

ACCIDENT COMPENSATION BILL 2017
(BILL NO. 33 OF 2017)

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SCHEDULE—ACCIDENTS

BILL NO. 33 OF 2017

A BILL

FOR AN ACT TO ESTABLISH THE ACCIDENT COMPENSATION COMMISSION
FIJI AND TO MAKE PROVISION FOR COMPENSATION IN RESPECT OF
PERSONS WHO SUFFER PERSONAL INJURY OR DEATH AS A RESULT OF
AN ACCIDENT IN FIJI AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the Accident Compensation Act 2017.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“accident” means an accident which is set out in the Schedule;

“Accident Compensation Fund” means the Accident Compensation Fund established under section 30;

“applicant” means a person who, whether on behalf of the person or another person, makes an application for compensation for any personal injury or death as a result of an accident in Fiji, and—

- (a) in the case of an application for compensation for personal injury suffered by a child, means the parent or legal guardian of the child;
- (b) in the case of an application for compensation for personal injury suffered by a person who is incapable of making an application because of a mental disorder, mental illness or being of unsound mind, means the legally appointed representative of that person;
- (c) in the case of an application for compensation for personal injury suffered by a person who is for some reason unable to make the application himself or herself, means the legally appointed representative of that person; and
- (d) in the case of an application for compensation for death of a person, means the personal representative of that person under the Succession, Probate and Administration Act 1970;

“child” means any person who is under the age of 18 years;

“Commission” means the Accident Compensation Commission Fiji established under section 4;

“judgment” includes a judgment or an order of a court or tribunal, any orders by consent of the parties and any out of court settlement between the parties on the quantum of damages or compensation for liability, interests and costs;

“Minister” means the Minister responsible for justice;

“no fault compensation scheme” means the no fault compensation scheme established under section 19;

“personal injury”, unless otherwise defined in regulations made under this Act, means a physical or bodily injury including any impairment or loss, loss of use, or derangement of any body part, organ system or organ function; and

“repealed Act” means the Motor Vehicles (Third Party Insurance) Act 1948.

Act to bind the State

3. This Act binds the State.

PART 2—ACCIDENT COMPENSATION COMMISSION FIJI

Accident Compensation Commission Fiji

4.—(1) This section establishes the Accident Compensation Commission Fiji.

(2) The Commission is a body corporate with perpetual succession and a common seal, and is capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as a body corporate may lawfully do and suffer.

(3) The Commission consists of a chairperson, a deputy chairperson and 3 other members to be appointed by the Minister following consultation with the Prime Minister.

(4) Every member of the Commission holds office for a term of 3 years, and is eligible for reappointment.

(5) The Minister may appoint a person to act as a member of the Commission during any period, or during all periods, when the member is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office.

(6) Every member of the Commission is entitled to such remuneration and allowances as may be fixed by the Minister following consultation with the Prime Minister.

(7) Any member of the Commission may resign from his or her office at any time by giving notice in writing to the Minister.

(8) Any member of the Commission may be removed from office at any time by the Minister for any reason, including on the grounds of inability to perform the functions of office, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the Minister.

(9) The powers of the Commission are not affected by any vacancy in its membership.

Meetings of the Commission

5.—(1) Meetings of the Commission must be held at such times and places as the chairperson appoints.

(2) Subject to subsection (3), the chairperson must preside at each meeting of the Commission.

(3) In the event of the absence of the chairperson from any meeting of the Commission, the deputy chairperson must preside at that meeting, and if both the chairperson and the deputy chairperson are absent, the meeting must be presided over by a member who is nominated by the chairperson and failing any such nomination, the meeting must be presided over by a member appointed by the members present.

(4) At all meetings of the Commission, the quorum necessary for the transaction of business of the Commission is 3 members.

(5) All questions arising at any meeting of the Commission must be decided by a majority of votes of the members of the Commission present at the meeting.

(6) At a meeting of the Commission, the chairperson and all members of the Commission present have the right to vote, and in the case of an equality of votes, the chairperson, or in the absence of the chairperson the member presiding, has a casting vote.

