exceed the disablement pension that would have been payable under paragraph (b) of subsection (1) of section *eight* had the degree of disablement of the disabled person been one hundred *per centum* for any period during which the disabled person undergoes the examination or treatment or while travelling in connection therewith.

15 Constant attendance allowance

Where—

- (a) the injury of a disabled person is of a serious nature; and
- (b) the Commissioner is satisfied that the disability of the person referred to in paragraph (a) necessitates the constant and continuous attendance of a nurse or other attendant;

the Commissioner may award to that disabled person, in addition to any other benefits payable in terms of this Part, an allowance not exceeding the reasonable expenditure actually incurred in respect of such attendance.

16 Clothing allowance

If—

- (a) a disabled person is in receipt of a disablement pension in respect of a disability which requires him regularly to wear an artificial limb or to use crutches or any other appliance; and
- (b) in the opinion of the Commissioner, excessive wear and tear of the clothing of the disabled person referred to in paragraph (a) is thereby caused;

the Commissioner may award to that disabled person for the wear and tear of his clothing such allowance as the Commissioner considers reasonable in the circumstances.

17 Children's allowance

(1) Subject to this section, where a disabled person is compelled to change his normal occupation or to follow a lower standard of occupation and, in the opinion of the Commissioner, his change of occupation or lower standard of occupation was a result of his disablement, he shall be paid in respect of his children an allowance—

- (a) if his degree of disablement is one hundred *per centum*, at the appropriate rates specified in Part I of the Second Schedule;
- (b) if his degree of disablement is less than one hundred *per centum*, at one-hundredth of the appropriate rates specified in Part I of the Second Schedule multiplied by the degree of disablement of the disabled person as assessed from time to time.

(2) An allowance payable in terms of subsection (1) shall be paid with effect from such date as the Commissioner may determine.

(3) The amount of an allowance payable in terms of subsection (1) may be increased by the Commissioner, if he considers it equitable in the circumstances, to an amount not exceeding the maximum rate specified in Part I of the Second Schedule.

(4) If the aggregate of the children's allowances payable in terms of subsection (1) and any disablement pension payable to a disabled person exceeds the rate of earnings of the disabled person at the date of his injury, the children's allowances shall be reduced by the amount of the excess.

18 Travelling and subsistence allowances

(1) Subject to this section, where a disabled person is required to make a journey at the request of the Commissioner, a medical practitioner employed by the State or a medical board, or in connection with an appeal, or for treatment or attention necessitated by his injury, he shall be paid an allowance at a rate determined by the Commissioner.

(2) The Commissioner may grant to a disabled person who is receiving treatment as an in-patient at an institution or hospital an allowance at such rate as the Commissioner considers equitable in the circumstances.

(3) No allowance in terms of subsection (1) shall be payable in respect of a journey of the disabled person to or from an institution or hospital outside Zimbabwe unless the Commissioner, on the recommendation of a medical board, had authorized that journey.

PART V

COMPENSATION FOR DEATH

19 Widow's pension

(1) Subject to this section, if a deceased person leaves a widow, his widow shall be entitled to a pension calculated at the rate of sixty *per centum* of the earnings of the deceased person immediately prior to his death:

Provided that—

- (i) if the death of the deceased person was the result of an injury which consisted of an aggravation to a material extent of pre-existing ill-health, physical or mental incapacity or personal injury, the pension payable to the widow shall be at a rate which bears the same proportion to the rate of pension specified in this subsection as the degree of disablement due to such aggravation bears to the total degree of disablement;
- (ii) the maximum rate of pension shall be six thousand six hundred and fifty-one dollars per annum.

(2) A pension payable in terms of subsection (1)—

- (a) shall be payable with effect from the 1st July, 1980, or from the day following the date of death of the deceased person whichever is the later date; and
- (b) shall cease with effect from the date on which the widow remarries.

(3) Where the pension payable to a widow in terms of subsection (1) has ceased in terms of paragraph (b) of subsection (2) and—

- (a) the husband of the widow by that subsequent marriage dies; or
- (b) the subsequent marriage is dissolved;

the Commissioner may restore the pension that was payable in terms of subsection (1) in whole or in part, according to the financial circumstances of the woman and any other factor which the Commissioner considers to be appropriate.

20 Polygamous wives

(1) Where any compensation is payable in terms of this Act to the widow of a deceased person and that person at the time of his death had more than one wife, the compensation payable shall be paid to the widow designated by the Commissioner for the purposes of this Act or shall be apportioned between the widows in such proportions as the Commissioner considers equitable in the circumstances, as the Commissioner directs.

