

BILL NO. 28 OF 2018

A BILL

FOR AN ACT TO REPEAL THE WORKMEN'S COMPENSATION ACT 1964 AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Workmen's Compensation (Repeal) Act 2018.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Repeal

2. The Workmen's Compensation Act 1964 and any subsidiary legislation made thereunder are repealed.

Consequential amendments

- 3.—(1) The Accident Compensation Act 2017 is amended by—
 - (a) after section 29, inserting the following new sections—

*“No proceedings against applicant or injured person where
compensation is paid*

29A. Notwithstanding anything contained in this Act or any other written law, a payment of compensation by the Commission under the no

fault compensation scheme is a bar to proceedings to recover damages or claim a contribution from the applicant or the person who suffers the injury or death for which the compensation was paid.

Compensation not to be assigned, charged or attached

29B. Compensation payable under the provisions of this Act is not capable of being assigned, charged or attached, and no claim is to be set off against such compensation.”;

- (b) before section 31, inserting “*Division 1— Motor vehicle accidents*”;
- (c) after section 33, inserting the following new Division—

“Division 2—Accidents arising out of and in the course of employment

Transitional

33A.—(1) Notwithstanding the repeal of the Workmen’s Compensation Act 1964, where a policy of insurance in respect of personal injury or death as a result of an accident arising out of and in the course of employment has been issued to any person by an insurance company before 1 January 2019, then any such policy of insurance continues to be valid, and the insurance company issuing any such policy of insurance must continue to provide insurance cover as provided for under the policy of insurance until the expiration of the policy of insurance for any personal injury or death.

(2) Any person who contravenes this section commits an offence and is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
- (b) in the case of a body corporate, a fine not exceeding \$100,000.

Claims for accidents under this Division

33B.—(1) Any proceeding, claim or action for compensation for personal injury or death as a result of an accident arising out of and in the course of employment which occurred before 1 January 2019 must be dealt with in accordance with the repealed Workmen’s Compensation Act 1964 or any other law applicable at the time of the accident.

(2) Any claim for compensation for personal injury or death as a result of an accident arising out of and in the course of employment which occurred on or after 1 January 2019, whether or not the employer is covered by a policy of insurance, must be made by way of an application to the Commission in accordance with section 20.

(3) Where any claim for compensation for personal injury or death as a result of an accident arising out of and in the course of employment is made to the Commission under subsection (2), the Commission must consider and determine the claim in accordance with Part 3 and, where the

employer is covered by a policy of insurance, the insurance company must pay to the Commission such amounts as are required under Part 3.”;

(d) before section 34, inserting “*Division 3—General*”; and

(e) in section 35(2)—

(i) after paragraph (b), inserting the following new paragraph—

“(ba) persons or classes of persons which are excluded from the compensation payable under this Act;”;

(ii) in paragraph (g), deleting “or”;

(iii) renumbering paragraph (h) as paragraph (k);

(iv) after paragraph (g), inserting the following new paragraphs—

“(h) the duties of employers and employees in relation to any personal injury or death as a result of an accident arising out of and in the course of employment and including the duty to report such personal injury or death;

(i) the duties of persons associated with a school in relation to any personal injury or death as a result of an accident occurring on any school premises and including the duty to report such personal injury or death;

(j) any matter in relation to any personal injury or death as a result of an accident in Fiji caused by a third party, including making regulations to empower the Commission to institute proceedings against such third party to recover or claim a contribution for any compensation paid by the Commission;”;

(v) in paragraph (k), deleting “.” and substituting “; or”; and

(vi) after paragraph (k), inserting the following new paragraph—

“(l) any matter whatsoever in relation to compensation for an accident in Fiji.”.

(2) The Fiji National University Act 2009 is amended by—

(a) deleting section 37(3) and substituting the following—

“(3) The funds collected under the Levy Order shall be used in the manner specified in such Levy Order.”;

(b) in section 42A—

(i) in subsection (1), deleting “to the Council”;

- (ii) deleting subsections (3), (4) and (5) and inserting the following new subsection—

“(3) The levy collected under a Levy Order may be distributed in the manner specified in such Levy Order.”; and

- (iii) in subsection (6)—

- (A) deleting “to the Council”;

- (B) deleting “as” and substituting “in accordance with”; and

- (C) after “specified”, inserting “in such Levy Order”; and

- (c) in section 42B in the heading, deleting “with the Levy Order”.

- (3) The Insurance Law Reform Act 1996 is amended by—

- (a) in section 5(c), deleting “to or in relation to which the Workmen’s Compensation Act 1964, applies” and substituting “in relation to personal injury or death as a result of an accident arising out of and in the course of employment”; and

- (b) in section 10(4), deleting “to or in relation to which the Workmen’s Compensation Act 1964 applies” and substituting “in relation to personal injury or death as a result of an accident arising out of and in the course of employment”.

- (4) The Pensions Act 1983 is amended by—

- (a) in section 28—

- (i) in subsection (2A)(b) after “Workmen’s Compensation Act 1964”, inserting “or the Accident Compensation Act 2017”; and

- (ii) in subsection (3A) after “Workmen’s Compensation Act 1964”, inserting “or the Accident Compensation Act 2017”; and

- (b) in section 37(5) after “Workmen’s Compensation Act 1964”, inserting “or the Accident Compensation Act 2017”.