(7) A resolution of the Commission in writing signed or assented to by letter, facsimile, e-mail or such other electronic means as approved by the Commission, by a majority of the members of the Commission, is as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(8) Subject to this Act, the Commission may regulate its own proceedings.

Appointment of the chief executive officer

6.—(1) The Commission may appoint a suitably qualified person as the chief executive officer of the Commission, in accordance with terms and conditions determined by the Commission.

(2) The chief executive officer is to be paid such remuneration and allowances as determined by the Commission and is to be employed on such terms and conditions of employment as may be determined by the Commission.

(3) The chief executive officer may be removed from office at any time by the Commission for any reason, including on the grounds of inability to perform the functions of office, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the Commission.

Functions of the chief executive officer

7.—(1) The chief executive officer is responsible to the Commission for the management of the Commission.

(2) The chief executive officer must attend every meeting of the Commission, and if the chief executive officer, for any reason, is unable to attend a meeting, the chief executive officer may, in consultation with the chairperson, nominate an officer to attend the meeting on his or her behalf.

(3) The chief executive officer must not engage in any other business without the prior approval of the Commission.

Staff of the Commission

8.—(1) The Commission may appoint such officers and employees, including acting, temporary or casual officers and employees, as it thinks necessary for the efficient exercise of its powers and authority and performance of its duties and functions, and may remove any officer or employee from his or her office or employment.

(2) Officers and employees of the Commission are to be paid such remuneration as determined by the Commission, and are to be employed on such terms and conditions of employment as may be determined by the Commission.

(3) The Commission may appoint medical referees, medical committees, specialists, consultants, agents and other persons to assist and advise the Commission in the exercise of its powers and authority and the performance of its duties and functions, and may pay such remuneration to these persons as determined by the Commission.

Powers and functions of the Commission

9. The Commission has such powers, authority, duties and functions as are prescribed in this Act.

Guidelines and directions

10. The Commission may issue guidelines and directions for the exercise of the Commission's powers and authority and performance of the Commission's duties and functions.

Delegation

11.—(1) The Commission may in writing, either generally or particularly, delegate any of its powers, authority, duties and functions to its officers, employees, agents or consultants as it thinks fit.

(2) Every delegation under this section is revocable at will by the Commission, and no such delegation prevents the exercise of any function or power by the Commission.

(3) Any delegation under this section, until revoked, continues in force according to its tenor notwithstanding that all or any of the members of the Commission at the time when the delegation was made has ceased to hold office, and continues to have effect as if made by a successor in office.

Funding, financial reporting and audit of accounts

12.—(1) Parliament must ensure that adequate funding and resources are made available to the Commission to enable the Commission to effectively exercise its powers and authority and perform its duties and functions.

(2) The financial year of the Commission commences on 1 August and ends on 31 July of the following year, or as determined by the Minister responsible for finance.

(3) The funds of the Commission consist of—

- (a) all monies lawfully received by the Commission under this Act or any other written law;
- (b) all monies appropriated by Parliament for the purposes of the Commission; and
- (c) all other monies lawfully received by the Commission.

(4) The Commission must cause proper accounts to be kept and must, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Commission which must include a balance sheet and an account of income and expenditure.

(5) The Commission must cause the statement of accounts to be audited by the Auditor-General.

(6) The Commission must, as soon as practicable, send a copy of the statement of accounts and a copy of the Auditor-General's report to the Minister.

Annual report

13. Without limiting the right of the Commission to report at any time, the Commission must, as soon as practicable after the end of each financial year, publish an annual report on the performance of the Commission’s duties and functions under this Act during the year, and must submit a copy to the Minister, who must cause it to be tabled in Parliament.

Disclosure of interest

14.—(1) Any member of the Commission or any officer, employee, agent or consultant of the Commission having any interest in any matter under discussion by the Commission must disclose to the Commission the fact and nature of his or her interest.

(2) Any member of the Commission or any officer, employee, agent or consultant of the Commission is deemed to have an interest referred to in subsection (1), if his or her spouse, partner, parent, child, adopted child or other immediate family member as may be prescribed by regulations, has an interest in the matter under discussion.