(2) Where a pension had been apportioned in terms of subsection (1) between two or more widows and the pension payable to one of the widows ceases because of her death or remarriage or otherwise, the pension or pensions payable to the other widow or widows shall not be increased.

(3) If a deceased person leaves two or more widows and any children, any pension payable in respect of such children shall not be increased in terms of proviso (i) to subsection (1) of section *twenty-one* until such time as all the widows have died or remarried, as the case may be.

21 Children's pensions

(1) If a deceased person leaves a widow and child, there shall be paid in respect of each child, subject to a maximum of five children, a pension at the appropriate rate specified in Part I of the Second Schedule:

Provided that—

- (i) on the death or remarriage of the widow the pension payable in respect of each child shall be at the appropriate rate specified in Part II of the Second Schedule;
- (ii) if any pension is increased in terms of proviso (i) and the pension payable to the widow is subsequently restored in terms of subsection (3) of section *nineteen*—
 - (a) in full, the pension payable in respect of the children shall, with effect from the date of such restoration, be payable at the appropriate rate specified in Part I of the Second Schedule;
 - (b) in part, the pension payable in respect of the children shall, with effect from the date of such restoration, be payable at such rate, being greater than the appropriate rate specified in Part I and

not greater than the appropriate rate specified in Part II of the Second Schedule, as the Commissioner may determine.

(2) If a deceased person leaves a child and no widow, there shall be paid in respect of each such child, subject to a maximum of five children, a pension at the appropriate rate specified in Part II of the Second Schedule.

(3) If a child in respect of whom a pension is payable in terms of subsection (1) or (2)—

(a) dies, or otherwise ceases to be a child as defined in subsection (1) of section *two*, the pension payable under subsection (1) or (2), as the case may be, shall, with effect from the day following, cease or, if there is another child or children, be adjusted accordingly;

(b) attains the age of six or twelve years, the pension payable under subsection (1) or (2), as the case may be, shall be adjusted accordingly.

(4) A pension payable under subsection (1) or (2) shall be paid to such person or persons as shall in each case be determined by the Commissioner.

(5) A pension payable under this section shall be payable with effect from—

(a) the date of death of the deceased person; or

(b) where the child is a posthumous child, from the day following the date of birth of the child; or

(c) the 1st July, 1980; whichever is the later date.

(6) Notwithstanding anything contained in this section, the Commissioner may, at his discretion, increase the rate of children's pensions up to an amount not exceeding the maximum rates specified in Part I or II, as the case may be, of the Second Schedule, as he may think fit.

(7) If a deceased person leaves more than five children, the pensions payable in terms of this section in respect of the children shall be calculated in relation to the five eldest who are children as defined in subsection (1) of section *two*.

22 Pensions for other dependants

(1) Subject to subsection (2), if a deceased person leaves a dependant who is not his widow or child and who—

(a) is wholly or partly incapable of supporting himself; and

(b) is in need of support;

the Commissioner may award to that dependant a pension or other benefit calculated in terms of subsection (2) for such period and subject to such terms and conditions as the Commissioner considers equitable in the circumstances.

(2) Where the dependant referred to in subsection (1)—

(a) is a parent of the deceased and wholly dependent upon him for support, a pension equal to one-third of the pension which would have been payable to the deceased person under paragraph (b) of subsection (1), as read with subsection (3), of section *eight* had the injury which caused his death resulted in a permanent degree of disablement of one hundred *per centum* shall be payable:

Provided that, if both parents are alive, the pension shall be payable to them jointly unless the Commissioner in any particular case otherwise determines;

(b) is not a parent of the deceased person or is a parent of the deceased person but was only partly dependent upon him for support, such pension or gratuity as may be considered appropriate by the Commissioner shall be payable:

Provided that the benefit shall not exceed—

(a) in the case of a pension, the rate of pension calculated in terms of paragraph (a) of this subsection;

(b) in the case of a gratuity, three times the rate of pension calculated in terms of paragraph (a) of this subsection.

23 Funeral expenses

The Commissioner may grant, in respect of the expenses of the funeral of a deceased person and any reasonable expenses incurred in the transportation of the deceased person and his effects, such amount as the Commissioner considers reasonable in the circumstances.