- (5) The Stamp Duties Act 1920 is amended in the Schedule in Part 1, column 1 of the table by deleting—

“compulsory third party; and

(c)”.

- (6) The Unit Titles Act 1985 is amended in section 16(1)(c)(ii) by deleting “, including any insurance required to be effected under the Workmen’s Compensation Act 1964”.

(7) The Fiji National Training Levy Order 1988 is amended after order 4 by inserting the following new orders—

“Collection of levy

4A.—(1) The levy referred to in order 3 shall be paid to the Council.

(2) The levy shall be deemed to be a simple contract debt due from the employer and shall be recoverable accordingly by the Council in any court.

(3) Proceedings under paragraph (2) may be instituted by—

(a) the Vice-Chancellor; or

(b) any servant or agent of the Council authorised by the Vice-Chancellor in writing for that purpose,

and the Vice-Chancellor or any such servant or agent may conduct proceedings whether or not he or she was the person instituting them.

Distribution of levy

4B. The Council shall distribute the levy, and any interest pursuant to order 6, as follows—

(a) 10% to be paid into the funds of the University to be used by the Council primarily for in-service training of employees of levy-payers, managing apprenticeship schemes, trade testing, productivity promotion and education and training in the national interest;

(b) 40% to be paid into the Accident Compensation Fund established under section 30 of the Accident Compensation Act 2017; and

(c) 50% to be paid into a special purpose trust fund established by the State for the purpose of facilitating public access to private medical services.”.

(8) The Maritime (Ship Registration) Regulations 2014 is amended in Form REG 18 of the Schedule by deleting “Workmen’s Compensation Act 1964 and”.

(9) The Mining Regulations 1966 is amended in regulation 95 in the definition of “serious injury” by deleting “Workmen’s Compensation Act 1964, whether or not such person is a workman as defined in that Act” and substituting “Accident Compensation Act 2017 and subsidiary legislation made under that Act”.

(10) The Public Hospitals and Dispensaries Regulations 1955 is amended in regulation 37(1)(p) by deleting “workmen’s compensation” and substituting “compensation in respect of personal injury or death as a result of an accident arising out of and in the course of employment”.

(11) The Quarries Regulations 1939 is amended in regulation 2 in the definition of “serious injury” by deleting “Workmen’s Compensation Act 1964, whether or not such person is a workman as defined in that Act” and substituting “Accident Compensation Act 2017 and subsidiary legislation made under that Act”.

July 2018

WORKMEN'S COMPENSATION (REPEAL) BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Workmen's Compensation Act 1964 ('**Act**') was promulgated as Ordinance 17 of 1964 to provide for compensation to workmen for injuries suffered in the course of their employment.
- 1.2 In spite of the many amendments made since the Act's promulgation, the basic structure of compensation still reflects the archaic fault based system of the era in which it was promulgated. Furthermore the framework set out in the Act is elaborate and necessitates, in practice, a lengthy and time consuming process.
- 1.3 The Workmen's Compensation (Repeal) Bill 2018 ('**Bill**') seeks to repeal the Act and facilitate the transition of compensation in respect of personal injury or death as a result of an accident arising out of and in the course of employment to the no fault compensation scheme provided under the Accident Compensation Act 2017.
- 1.4 The Bill also makes consequential amendments to various other laws to ensure a comprehensive and effective transition to the no fault compensation scheme for accidents arising out of and in the course of employment and to allow for the extension of the no fault compensation scheme to accidents occurring on any school premises.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill repeals the Act and subsidiary legislation made under the Act.

2.3 Clause 3 of the Bill provides for consequential amendments to the following laws:

- (i) Accident Compensation Act 2017;
- (ii) Fiji National University Act 2009;
- (iii) Insurance Law Reform Act 1996;
- (iv) Pensions Act 1983;
- (v) Stamp Duties Act 1920;
- (vi) Unit Titles Act 1985;
- (vii) Fiji National Training Levy Order 1988;
- (viii) Maritime (Ship Registration) Regulations 2014;
- (ix) Mining Regulations 1966;
- (x) Public Hospitals and Dispensaries Regulations 1955; and
- (xi) Quarries Regulations 1939.

2.4 The consequential amendments under clause 3 of the Bill facilitate the transition of compensation in respect of personal injury or death as a result of an accident arising out of and in the course of employment to the no fault compensation scheme provided under the Accident Compensation Act 2017 and allow for the extension of the no fault compensation scheme to accidents occurring on any school premises.

2.5 The proposed amendments to the Accident Compensation Act 2017 by clause 3 of the Bill insert the necessary transitional provisions, provide for a bar to proceedings instituted against an applicant or injured person where compensation has been paid and broaden the regulation making powers of the Minister to ensure that regulations made under the Accident Compensation Act 2017 are able to cater for accidents arising out of and in the course of employment as well as accidents occurring on any school premises.

2.6 Clause 3 of the Bill also amends the Fiji National Training Levy Order 1988 (**‘Order’**) to set out the manner in which the levy imposed under the Order is to be collected and distributed.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for employment.

A. SAYED-KHAIYUM
Attorney-General