(3) A disclosure under subsection (1) must be recorded in writing, and, after the disclosure, the member of the Commission or the officer, employee, agent or consultant of the Commission must not take part in nor be present at any deliberation or decision of the Commission.

(4) Any member of the Commission or any officer, employee, agent or consultant of the Commission who fails to disclose his or her interest as provided under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(5) For the purpose of determining the interest to be disclosed under subsection (1), “interest” includes any interest in a business or company, associated company, joint venture or entity.

Commission to maintain confidentiality

15.—(1) The Commission or any officer, employee, agent or consultant of the Commission must not, directly or indirectly, make a record of, disclose or communicate to any person any information acquired in the performance of its functions under this Act, unless—

- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a duty or function under this Act;
- (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court or tribunal or any other statutory entity in the course of civil or criminal proceedings under this Act or any other written law; or
- (c) it is necessary to do so for reporting a suspected offence or assisting in the investigation of a suspected offence.

(2) Subsection (1) does not prevent the Commission from disclosing information to any other State entity or from disclosing information or making a statement to the public with respect to the performance of the duties and functions of the Commission.

(3) Any person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Validity of acts and decisions

16. An act or decision of the Commission is not invalid because—

- (a) of a defect or irregularity in, or in connection with, the appointment of a member of the Commission; or
- (b) in the case of an acting appointment, the occasion for acting had not arisen or had ceased.

Protection from liability

17.—(1) No civil or criminal proceedings lie against the Commission nor any member, officer, employee, agent or consultant of the Commission for anything he or she or it may do or fail to do in the course of the exercise or purported exercise of his or her or its powers and authority or performance of his or her or its duties and functions, unless it is shown that he or she or it did not act in good faith or with reasonable care.

(2) No civil or criminal proceedings lie personally against any member, officer, employee, agent or consultant of the Commission or other person acting under the direction of the Commission for anything which is done in good faith, or done or intended to be done in the execution or purported exercise of his or her powers and authority or performance of his or her duties and functions under the Act or any other written law.

PART 3—ACCIDENT COMPENSATION

Accident compensation

18.—(1) Subject to the provisions of this Act, compensation must be paid for any personal injury or death suffered by any person as a result of an accident in Fiji.

(2) The Commission must, in accordance with this Act, pay compensation to all persons who suffer personal injury or death as a result of an accident in Fiji.

(3) The compensation payable by the Commission under this Act for any personal injury or death as a result of an accident in Fiji is as follows—

- (a) a lump sum, under the no fault compensation scheme; or
- (b) a lump sum, awarded by a judgment.

No fault compensation scheme

19.—(1) This section establishes a no fault compensation scheme for compensation for any personal injury or death as a result of an accident in Fiji.

(2) Under the no fault compensation scheme, the Commission must make a lump sum payment in respect of personal injury or death suffered by a person as a result of an accident in Fiji, without the need for any person to establish fault or negligence on any person for the accident, provided however that the total sum payable as compensation does not exceed the maximum or fixed amount as prescribed by regulations.

Application for compensation

20.—(1) An applicant claiming compensation for any personal injury or death as a result of an accident in Fiji, whether for the applicant or on behalf of another person, must make an application for compensation to the Commission in such manner and within the time prescribed by regulations.

(2) The applicant must provide such particulars and information as may be required by the Commission.

(3) If an application for compensation is not made within the prescribed time, the Commission may in its discretion extend the time for making the application if the applicant satisfies the Commission that there are reasonable grounds for the delay in making the application.

(4) The decision of the Commission under subsection (3) is final and is not subject to any appeal or review in any court or tribunal.

Consideration of application

21.—(1) Upon receipt of an application for compensation, the Commission must as soon as practicable consider the application.

(2) In considering an application, the Commission may require the applicant or any other person to provide such particulars and information as the Commission deems necessary, including particulars of the accident and particulars of the injuries sustained by any person from the accident.

(3) Any person who fails to provide the required particulars and information under subsection (2) 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.

(4) Where an application for compensation concerns a personal injury, the Commission may, in addition to any particulars and information provided in the application, require any person who is injured by the accident to undergo such further medical assessment as the Commission deems necessary.

(5) The Commission may refuse compensation for the personal injury if the person who is injured fails to undergo further medical assessment under subsection (4).