PART VI

SPECIAL PROVISIONS FOR WOMEN AND CHILDREN

24 Special provisions relating to females

(1) If a disabled person is a female and has—

(a) a husband who is incapable of supporting himself due to physical or mental incapacity occasioned without his default; or

(b) one or more children who are incapable of supporting themselves and have no father who is both able and willing to support them; or

- (c) a dependant who—
 - (i) is not her husband or child; and
 - (ii) is wholly or partly incapable of supporting himself; and
 - (iii) is in need of support;

the Commissioner may award in respect of such husband, children or dependant, as the case may be, the compensation that would have been payable in terms of this Act had the disabled person been a male and had a wife or children or a dependant, as the case may be, in those circumstances.

- (2) If a disabled person is a female who is—
 - (a) married, her earnings shall, for the purpose of calculating the amount of any compensation payable to her in terms of this Act, be deemed to be the amount of the pension which would have been payable in terms of section *nineteen* had she been a widow;
 - (b) unmarried, her earnings shall, for the purpose of calculating the amount of any compensation payable to her in terms of this Act, be deemed to be such amount as the Commissioner may determine.
- (3) If a deceased person was a female and leaves—
 - (a) a widower who is incapable of supporting himself due to physical or mental incapacity occasioned without his default; or
 - (b) one or more children who are incapable of supporting themselves and have no father who is both willing and able to support them; or
 - (c) a dependant who—
 - (i) is not her husband or child; and
 - (ii) is wholly or partly incapable of supporting himself; and
 - (iii) is in need of support;

the Commissioner may award to such widower or in respect of such children or dependant, as the case may be, the compensation that would have been payable in terms of this Act had the deceased person been a male and left a widow or children or a dependant, as the case may be, in those circumstances.

- (4) If a deceased person was a female, her earnings shall—
 - (a) for the purpose of calculating the amount of any compensation payable in respect of her death in terms of this Act; and
 - (b) whether or not she was married;

be deemed to have been such amount as the Commissioner may determine.

25 Special provisions relating to minors

- (1) In this section—

“minor” means an unmarried person who has not attained the age of nineteen years.
- (2) Notwithstanding anything contained in this Act—
 - (a) there shall be paid in respect of the disablement of a minor such compensation as the Commissioner may consider appropriate after taking into account—
 - (i) such of the provisions of this Act as the Commissioner may consider relevant; and
 - (ii) the circumstances of the minor and of the parents, if any, of the minor;
 - (b) no pension shall be payable to any person in respect of the death of a minor.

26 Educational allowances

(1) If any pension or allowance payable in terms of this Act in respect of the child of a disabled person or deceased person has ceased because the child has reached the age of nineteen or twenty-one years, as the case may be, and that child continues to receive full-time education at an educational institution, the Commissioner may, having due regard to the circumstances of the case and taking into consideration the amount of assistance from any other source towards the further education of that child, award an allowance—

- (a) if that child attends at a university, at a rate not exceeding eight hundred and fifty-six dollars per annum;
- (b) if that child attends at an educational institution other than a university, at a rate not exceeding eight hundred and fifty-six dollars per annum or, if the Commissioner considers that there are special circumstances warranting a greater allowance, not exceeding five hundred and ninety-five dollars per annum.

(2) Subject to subsection (3), an allowance in terms of subsection (1) shall be payable with effect from such date and for such period as may be fixed by the Commissioner:

Provided that payment of such allowance shall depend on the progress of the child at the educational institution being satisfactory to the Commissioner.

(3) An allowance in terms of subsection (1) shall not be payable in respect of any period after the child attains the age of—

- (a) in the case of a child attending at a university, twenty-four years;
- (b) in the case of a child attending at an educational institution other than a university, twenty-one years:

Provided that, if the Commissioner considers that there are special circumstances warranting the payment of the allowance or part thereof after the child attains the age specified in paragraph (a) or (b), as the case may be,

the Commissioner may authorize the payment of the allowance or part thereof for such period as the Commissioner thinks fit.

PART VII

GENERAL

27 Medical boards

(1) The Commissioner may from time to time request the Minister to appoint a medical board consisting of two medical practitioners for the purposes of this Act.

(2) A member of a medical board who is not in the full-time employment of the State shall be entitled to be paid such remuneration and allowances as the Minister may in his case fix.

