

19 February 2021

Mr Zolani Sakasa
Secretary to the Parliamentary Standing Committee on Finance
3rd Floor
90 Plein Street
Cape Town
8001

By e-mail: coidabill@parliament.gov.za

Dear Mr Sakasa,

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON EMPLOYMENT AND LABOUR ON
THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES AMENDMENT
BILL, 21 OF 2020**

1. The South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make submissions to the Portfolio Committee on Employment and Labour on the Compensation for Occupational Injuries and Diseases Amendment Bill 21 of 2020 (COID Bill).
2. The South African Institute of Chartered Accountants (SAICA) is the home of chartered accountants in South Africa – we currently have over **46,000 Chartered Accountant** members from various constituencies, including members in public practice ($\pm 30\%$), members in business ($\pm 50\%$), in the public sector ($\pm 5\%$), education ($\pm 2\%$) and other members ($\pm 13\%$). In meeting our objectives, our long-term professional interests are always in line with the public interest and responsible leadership. Our members in business employs people and our members in practice often provides the services in registering employees, submission of information and submitting and managing claims for employers.
3. For ease of reference we set out below in **Annexure A**, our main points and detailed comments.

Yours sincerely



Juanita Steenkamp
Project director: Governance and Non-IFRS Reporting
The South African Institute of Chartered Accountants

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ANNEXURE A: DETAILED COMMENTS

GENERAL MATTERS

SAICA's consultation and advocacy

1. SAICA is a membership body with varied representation from members/associates in the public and private sector as well as business owners and accountants and auditors.
 2. The proposed amendments will have a profound impact on the public interest, specifically where our members register their own and clients' employees and the public must register their employees, with specific reference to the registration of domestic workers and employees should be able to claim the benefits of the Fund.
 3. We have attempted to bring a collective voice to this submission.
 4. In this regard SAICA's approach to informing its members of the proposed amendments, and to gather information to inform our comment letter can be summarised as follows:
 - a. SAICA communicated for comment the proposed Compensation for Occupational Injuries Amendment Bill to all its members through its social media and newsletters channels.
 - b. SAICA submitted it to a specialist interested committee which forms part of a network of committee structures established to achieve the objective of leading, supporting and advocating for the members, associates and general public. In this case, specifically the **Legal Compliance Committee (LCC)** which was established to provide input/guidance on behalf of members and associates on legislation.
5. Submission: It is submitted that the impact of the proposed amendments affects the public at large, accountants and members in business, all who participate in and will benefit from a well-managed social security system. A balance however needs to be achieved between the interest of all parties as relates to compliance and fairness.

Concerns over consultation and consideration of comments

6. SAICA previously submitted its input in 2018 when comments were requested on the COIDA Amendment Bill, 2018 although it would seem that such input has not been considered.
7. SAICA also received submissions from members that stakeholders involved in the industry were not engaged on the impact of the proposed amendments.

8. Submission: It is submitted that the Department of Labour and Employment's approach is untenable as consultations are required in a particulate democracy. The exclusion of stakeholder views from the COID Bill means that the bills in its current form would require significant consideration by the Portfolio Committee who are now burdened by ensuring that the bill is technically sound and considered.
9. Alternatively, though we would prefer not to delay the process but at the risk of the bill suffering fundamental challenges, we submit that the Portfolio Committee may find it prudent to instruct the Department of Labour and Employment to properly consult and consider stakeholder input to ensure that the proper public consultation process has been followed before proceeding with the bill.

Regulatory Impact Assessment

10. It is noted that the Department of Labour and Employment was required in terms of a South African Cabinet decision taken and implemented from 1 October 2015 to conduct an impact assessment.
11. As per Cabinet Memoranda, seeking approval for draft policies, Bills or regulations must include an impact assessment that has been signed off by the Socio Economic Impact Assessment System Unit.
12. We note that no such assessment was conducted and none of the documents, including the *Memorandum on the Objects of the Compensation for Occupational Injuries and diseases Amendment Bill, 2020* submitted suggest otherwise.
13. Submission: SAICA recommends that an assessment of the socio-economic impact of policy initiatives, legislation and regulations be completed by the Department of Labour and Employment as per the Cabinet decision. This will enable the Portfolio Committee and stakeholders to also better understand any such impacts on the public.
14. We also believe this impact assessment would form a critical part of the public consultation process and provide objective information to the Portfolio Committee in assessing the draft legislation

SPECIFIC MATTERS

Definitions

Amendment of section 1 of the COID Act

15. The proposed amendment of the Act including domestic workers in the definition of an employee is lauded but we are concerned with regards to the Compensation Fund's ("Fund") ability to deal with this administratively.
16. Employers currently face enormous battles to register as the current system only allows for companies and other entities such as Non-profit organisations, sole traders and trusts need to register by sending information via email to RegistrationCF@labour.gov.za
17. We question how individual employers will be able to register via email. SAICA has received numerous complaints where registration takes longer than a year. Clients submit the registration forms and receive no feedback. The stringent penalties to be implemented will impact these individual employers of domestic workers as well as the opportunity of these employees to claim against the Fund.