Decision of the Commission

22.—(1) The Commission must, upon considering all relevant particulars and information, make a decision as soon as practicable on an application for compensation and must promptly inform the applicant of the decision of the Commission in writing.

(2) The decision of the Commission under subsection (1) is final and is not subject to any appeal or review in any court or tribunal.

(3) If the Commission approves an application for compensation, the Commission must in its decision prescribe the amount payable by the Commission as compensation for the personal injury or death under the no fault compensation scheme.

Acceptance of compensation offered under the no fault compensation scheme

23.—(1) If the applicant accepts the decision of the Commission and the amount prescribed by the Commission in its decision as compensation for personal injury or death under the no fault compensation scheme, the applicant must convey the applicant's acceptance of the decision in writing to the Commission, within the time prescribed by regulations.

(2) If the applicant does not convey the applicant's acceptance of the Commission's decision in writing to the Commission within the prescribed time, the Commission may in its discretion extend the time for acceptance if the applicant satisfies the Commission that there are reasonable grounds for the delay in conveying the applicant's acceptance, and if the applicant does not convey the applicant's acceptance within such prescribed or extended time, then the applicant is deemed to have not accepted the decision of the Commission.

(3) Upon receipt of the decision in writing by the applicant to accept the compensation for personal injury or death under the no fault compensation scheme, the Commission must as soon as practicable pay the compensation to the applicant or to the person who is entitled to receive the compensation.

(4) If the payment of compensation by the Commission under the no fault compensation scheme is in respect of any personal injury or death as a result of an accident in Fiji which is covered under a policy of insurance issued by an insurance company, then the insurance company must pay to the Commission such amount paid out by the Commission under the no fault compensation scheme within the time prescribed by regulations, provided however that the insurance company is only required to pay such amount as is covered under the policy of insurance.

Acceptance of compensation to be bar to any proceeding

24.—(1) The acceptance of compensation for personal injury or death under the no fault compensation scheme is an absolute bar to any proceeding, claim or action in any court or tribunal against the Commission or any other person for damages or compensation for personal injury or death as a result of the accident for which the compensation was accepted and paid by the Commission.

(2) The Commission or any other person against whom damages or compensation is claimed in any proceeding, claim or action in any court or tribunal is entitled to rely on the acceptance of compensation paid by the Commission for personal injury or death as a result of an accident in Fiji to apply for an order from the court or tribunal for the termination of such proceeding, claim or action, and the court or tribunal must grant the order terminating the proceeding, claim or action.

Non-acceptance of compensation under the no fault compensation scheme

25.—(1) If an applicant, having made an application for compensation to the Commission, decides not to accept the decision of the Commission and the amount prescribed by the Commission in its decision as compensation for personal injury or death under the no fault compensation scheme, then a proceeding, claim or action may be instituted in a court or tribunal for compensation for the personal injury or death under common law.

(2) Nothing in this Act affects the operation of the Limitation Act 1971 with respect to any proceeding, claim or action for compensation for personal injury or death as a result of an accident in Fiji.

Commission to consider proceeding

26.—(1) Where any person has instituted any proceeding, claim or action in any court or tribunal, whether for the person or on behalf of another person, for damages or compensation for personal injury or death as a result of an accident in Fiji, without making an application for compensation to the Commission, the Commission must, as soon as practicable upon being served with the particulars of the proceeding, claim or action—

- (a) consider the proceeding, claim or action;
- (b) make a decision on whether to award compensation under the no fault compensation scheme;
- (c) promptly inform the applicant of the decision of the Commission in writing; and
- (d) if the Commission decides to offer compensation under the no fault compensation scheme, prescribe the amount payable by the Commission in its decision.

(2) If the Commission makes a decision and offers compensation under the no fault compensation scheme and the person instituting the proceeding, claim or action accepts the Commission's offer, the person instituting the proceeding, claim or action must convey acceptance of the offer in writing to the Commission within the time prescribed by regulations and the Commission must as soon as practicable pay the compensation to the person instituting the proceeding, claim or action or to the person who is entitled to receive the compensation.