28 Assessment of earnings

(1) Subject to subsections (2) and (4) of section *twenty-four*, where any compensation payable in terms of this Act is to be calculated in relation to the earnings of any person, the Commissioner shall assess the earnings of that person by taking into account—

- (a) in the case of a person employed by another, the income, either real or potential, including the value of free quarters, received by him in respect of such employment and any other income which the Commissioner considers to be relevant; and
- (b) in the case of a person not employed by another, any income of his which the Commissioner considers to be relevant;

and where, in the opinion of the Commissioner, it is necessary to do so, the Commissioner may, for the purpose of calculating the earnings of that person immediately prior to the date of his injury or death, as the case may be, calculate his average income over such period, not exceeding four years, immediately prior to that date, as the Commissioner considers to be equitable in the circumstances.

(2) In assessing, in terms of subsection (1), the earnings of a person who, at the time of his injury or death, was under the age of twenty-five years or was employed under a contract of apprenticeship or learnership, the Commissioner shall calculate the income received by him or which would have been received by him had he been employed as being the income which, had he not been injured or died, he would, in the opinion of the Commissioner, probably have been receiving from employment—

- (a) four years after the date of his injury or death; or
- (b) in the case of a person who was employed under a contract of apprenticeship or learnership, had he been a journeyman or operator who had completed his apprenticeship or learnership at the date of his injury or death;

whichever calculation is more favourable to the person or any dependant to whom compensation is payable, as the case may be:

Provided that the amount so calculated shall not exceed the income which the person would, in the opinion of the Commissioner, probably have been receiving at the age of twenty-five years.

(3) In assessing, in terms of subsection (1), the earnings of a person who at the time of his death or injury was performing unpaid combatant duties, the Commissioner shall, for the purpose of calculating that person's potential earnings, have regard to the level of seniority and rank of that person in his military or guerilla service at the time of his death or injury.

29 Appeals

(1) Any person who is aggrieved by a finding or decision of the Commissioner may, subject to this Act, appeal against such finding or decision to the Minister, whose decision shall be final:

Provided that the Minister may at any time reconsider such decision.

(2) The Minister shall not be obliged to furnish any person with his reasons for reaching a decision on any appeal.

30 Compensation to be inalienable

Subject to the Maintenance Act [*Chapter 5:09*] and Part VI of the Children's Protection and Adoption Act [*Chapter 5:09*], no compensation or right to compensation shall—

- (a) be capable of being assigned or ceded or otherwise transferred or of being pledged or hypothecated;
- (b) be liable to be attached or subjected to any form of execution under a judgment or order of a court:

Provided that the Commissioner may, upon representations being made to him by or on behalf of the person to whom compensation is payable or who is entitled to compensation, order that this section shall not apply to the compensation or right to compensation concerned.

31 Insolvency of pensioner

If a person in receipt of any compensation is declared to be insolvent, the compensation shall not form part of the assets in his insolvent estate.

32 Proof of certain particulars

No payment of a pension or other benefit in terms of this Act—

- (a) to a widow or widows, shall be made until proof of the marriage to, and the date of death of, the spouse has been furnished;
- (b) in respect of a child, shall be paid until proof has been furnished of the eligibility of that child for the pension or other benefits;

and such proof shall be to the satisfaction of the Commissioner.

33 Compensation and other moneys to be paid from Consolidated Revenue Fund

Any compensation, remuneration, allowances or other moneys payable in terms of this Act shall be paid from the Consolidated Revenue Fund which is hereby appropriated for the purpose.

34 Offences and penalties

(1) Any person who, in any claim for compensation or other application in terms of this Act, makes a false statement, whether orally or in writing, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(2) Any person who, having been subpoenaed to give evidence before the Commissioner or to produce any document to the Commissioner—

- (a) fails, without sufficient cause, to attend at the time and place mentioned in the subpoena served on him; or
- (b) attends, but leaves the Commissioner without his permission; or
- (c) fails or refuses, without sufficient cause, to produce any document in his possession or under his control and mentioned or referred to in the subpoena served on him;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(3) If any person appearing before the Commissioner, whether in obedience to a subpoena or otherwise—

- (a) refuses to be sworn; or
- (b) having been sworn, refuses without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by the Commissioner or any person authorized by the Commissioner to question him; or
- (c) insults the Commissioner or wilfully interrupts the proceedings before the Commissioner or otherwise wilfully disturbs the peace and order of such proceedings;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(4) Any person who, having been sworn, makes a false statement on oath to the Commissioner on any matter relevant to the question being investigated by the Commissioner, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(5)

[Subsection repealed by section 4 of Act 22 of 2001]

35 Regulatory powers of Minister

(1) The Minister may by regulation provide for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form and manner in which claims for compensation and other applications shall be made and the information which shall be supplied in connection therewith;
- (b) the procedure to be adopted by the Commissioner in exercising his functions in terms of this Act;
- (c) the appointment of assessors and their powers and functions;
- (d) the time within which appeals shall be lodged and the form and manner in which appeals shall be made;
- (e) the fees which may be charged for any matter or thing done in terms of this Act;
- (f) the remuneration and allowances which may be paid to any person for any matter or thing done by him in terms of this Act.

