



MAXIMISING YOUR CASH FLOW

**ORAL SUBMISSION ON THE
COMPENSATION FOR OCCUPATIONAL
INJURIES AND DISEASES AMENDMENT BILL**

INTRODUCTION

- We thank the Select Committee for the opportunity to make an oral submission on COIDA Amendment Bill. We were also privileged to make an oral submission to the Portfolio Committee in 2021. Our oral submission today covers three key points:
- First - To thank the Portfolio Committee for the transparent, consultative and thorough process they undertook on COIDA Amendment Bill. This was democracy in action and we are satisfied with the final amendments, including amended Clause 43(4), agreed to by the Portfolio Committee and passed by the National Assembly.
- Second – To point out to Select Committee that the Compensation Commissioner has used his administrative powers through a Gazette Notice to operationally defeat the amended Clause 43(4) as agreed to by the Portfolio Committee and passed by the National Assembly.
- Third – To request the Select Committee to take action to correct this blatant misuse of administrative powers by an official to operationally defeat a transparent democratic process by elected representatives.

ABOUT US

- COIDLink has a proven track record of over 20 years working with Compensation Fund, Employers and Medical Service Providers for the benefit of workers injured on duty.
- We put the interests of workers injured on duty at the centre of what we do.
- We are a 100% Black owned and controlled company with a Board comprised of high caliber individuals led by Gideon Nkadimeng, our presenter.
- We are trusted by over 1 800 Medical service Providers to administer and to provide them with working capital by prefunding their injury on duty (IOD) claims. These Medical Service Providers would not be in a financial position to treat workers injured on duty without COIDLink providing them with the much needed working capital.
- In turn our trusted clients treat over 50 000 workers injured on duty, generating 150 000 invoices to the value of R2 Billion per year.

PURPOSE OF THE AMENDMENT BILL

The Amendment bill seeks to -

- Extend the coverage to previously excluded vulnerable workers
- Improve the compensation benefits of employees
- Provide a Rehabilitation and Reintegration framework for injured and or diseased employees into the workplace
- Address the Compensation Fund's administrative challenges
- Clarify the roles and responsibilities of the Compensation Fund and the Department of Employment and Labour
- Provide for administrative penalties, inspectors, compliance and other matters related to the work of CF
- Redefine the relationship of the Fund with Mutual Associations.

COIDLink is in full support of the latest version of the Bill and the consultative process undertaken to get to this point.

BACKGROUND ON SECTION 73(4)

The original COIDA Bill, published in the gazette in December 2018 for public comment, contained the original version of clause 43 which sought to amend Section 73(4) of Act 130 of 1993.

‘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 claims in terms of this Act, shall be void’.

This proposed amendment, commonly referred to as ‘cession or relinquishment of medical claims’

sought to discontinue the practice of pre-funding or purchasing medical claims from medical service providers who treat workers injured on duty.

ACTIONS TAKEN ON SECTION 73(4)

- The Portfolio Committee on Employment and Labour facilitated a transparent, consultative and thorough process to engage on the COIDA Bill.
- COIDLink was one of many stakeholders who made submissions representing workers, employers and medical service providers to the Portfolio Committee. The majority of the participants were against the intended Section 73(4).
- The submission by COIDLink and submissions by many other stakeholders in various clauses were properly considered, including the more contested Clause 43(4).
- The final Clause 43 (4) agreed to by the Committee and passed by the National Assembly on the 9th of September 2021 was a result of a this consultative process and a compromise of all stakeholders.

AMENDMENTS TO SECTION 73(4)

The proposed amendments to the COLD Act, Section 43 amendments the COLD Act, was **expressly declined** by the Portfolio Committee on 31 August 2021.

The following wording was agreed to and accepted in the Compensation for Occupational Injuries and Diseases Amendment Bill, and was adopted on 31 August 2021:

“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)(a) No third party will be allowed to transact with the Compensation Fund unless they are registered with the Compensation Fund in the manner as prescribed. (b) All third parties that are already transacting with the Compensation Fund must register with the Compensation Fund within six months after the commencement of the Compensation for Occupational Injuries and Diseases Amendment Act, 2021”

IRRATIONAL REACTION (NOTICE 526/615)

Compensation Fund reacted irrationally to the amended Clause 43(4) by publishing Notice 526 and 615

- Gazette Notice 526 was published on 10 September 2021, exactly 1 day after the National Assembly adopted the COIDA Bill. Gazette Notice 615 was published on 19 October 2021 inviting public comment
- **Both notices exclude pre-funding third parties from being paid directly by the Compensation Fund – effectively banning them through operational means and rendering Amended Clause 43(4) null and void.**
- The notices clearly undermine the Parliamentary legislative process and will cause job losses and business closures
- The notices extend beyond the current enabling Act.
- The Notices also seek to create a legal instrument to limit the customers the Fund wished to transact with.
- Clearly the CF is using back door tactics to defeat the ends of Clause 43(4) as amended by the Portfolio Committee and passed by the National Assembly.

- The Chairperson of the Portfolio Committee submitted a letter to the Minister of Employment and Labour on 3 November 2021 to request clarity on:
 - What informed the basis for Notice 615?
 - How will Notice 615 influence the implementation of the COIDA Bill once signed into law?
 - Is the intention of the Commissioner to make it impractical to implement Clause 43(4)?
 - Why does CF want to exclude Third Parties now after the implementation of the Account Verification System?
- To date no response was received
- For clarity and avoidance of doubt,

COIDLink is not opposed to bank verification process, which we undertake regularly with CF. We are opposed to stopping direct payments from CF to pre-funding third parties, which operationally bans the business of pre-funding and makes it impractical to implement amended Clause 43(4).

- COIDLink submitted a letter to the Commissioner and the Minister of Employment on 10 December 2021:
 - To raise our concerns about Gazette Notice 615
 - We believe it is an undeniable attempt to get rid of pre-funders
- To date no progress was made despite commitments by the Minister

RECOMMENDATION

- The Minister of Employment and Labour needs to explain how the Gazette Notices 526 and 615 relate to the Bill, in particular Section 43(4).
- Unless the Gazette Notice 615 is withdrawn, Clause 43 of the Bill will be rendered invalid- Effectively rendering the parliamentary process null and void.
- We urge the Select Committee to be vigilant to ensure that administrative powers are not abused by the Commissioner to frustrate the legislative process. The disregard of the Parliamentary process by the Commissioner and CF management is evident from the above Gazette Notice that has been issued to frustrate operations of pre-funders as third parties.
- The Select Committee should send a stern warning to the CF Commissioner and his management not to undermine the legislative powers vested in National Assembly and the National Council of Provinces. Any administrative notices must be strictly in line with the Act and should not be used to implement policy changes.

FINAL REMARKS

We do not make this request lightly as we are aware of clear separation of powers between the Executive, Judiciary and the Legislative arms of the State. However, COIDLink wrote to the Portfolio Committee on Employment and Labour on 3 November 2021 to bring to the attention of the Portfolio Committee the attempts by the CF to undermine legislative process underway in Parliament with a Bill passed by the National Assembly.

We agree with the Portfolio Committee that the Commissioner has a right to regulate third parties through administrative checks and balances but he does not and should not have the power to exclude legal transactions or to undermine a democratic process through administrative and operational actions.