(3) Where any person has instituted any proceeding, claim or action in any court or tribunal, whether for the person or on behalf of another person, for damages or compensation for personal injury or death as a result of an accident in Fiji and subsequently accepts compensation from the Commission under the no fault compensation scheme, then the acceptance of the compensation from the Commission under the no fault compensation scheme has the effect of terminating the proceeding, claim or action.

(4) If the payment of compensation by the Commission under the no fault compensation scheme is in respect of any personal injury or death as a result of an accident in Fiji which is covered under a policy of insurance issued by an insurance company, then the insurance company must pay to the Commission such amount paid out by the Commission under the no fault compensation scheme within the time prescribed by regulations, provided however that the insurance company is only required to pay such amount as is covered under the policy of insurance.

(5) In considering a proceeding, claim or action, the Commission may require the applicant or any other person to provide such particulars and information as the Commission deems necessary, including particulars of the accident and particulars of the injuries sustained by any person from the accident.

(6) Any person who fails to provide the required particulars and information under subsection (5) 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.

Non-acceptance of compensation offered under section 26

27.—(1) If any person—

- (a) has instituted any proceeding, claim or action in a court or tribunal, whether for the person or on behalf of another person, for damages or compensation for personal injury or death as a result of an accident in Fiji without making an application for compensation to the Commission;
- (b) has received an offer from the Commission for compensation under the no fault compensation scheme; and
- (c) decides not to accept the decision of the Commission and the amount prescribed by the Commission in its decision as compensation for the personal injury or death under the no fault compensation scheme,

then that person is entitled to continue with the proceeding, claim or action instituted by the person in a court or tribunal for compensation for the personal injury or death under common law.

(2) Nothing in this Act affects the operation of the Limitation Act 1971 with respect to any proceeding, claim or action for compensation for personal injury or death as a result of an accident in Fiji.

Proceeding for personal injury or death in a court or tribunal

28.—(1) Any person who institutes a proceeding, claim or action in a court or tribunal, whether for the person or on behalf of another person, which seeks to claim damages or compensation for personal injury or death as a result of an accident in Fiji must serve a copy of all pleadings and documents on the Commission.

(2) Any person against whom a proceeding, claim or action is instituted in a court or tribunal for damages or compensation for personal injury or death as a result of an accident in Fiji must—

- (a) immediately notify the Commission and provide the Commission with all pleadings and documents;
- (b) provide all such other particulars or information and take all such steps as the Commission may require; and
- (c) not, without the written consent of the Commission, make any offer, promise, payment or settlement or any admission of liability or quantum of damages or compensation in any such proceeding, claim or action, and the Commission is not bound by any such offer, promise, payment or settlement or any admission of liability or quantum of damages or compensation.

(3) No court or tribunal is to hear or determine or make any orders in any proceeding, claim or action for damages or compensation for personal injury or death as a result of an accident in Fiji until the court or tribunal is satisfied that the Commission has been served with all the pleadings and documents in respect of any such proceeding, claim or action and has been given an opportunity to appear in, be heard and to defend any such proceeding, claim or action.

(4) The Commission may—

- (a) undertake settlement of any proceeding, claim or action in a court or tribunal against any person for damages or compensation for personal injury or death as a result of an accident in Fiji;
- (b) take over the conduct and control of any such proceeding, claim or action in a court or tribunal; and
- (c) defend or conduct any such proceeding, claim or action in a court or tribunal,

and the person against whom any such proceeding, claim or action in a court or tribunal is instituted is deemed to have authorised the Commission to have conduct and control of any such proceeding, claim or action.

(5) A court or tribunal, with respect to any proceeding, claim or action for damages or compensation for personal injury as a result of an accident in Fiji must, upon an application by the Commission, require any person who is injured by any such accident to undergo such medical examination as the Commission requires in order to ascertain the nature and extent of injuries sustained by that person, and where the person refuses or fails to attend any such medical examination, the court or tribunal must stay any such proceeding, claim or action until such time when the person undergoes the medical examination.