(3) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof not exceeding a fine of level five or imprisonment for a period not exceeding six months or both such fine and such imprisonment.

36 Transitional provisions and savings

(1) Subject to subsection (2)—

- (a) any award of compensation in respect of an injury to or the death of a person made under a repealed law shall, on and after the 14th November, 1980, continue to have effect in terms of and subject to the repealed law concerned;
- (b) any remuneration, allowance or expense payable in respect of an injury to or the death of a person in terms of a repealed law shall, on and after the 14th November, 1980, continue to be so payable in terms of and subject to the repealed law concerned;

and for the purpose of paragraphs (a) and (b) the repealed laws concerned shall remain in force.

(2) In the application of the repealed laws to claims for compensation and matters associated therewith—

- (a) any reference to a board shall be construed as a reference to the Commissioner; and
- (b) if the Minister responsible for finance has, in terms of section 7 of the Pensions Review Act [Chapter 16:03], increased the amounts referred to in section 8, 18 or 25 of this Act, the amounts referred to in section 19, 25 or 35, as the case may be, of the Victims of Terrorism (Compensation) Act [Chapter 340 of 1974] shall be deemed to have been increased by a like amount.

FIRST SCHEDULE (Section 7)

DEGREES OF DISABLEMENT

	Degree of Disablement per centum
A	
General	
1. Loss of hand and foot above the site of Symes amputation	100
2. Injury resulting in the person concerned being permanently bedridden	100
B	
Injury to upper limb	
1. Loss of both hands or loss of both arms at higher sites	100
2. Loss of remaining arm by a person who has previously had one arm amputated	100
3. Loss of arm at shoulder or below shoulder with stump of less than 20 centimetres from tip to acromion	70
4. Loss of arm from 20 centimetres below tip of acromion to less than 11 centimetres below tip of olecranon.	68
5. Loss of arm 11 centimetres below tip of olecranon	65
	Degree of Disablement per centum
B	
Injury to upper limb	
6. Loss of hand at wrist	60
7. Loss of four fingers and thumb of one hand	60
8. Loss of four fingers on one hand	35
9. Loss of thumb—	
(a) both phalanges	25
(b) one phalanx	25
10. Loss of index finger—	
(a) three phalanges	10
(b) two phalanges	8
(c) one phalanx	4
(d) tip and nail, no bone	2
11. Loss of middle finger—	
(a) three phalanges	6
(b) two phalanges	4

(c)	one phalanx	2
(d)	tip and nail, no bone	1
12.	Loss of ring finger—	
(a)	three phalanges	5
(b)	two phalanges	4
(c)	one phalanx	2
(d)	tip and nail, no bone	1
13.	Loss of little finger—	
(a)	three phalanges	4
(b)	two phalanges	3
(c)	one phalanx	2
(d)	tip and nail, no bone	1
14.	Loss of metacarpals—	
(a)	first or second (additional)	3
(b)	third fourth or fifth (additional)	2
15.	Ankylosis in optimum position—	
(a)	shoulder	35
(b)	elbow	35
(c)	wrist	25

Note—

- (i) In the case of a right-handed person, an injury to the left arm or hand, and, in the case of a left-handed person, an injury to the right arm or hand, shall be rated at ninety *per centum* of the percentages shown above.
- (ii) The loss of the thumb and four fingers of one hand shall be equivalent to the loss of a hand.
- (iii) When there are two or more injuries to the hand, the following basis of computing the degree of disablement shall be adopted and for this purpose a thumb shall be regarded as a finger—
 - (a) where two fingers have been injured, the aggregate of the percentages for each finger shall be increased by twenty *per centum* of such aggregate;
 - (b) where three fingers have been injured, the aggregate of the percentages for each finger shall be increased by thirty *per centum* of such aggregate;
 - (c) where four fingers have been injured, the aggregate of the percentages for each finger shall be increased by forty *per centum* of such aggregate.

