

# COMMENTS ON THE PROPOSED AMENDMENT OF SECTION 43 OF THE COIDA BILL

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## 1. INTRODUCTION

The Compensation for Occupational Injuries and Diseases Act (COIDA) Amendment Bill [B21-2020] contains certain proposed amendments which will have a devastating impact, not only on injured workers and Medical Service Providers (MSPs), but also on employers, who in the ordinary sense, employ millions of workers. As South Africa's most prominent lobbyist for the rights of employers, NEASA is opposed to any proposed legislation which may undermine employers' operational capabilities.

The proposed amendments will exacerbate the known inefficiencies of the Compensation Fund (CF) which has a direct impact on the operational abilities of employers. The basis for the comments opposing the Bill, in particular, is the inclusion of the proposed amendment in section 43, which will have a catastrophic impact not only on injured workers and the practices of healthcare professionals, who will suffer a major financial blow, but also employers who have the right to claim from the Compensation Fund.

The contentious provision in the Amendment Bill is section 43 which reads as follows:

### Amendment of section 73 of Act 130 of 1993

**43.** Section 73 of the principal Act is hereby amended by the addition of the following subsections:

“(3) Notwithstanding the provision of subsection (2) the medical practitioner may after the claim has been finalised or the period referred to in subsection (1) has lapsed, apply for reopening of the claim and payment of further medical costs.

(4) Any provision of any agreement existing at the commencement of this Act or concluded thereafter in terms of which a service provider cedes or purports to cede or relinquishes or purports to relinquish any rights to medical claim in terms of this Act, shall be void.”

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## 2. RECOMMENDED SECTION 43 AMENDMENTS

NEASA would like to make the following submissions in respect of the invitation for comments on the Compensation of Occupational Injuries and Diseases Amendment Bill 2020, as requested on 17 January 2021 by the Parliamentary Portfolio Committee on Employment and Labour.

NEASA has investigated the impact of this proposed amendment - in solidarity with other affected and concerned parties who are negatively affected by the dysfunctionality of the Compensation Fund and who advocate for the efficient and effective functioning of the Compensation Fund. NEASA is particularly and vehemently opposed to the introduction of section 43 of the Amendment Bill. The reasons for this are simple; it is trite and widespread knowledge that the Compensation Fund is, and has been for some time, structurally and operationally dysfunctional. This is evidenced by repeated qualified audits by the Auditor-General and a slew of court orders against the Compensation Fund for non-payment of claims.

When an employee is injured while performing their duties at work, the employee is able to access necessary specialised private medical care, given that the employer contributes to the Compensation Fund (CF). MSP's then claim the fee from the CF. However, because of the rigorous administrative process involved, MSPs choose to cede their claims to 3rd party administrators in return for immediate payment at a fee charged directly to the MSPs and not the CF. Third party administrators therefore assist employers and MSPs to navigate the complex CF claiming process in such a way that allows cash flow and ensures that injured workers are treated timeously.

This section will prohibit the cession of medical invoices by MSPs to financial institutions, including banks and other credit providers, or third-party administrators who act as intermediaries between the employers, MSPs and the Fund.

What Government fails to understand is that section 43 will effectively remove a key part of the Fund's value chain that actually works, it will discourage Health Care Providers from treating workers injured on duty, undermine the ability of an Injury on Duty (IOD) patient to access quality healthcare and treatment and increase the burden on the legal system, for MSPs, employers and the State. It will exclude domestic workers from getting quality health care as beneficiaries of the Fund, and it will also paralyze the efficient manner in which contributing employers may exercise their right to claim from the Fund and, ultimately, it will undermine the object of COIDA, which is to get injured workers proper health care and back to work. Furthermore, no tangible rationale has been given for this amendment.

Intermediaries exist because of the inefficiency and dysfunctionality of the Fund in fulfilling its mandate. Third party administrators allow MSPs to be paid expeditiously and ensure that IOD

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patients receive quality healthcare. Injured workers cannot wait for a claim to be approved before receiving medical treatment, nor can the MSPs wait for years before their invoices are paid as this would cripple their practices financially.