Commission to satisfy judgments

29.—(1) Subject to the provisions of this Act, where a judgment is issued or delivered in Fiji awarding compensation for any personal injury or death as a result of an accident in Fiji, the Commission must pay to the person entitled to the benefit of such judgment any sum payable thereunder including any amount payable in respect of costs and the sum payable by virtue of any written law in respect of interest on that sum.

(2) No sum is payable by the Commission under subsection (1) in respect of any judgment while execution thereon is stayed pending an appeal.

(3) The Commission is not liable to make any payment with respect to any judgment of any foreign court or tribunal awarding compensation to any person for any personal injury or death as a result of an accident in Fiji.

(4) Where a judgment is obtained in respect of liability of any person for any personal injury or death as a result of an accident in Fiji and where such liability is covered under a policy of insurance issued by an insurance company, then the Commission must satisfy the judgment in accordance with this section, and the insurance company must pay to the Commission such amount paid out by the Commission within the time prescribed by regulations, provided however that the insurance company is only required to make such payment as is covered under the policy of insurance.

PART 4—ACCIDENT COMPENSATION FUND

Accident Compensation Fund

30.—(1) This section establishes a fund to be known as the Accident Compensation Fund for the payment of compensation for personal injury and death as a result of an accident in Fiji.

(2) The Accident Compensation Fund consists of—

- (a) levies that are payable by any person under regulations made under this Act or under any other written law;
- (b) all interest and other income derived from the money and investments comprising the Accident Compensation Fund;
- (c) all monies which are appropriated by Parliament for the purposes of the Accident Compensation Fund; and
- (d) all monies which are lawfully received for the Accident Compensation Fund, including under any other written law.

(3) The Accident Compensation Fund must be administered and managed by the permanent secretary responsible for finance.

(4) The permanent secretary responsible for finance may, following consultation with the Commission and with the agreement of the Minister, enter into arrangements for insurance or reinsurance for the purpose of the Accident Compensation Fund.

(5) Where any payment is required to be made for any personal injury or death as a result of an accident in Fiji, the Commission must notify the permanent secretary responsible for finance in writing of the details of the payment that is required to be made, and the permanent secretary responsible for finance, upon receiving the notification from the Commission, must make the necessary payment out of the Accident Compensation Fund.

(6) The permanent secretary responsible for finance must cause proper accounts to be kept and must, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Accident Compensation Fund which must include a balance sheet and an account of income and expenditure.

(7) The permanent secretary responsible for finance must cause the statement of accounts to be audited by the Auditor-General.

(8) The permanent secretary responsible for finance must, as soon as practicable, send a copy of the statement of accounts and a copy of the Auditor-General's report to the Minister.

(9) Parliament must ensure that adequate funding is made available to the Accident Compensation Fund for the provision of compensation for personal injury and death as a result of an accident in Fiji.

PART 5—MISCELLANEOUS

Repeal

31.—(1) The Motor Vehicles (Third Party Insurance) Act 1948 and the Motor Vehicles (Third Party Insurance) Regulations 1949 are repealed.

(2) For the avoidance of doubt, no person is required to obtain insurance in respect of third party risks from an insurance company under the repealed Act from 1 January 2018.

Transitional

32.—(1) Notwithstanding the repeal of the repealed Act, where a policy of insurance in respect of third party risks has been issued to any person by an insurance company under the repealed Act before 1 January 2018, 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 required under the repealed Act until the expiration of the policy of insurance for any personal injury or death.

(2) Before 1 January 2018, any insurance company which is approved under the repealed Act to provide a policy of insurance must offer or provide a policy of insurance to any person applying for a policy of insurance in accordance with the provisions of the repealed Act.

(3) A policy of insurance issued before 1 January 2018 by an insurance company under the repealed Act must not be cancelled, withdrawn or revoked, except in accordance with the provisions of the repealed Act.

(4) 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 under the repealed Act

33.—(1) Any proceeding, claim or action for compensation for personal injury or death arising from a motor vehicle accident in Fiji which occurred before 1 January 2018 involving a motor vehicle that is covered by a policy of insurance under the repealed Act must be dealt with in accordance with the repealed Act.

(2) Any claim for compensation for personal injury or death as a result of a motor vehicle accident in Fiji which occurred on or after 1 January 2018 involving a motor vehicle that is covered by a policy of insurance under the repealed Act must be made by way of an application to the Commission in accordance with section 20.