Degree of
Disablement
per
centum

C

Injury to lower limb

1.	Loss of both feet above site of Symes amputation or loss of both legs at higher sites	100
2.	Loss of remaining leg by person who has previously had one leg amputated	100
3.	Loss of leg at hip or below hip with stump not exceeding 13 centimetres in length measured from tip of great trochanter	70
4.	Loss of leg with stump exceeding 13 centimetres in length measured from tip of great trochanter but not beyond middle thigh	60
5.	Loss of leg below middle thigh to 10 centimetres below knee	50
6.	Loss of leg below knee with stump exceeding 10 centimetres	30
7.	Modified Symes operation—	
(a)	one foot	25
(b)	two feet	70
8.	Loss of foot at tarso-metatarsal joint	25

Degree of
Disablement
per
centum

C

Injury to lower limb

9.	Loss of all toes of both feet proximal to the proximal interphalangeal joint	25
10.	Loss of all toes of one foot proximal to the proximal interphalangeal joint	15
11.	Loss of all toes of both feet distal to the proximal interphalangeal joint	15
12.	Loss of all toes of one foot distal to the proximal interphalangeal joint	10
13.	Loss of great toe—	
(a)	both phalanges	5
(b)	one phalanx	2
14.	Loss of toe other than great toe if more than one toe lost, each	1
15.	Ankylosis in optimum position—	
(a)	hip	50
(b)	knee	25
(c)	ankle	15

D

Injury to eyes

1.	Total loss of sight	100
2.	Loss of remaining eye by person who previously had the sight of only one eye	100
3.	Loss of one eye, the other being normal	30
4.	Total loss of vision of one eye, the other being normal	30
5.	Other degrees of defective vision based on the visual defects as measured after correction with glasses—	

When best visual acuity is in one eye	Other eye	Assessment per centum
6/6 or 6/9	6/24	15
6/6 or 6/9	6/36	20
6/6 or 6/9	6/60	20
6/6 or 6/9	3/60	20
6/12	Nil	30
6/18	6/18	15
6/18	6/24	30
6/18	6/36	40
6/18	6/60	40
6/18	3/60	40
6/18	Nil	50
6/24	6/24	30
6/24	6/36	40
6/24	6/60	50
6/24	3/60	50
6/24	Nil	70
6/36	6/36	50
6/36	6/60	60
6/36	3/60	60
6/36	Nil	70
6/60	6/60	80
6/60	3/60	80
6/60	Nil	90
3/60	3/60	80
3/60	Nil	90
Nil	Nil	100

E

Injury to ears (defective hearing)

Grade	Degree of hearing	Assessment for both ears used together per centum
0	Total deafness	50
1	Shout not beyond 1 metre	40
2	Conversational voice not over 30 centimetres	30

3	Conversational voice not over 1 metre	20
4	Conversational voice not over 2 metres	10
5	Conversational voice not over 3 metres	7

SECOND SCHEDULE (Sections 17 and 21)

CHILDREN'S PENSIONS OR ALLOWANCES

PART I

ANNUAL RATE WHERE WIDOW'S PENSION BEING PAID

Age of child	For each child
Under six years of age	Six <i>per centum</i> of earnings subject to maximum award of \$446.
Six years of age or over but under twelve years	Nine <i>per centum</i> earnings subject to maximum of award of \$649
Twelve years of age or over	Twelve <i>per centum</i> of earnings subject to maximum award of \$856.

PART II

ANNUAL RATE WHERE NO WIDOW'S PENSION BEING PAID

Age of child	For each child
Under six years of age	Twelve <i>per centum</i> of earnings subject to maximum award of \$856.
Six years of age or over but under twelve years	Eighteen <i>per centum</i> of earnings subject to maximum award of \$1 260.
Twelve years of age or over	Twenty-four <i>per centum</i> of earnings subject to maximum award of \$1 698.

THIRD SCHEDULE (Section 10)

TABLE FOR CALCULATING COMMUTATION OF PENSION

Single cash payments in commutation of each \$1 per annum of pension	
Age of person at the date of commutation	Cash payment in commutation for each \$1 per annum of pension \$ c
20 years or more but less than 25 years	50
25 years or more but less than 30 years	00
30 years or more but less than 35 years	50
35 years or more but less than 40 years	00
40 years or more but less than 45 years	00
45 years or more but less than 50 years	00
50 years or more but less than 55 years	00
55 years or more but less than 60 years	00

60 years or more but less than 65 years	658	50
65 years or more but less than 70 years	707	00
70 years or more but less than 75 years	756	00
75 years or more	5	00