Third party administrators therefore address this problem. What the Government seems to fail to understand is that the CF is not operating efficiently to allow businesses and stakeholders to work co-operatively with it. If an injured worker cannot get proper treatment and does not return to work, it effects the employer's operational capabilities. This is further worsened if MSPs and businesses must take over the administrative processes in dealing with CF claims. Due to the inefficiencies of the CF many MSPs and employers rely on third party administrators to ensure cash flow for working capital.

Third party cession, debtor as collateral and administration outsourcing is not unique to COID but also exists effectively and efficiently within the Road Accident Fund (RAF), Medical Aid Industry and commercial banks.

Section 43 collapses the only element of the Fund's process that currently works efficiently, which will not only have a detrimental impact on the entire value chain, including IOD patients, MSPs, Commercial Banks and employers, but even to the Fund itself. In the end, it will be the injured workers who will suffer as practitioners will no longer be willing to treat them and they will be forced to pay personally or resort to public hospitals.

Curiously, Government alleges an element of fraud and corruption from intermediaries; however, there is no evidence to this effect. On the contrary, intermediaries have had to resort to legal proceedings to get payment from the Fund itself – court cases the Fund never wins. What is evident though, is that the Compensation Fund, by its own admission, spent billions irregularly, but the auditor-general was not able to confirm this figure, "as the entity did not maintain proper records and adequate systems of internal controls". Corruption cannot be attributed to intermediaries, nor can it be a valid reason for this amendment. Intermediaries are not the authorised bodies who approve payment of unsupported claims. It is the Fund itself which authorises the payment of unsupported claims and which cannot seem to manage legitimate claims due to maladministration.

Far beyond the effects of this amendment to the medical practitioners, it also has implications for employers who have a right to claim injured workers' salaries or wages paid while on sick leave from the Fund. The inefficiencies of the Fund have a direct impact on the operational abilities of employers. Two issues that are already problematic in the CF, is businesses that lose contracts because 'certificates of good standing' cannot be obtained from the Fund due to maladministration, and medical practitioners who already refuse to treat injury on duty claims as a result of non-payment by the Fund. This amendment, as illustrated above, will only worsen these already problematic issues.

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### 3. CONCLUSION

The Government must realise that its attempt to rectify corruption within the Fund, has been futile. This amendment will be no different. The fact that MSPs cannot cede their medical invoices to intermediaries will only hamper patient treatment. The transfer of the administrative and financial risk back to MSPs will discourage MSPs from treating IOD patients due to the known issues of backlogs and late payment or non-payments by the Fund. Opportunists exist who see an opportunity in this dysfunctionality. The dysfunctionality of the Fund and its lack of accountability will only get worse without the crucial role of intermediaries. Employers who contribute to the fund, will also suffer the brunt of the administrative failures of the fund which may cost industry millions of Rand and effectively weaken the economy. This amendment will disable the only mechanism that keeps the Fund functional.

NEASA therefore submits that the Parliamentary Portfolio Committee considers the irrationality of clause 43, the consequences of clause 43 in relation to workers, including domestic workers, not getting treated, and the burden on the medical fraternity which is already under strain due to the COVID-19 pandemic. NEASA implores the Government to remove section 43 or allow for it to be amended in such a way that is beneficial not only to MSPs and employers but also the workers who suffer injuries on duty. NEASA finds it incomprehensible that a Fund which is known for its administrative failures would support amending legislation which would exacerbate their inability to function effectively and transparently.

If there is any real desire to address the inefficiencies of the Fund, the Government will require an entirely different approach to the one proposed which will yield adverse results. Government must find measures to rebuild the integrity of the Fund and to ensure it operates efficiently. Measures through which this can be achieved is to:

- relax obstructions for MSPs in deciding how they manage their businesses;
- recruit adequately qualified and skilled employees for the Fund;
- improve the system through which claims are lodged;
- find a way to make it easier for MSPs to get paid for their services; and
- remove section 43(4) of the Bill.

Unless an intervention is implemented to stop this section from becoming operational, an entire services sector could be abolished overnight, possibly also infringing on the constitutional right for individuals to freely choose their occupation, trade, or profession. Medical services providers, businesses, and not the government, must decide how they manage their affairs. The proposed amendments will not only foster a culture of unaccountability and worsen the corruption in the Fund, but will cripple MSP's and other businesses and deny injured workers quality health care.

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Regards

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