(3) Where any claim is made to the Commission under subsection (2), the Commission must, with respect to any claim for compensation under subsection (2), consider and determine the claim in accordance with Part 3, and the insurance company must pay to the Commission such amounts as are required under Part 3.

Offences

34.—(1) If a body corporate commits an offence under this Act, an officer also commits the offence and is liable to the penalty prescribed for the offence, whether or not the body corporate has been prosecuted or convicted, if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), in determining whether things done or omitted to be done by an officer constitute reasonable steps, a court must have regard to—

- (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate;
- (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (c) any other relevant matter.

(3) For the purposes of this section, “officer” means a director, officer, employee, agent or consultant of the body corporate.

Regulations

35.—(1) The Minister may, following consultation with the Commission, make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without affecting the generality of subsection (1), the Minister may, following consultation with the Commission, make regulations prescribing—

- (a) limitations, exclusions and exemptions to the compensation payable under this Act;
- (b) the types of personal injuries which are excluded from the compensation payable under this Act;
- (c) the maximum or fixed amounts payable to any person as compensation under the no fault compensation scheme for any personal injury or death as a result of an accident in Fiji;
- (d) the maximum or fixed amounts payable to any person as compensation under a judgment of a court or tribunal awarding compensation for any personal injury or death;
- (e) the maximum or fixed amounts payable to any person for expenses incurred where the person is required by the Commission to undergo further medical assessments;
- (f) the levies which are payable into the Accident Compensation Fund and the manner and time in which any such levies are to be paid;
- (g) the appointment of committees for the purpose of assisting the Commission in the performance of its functions; or
- (h) offences and penalties, not exceeding—
 - (i) in the case of a natural person, a fine of \$10,000 or imprisonment for a term of 5 years or both; or
 - (ii) in the case of a body corporate, a fine of \$100,000.

Power to amend Schedule

36. The Minister may, by notice in the Gazette, amend the Schedule.

Consequential amendments

37.—(1) The Income Tax Act 2015 is amended by—

- (a) in section 2, deleting the definition of “Third Party Insurance Levy”;
- (b) deleting section 100;
- (c) deleting section 135(3);
- (d) in section 136—
 - (i) deleting “or Third Party Insurance Levy” wherever it appears; and
 - (ii) deleting “, as the case may be,”; and
- (e) in section 137, deleting “or the Third Party Insurance Levy”.

- (2) The Insurance Law Reform Act 1996 is amended by—
- (a) in section 5—
 - (i) in paragraph (b) after “;”, inserting “and”;
 - (ii) in paragraph (c), deleting “; and” and substituting “.”; and
 - (iii) deleting paragraph (d); and
 - (b) in section 10(4), deleting “, applies and to or in relation to which the Motor Vehicles (Third Party Insurance) Act 1948,”.
- (3) The Land Transport Act 1998 is amended by—
- (a) in section 51(2), deleting “third party insurance” and substituting “the levies payable under the Accident Compensation Act 2017”;
 - (b) in section 52—
 - (i) in the heading, deleting “third party insurance” and substituting “levies payable under the Accident Compensation Act 2017”; and
 - (ii) in subsection (1), deleting “a premium for third party insurance cover has been paid under the provisions of the relevant Act” and substituting “the levies payable under the Accident Compensation Act 2017 have been paid”; and
 - (c) in section 113(2)(g), deleting “have appropriate third party insurance” and substituting “pay levies under the Accident Compensation Act 2017”.
- (4) The National Fire Service Act 1994 is amended in section 29(1) by deleting “, including a motor vehicle insured in terms of a contract of compulsory motor vehicle policy for the purposes of the Motor Vehicles (Third Party) Insurance Act 1948,”.
- (5) The Value Added Tax Act 1991 is amended by—
- (a) in section 3(8)—
 - (i) after “payment received”, inserting “as compensation under the Accident Compensation Act 2017”; and
 - (ii) in subparagraph (iii), deleting “or the Motor Vehicle (Third Party Insurance) Act 1948”; and
 - (b) in Schedule 1 in paragraph 1(b)—
 - (i) in subparagraph (iii), deleting “or the Motor Vehicle (Third Party Insurance) Act 1948; or” and substituting “;”;
 - (ii) in subparagraph (iv), deleting “,” and substituting “; or”; and
 - (iii) after subparagraph (iv), inserting the following new subparagraph—
 - “(v) compensation paid under the Accident Compensation Act 2017,”.

