

WORKMENS COMPENSATION BILL

The Workmens Compensation Act of 1941 has been amended at least eleven times since the original Act of was passed. Most of these amendments have introduced very small changes. References to other acts were changed as these were introduced or amended, "Bantu" became "Black", and more importantly, there were changes in the monetary amounts as the real value of money declined. Workers, whether male or female, are still "workmen", On Friday 3 February a new bill was read for the first time.* At this stage there had been no real debate in Parliament and the White Paper was not available before going to print. Many of the changes proposed have no real substance. The White Paper acknowledges that this is a temporary measure. A major review and consolidation of the Act is still awaited despite the fact that the Commission of Inquiry into Compensation for Occupation Diseases appeared in 1981. But the present Bill still deserves some comment.

The first point to note is the many complaints which have not been tackled. Domestic workers and outworkers are still excluded for the scope of the Act. Scheduled diseases will still only be compensated if they were contracted after a fixed date. Workers will still not receive compensation for the first three days of any occupational illness for which they are off work for less than a fortnight. Compensation still does not comprise the full wage. Workers can still not institute civil claims for damages from employers.

The major new innovation in the Bill is the proposed Objection Committee and Revision Board introduced in the new Section 25. Instead of appealing to the Workmens Compensation Commissioner,

*The bill was passed, without change after the third reading on the 28th February 1983. (Ed.)

workers who "feel aggrieved" by a decision can now appeal to an Objection Committee. This committee will consist of a chairman, one member representing workers and one representing employers. It will consider the complaint and then make a recommendation to the Commissioner. He can then choose whether to follow the recommendation or not.

If the worker is still unhappy with the decision, he or she can then appeal to a Revision Board. The Board will consist of a presiding officer, who will be a member of the Industrial Court, two assessors representing workers and employers respectively, and one or more medical assessors where necessary. Finally, there is the right of appeal to the Supreme Court in the event that the decision of the board is not acceptable.

While both the Committee and the Board provide for worker and employer representatives, these are not representative in the true sense of the word. In the case of the Committee the members are appointed by the Minister. In the case of the Board they are appointed by the presiding officer, who is himself chosen by the president of the Industrial Court.

The procedure of these bodies is also open to question. The objector will only appear before the Committee if the commissioner thinks this is necessary. He or she only has the right to submit written evidence. A written copy of the proceedings must be kept and sent to the Director General of Manpower, but no mention is made as to whether the objector or anybody else will have access to it. The commissioner can decide whether to accept the recommendations of the committee or not.

If the worker perseveres, the Revision Board's procedure resembles that of an ordinary court more closely. Personal appearance, together with legal representatives, are allowed, and copies of the proceedings are available. However, all this is subject to the worker being able to afford the expense. Legal representatives will have to be paid

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for and the record is only obtainable on payment of a fee. Time is also an important issue. The draft bill which was gazetted in July 1983 only provided for a Revision Board. The additional level of the Objection Committee can cause unnecessary delay for a worker needing compensation.

The new bill moves away from discrimination on the grounds of colour. According to Section 14, unclaimed monies in respect of all workers can now be used for "the general welfare" of all workers, and not only for africans as before. Most of the names appearing on the periodic lists of unclaimed money are african. This change will allow money owing to african workers to be used for the benefit of other population groups.

The second change in this area is that accidents and occupational diseases in respect of all workers must now have been reported within twelve months if the worker wants to claim compensation. Previously these clauses did not apply in the case of african workers. The act has always allowed for these clauses to be waived and for the commissioner to award compensation despite non-reporting. The change will provide one more way in which compensation can be denied to african workers. There are many reasons why african workers might not report accidents. Many are unaware of the law, or at least of the need to report. Many do not know or lack access to the mechanisms of reporting. Many will fear losing their jobs if they do report. Most of the reasons apply more to african workers than to others. The removal of explicit discrimination could thus introduce it implicitly.

Not all discrimination has been removed. Hookworm is still a scheduled disease only in the case of white and "coloured" workers.

The bill also appears to provide for inflation. Benefits have been increased, as well as the cut off salary above which compensation cannot be claimed. The fines have also been increased for the first time since 1941 and there is now a higher maximum fine (R500) in the case of an employer who doesn't

pay assessments than in the case of other offences (R200). It is doubtful if these increases will cope with the effects of inflation. Section 43/bis provides for a 15% increase in all previous awards. The last such increase was made in 1981, three years ago. A 15% increase in a three year period is hopelessly inadequate.

The bill explicitly allows for gazetted increases in terms of the maximum salary cutoff point. A new sub-clause also allows for the commissioner to make regulations on "any matter which he may deem necessary or expedient to prescribe in order to further the objects of this Act" (Section 107). Ideally one would like compensation payments to be linked to the consumer price index. In the absence of this, hopefully the commissioner will use the new subclause to prescribe regular and decent increases.

(Debbie Budlender, Cape Town, February 1984)