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| <ol style="list-style-type: none">18. <u>Submission</u>: We submit that the Fund needs to be able to inform the Portfolio Committee on how the individual employers needs to register to ensure that this process will be able to function efficiently and effectively.19. Similarly, the claims process is also not working efficiently and the changes proposed in section 73 might impact this even more. Currently medical service providers treats COID patients but due to the backlog in claims and subsequent payments of the claims the medical service providers cedes claims that the firm then claims from the Fund.20. The proposed changes could impact the vulnerable employees even more as medical service providers might decide not to treat COID patients due to the poor service from the Fund. |
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Medical expenses

Amendment if section 73 – Payment of medical expenses

21. The Compensation Fund in terms of section 73(1) and (2) shall for a period of not more than 2 years after the date of an accident or commencement of a disease pay the reasonable costs of an employee.
22. Medical service providers such as doctors' practices, physiotherapy practices and others provides services to patients treated for injuries on duties. The Compensation Fund unfortunately do not have a great track record in paying claims and service providers can wait anything from 180 days to numerous years. This was also mentioned in the briefing to Parliament on the 4th of November 2020 where the member of the Portfolio Committee questioned the processing and payment of claims in line with the new category of employees that need to be included:

“if the Compensation Fund will be able to cope with another sectoral category of claims given the challenges it already faces with processing and paying claims using the dysfunctional Comp-Easy system; if a proper socio-economic impact assessment of this Bill has been done since it will have serious financial and economic consequences; and for the Department to explain the rationale behind the introduction of a draconian penalty regime contained in Section 19 as it proposes a fine on employers for late reporting of accidents that is equal to 10% of their entire wage bill for every accident reported late. Members heard about the importance of penalties and that companies have a responsibility and or a duty of care. Further that the ‘battle will not be won’ if penalties were not put in place. Employers have nothing to fear if they comply with the law.”

23. To assist medical service providers to finance their working capital and obtain financing for capital expenditure and simply to survive in the current economic climate they often cede their claims to pre-funders or banks as security. The third party service provider then provides the medical service provider with the funds and then continue to claim the money from the Fund.
24. The proposed inclusion of section 73(4) now makes this practice “void” therefore the agreement does not exist.
25. Referring to the Compensation Fund’s inability to pay claims speedily this might impact the smaller and even larger medical service providers who cannot afford to not be paid for a number of months.
26. The length of time that it takes to be paid after supplying the services to an Injury on Duty (IOD) patient would make this proposal a poor substitute to any new practice and would in effect reserve IOD work only for very wealthy individuals or practices that have enough working capital to carry its debt for 5-6 months on average without being paid
27. These medical services providers might also not have the capacity and time to keep on following up with the Fund to be able to obtain their funds.
28. The fact that medical service providers may not cede their claims can impact the most vulnerable of employees, including domestic workers that will now be included as the medical service provider might decide that they don’t want to continue treating these patients.
29. The unintended consequence of the proposed amendment is that that many service providers may be reluctant to treat IOD patients. This will place an additional burden on government health services that are already over utilised and that may not have the capacity to accommodate additional patients. The injured employee may be severely prejudiced and companies fear that many IOD employees will simply not receive medical treatment. The public interest will not be served under these circumstances.
30. Submission: It is submitted that the Fund needs to consider the impact of the proposed changes to medical service providers and their employees claiming the benefits.

Changes effective

31. The proposed amendment states that any agreement existing at the commencement of the Act is void. This seemingly has the unintended consequence that all valid claims that were ceded and /or assigned from medical services providers and submitted to the Fund for payment prior to commencement of the Act will be “void”.
32. The existing pre-funding book would in effect be wiped off the balance sheet of companies with the effect that financial institutions that advanced funds to these companies will cancel all facilities and will foreclose on their security. This will have dire consequences for companies, its shareholders, sureties and other financial services sector entities, posing potential systematic risk and loss of confidence in the South Africa financial sector.
33. The proposed amendment seemingly has retrospective effect and the retrospectivity prejudices pre-funders that legally conducted its business before the proposed amendment.
34. Submission: It is submitted that the Fund should consider the impact of the proposed changes to medical service providers and their employees claiming the benefits. As no Regulatory Impact Assessment was mentioned, we call into question the potential impact of this proposed change as well as the constitutionality of unreasonably prohibiting business practices with no apparent business rationale.

Assessment of employer

Amendment of section 83 - Assessment

35. The COID Act states that where the actual earnings paid differ from the current estimated earnings shown in the return the Commissioner shall adjust the assessment. The Compensation Fund currently identify clients for audit based on the difference in estimated versus actual earnings, refer to Government Gazette dated 14 December 2018, No 42114, Notice 1385. The Fund then requests further information and should the information not be forthcoming they assess the employer on an estimated figure.
36. Whilst SAICA agrees that where employer do not respond the Fund should continue with the assessment, numerous members have complained that they submit the information and no feedback is received. The Fund then continues to assess them on the incorrect figures and there is no method to engage the Fund on correcting the information.
37. We are concerned with the fact that the proposals states that where the actual earnings were more than estimated earnings, the difference will be recovered and the fund MAY impose a penalty. There is no clarity on the amount of penalty and the information to be considered when the penalty is imposed.

38. SAICA also receives numerous comments on the inability of the Fund to correct their records despite the information being updated. Clients also complain with regards to the Fund assessing them on incorrect categories.

39. Submission: We submit that the Bill needs to set out a method for employers to object to incorrect assessments prior to penalties being levied. Detail regarding the calculation of the penalty and a process to object to the assessment needs to be included.