(6) The Financial Transactions Reporting Regulations 2007 is amended in regulation 6 by deleting “third party insurance policy or”.

(7) The Income Tax (Rates of Tax and Levies) Regulations 2016 is amended by deleting paragraph (11) of the Schedule.

(8) The Insurance Regulations 1998 is amended by deleting regulation 10.

(9) The Land Transport (Traffic) Regulations 2000 is amended in regulation 63(1) by deleting “, its registration number and the name of the insurance company responsible for the third party insurance” and substituting “and the vehicle’s registration number”.

(10) The Land Transport (Vehicles Registration and Construction) Regulations 2000 is amended in regulation 8(1)(d) by deleting “third party insurance premium” and substituting “levies payable under the Accident Compensation Act 2017”.

SCHEDULE
(Section 2)

ACCIDENTS

1. An accident caused by a motor vehicle in Fiji.

ACCIDENT COMPENSATION BILL 2017

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 Accident Compensation Bill 2017 (**'Bill'**) is the result of the review of the Motor Vehicles (Third Party Insurance) Act 1948 (**'existing Act'**).
- 1.2 The existing Act provides for compulsory insurance against third party risks arising out of the use of motor vehicles. It makes it compulsory for all registered motor vehicles to have compulsory third party insurance cover, unless exempted by the Minister responsible for transport.
- 1.3 Despite third party insurance being compulsory for all registered motor vehicles, not all victims of motor vehicle accidents receive compensation. The exclusion provisions within the insurance contracts do not provide protection to all third parties who are injured from accidents involving motor vehicles and not all insurance claims are redressed.
- 1.4 As a result, many Fijians who have been victims of motor vehicle accidents have been denied compensation. As an example, an innocent pedestrian who is hit by a car and may be denied compensation by the insurance company simply because the driver of the vehicle did not have a driver's licence or was drunk-driving. Claims for compensation have also been unduly delayed with insurance companies or in the courts, and victims of motor vehicle accidents have often waited for years to get compensation, if any.
- 1.5 The Bill is intended to remedy this injustice. The Bill establishes a Commission to be known as the Accident Compensation Commission Fiji (**'Commission'**) and provides for a 'no fault compensation scheme' through which victims of accidents will be compensated without having to prove fault or negligence.

- 1.6 From 1 January 2018, the Accident Compensation Act 2017 (**‘the Act’**) will be applicable to motor vehicle accidents and will provide no fault compensation for personal injuries and deaths arising from motor vehicle accidents. Under the Act, any person who suffers personal injury or death as a result of a motor vehicle accident in Fiji will be provided with a lump sum compensation payment in a prompt and timely manner under the no fault compensation scheme. Victims of motor vehicle accidents no longer have to pay large amounts of legal fees to a lawyer and then wait for years to get any compensation from the insurance companies. Fijians will be able to claim compensation without a lawyer, potentially saving years of litigation and obtaining speedy justice.
- 1.7 From 1 January 2018, owners of motor vehicles no longer have to take third-party insurance with an insurance company. A levy will instead be paid into the Accident Compensation Fund, and will be payable through the Land Transport Authority (**‘LTA’**). This will make LTA a one-stop shop for the payment of all motor vehicle registration costs. The Accident Compensation Fund will be administered by the Ministry of Economy and the Reserve Bank of Fiji will assist with such reinsurance arrangements as necessary.
- 1.8 The proposed no fault compensation scheme is similar to the scheme in place for motor vehicle accidents in New Zealand.
- 1.9 The no fault compensation scheme is intended to make the redress for accident victims simple by providing compensation that the victims deserve by way of application to the Commission. This is less adversarial than the current system and more efficient as it saves costs, time and lessens the impact of the trauma suffered by victims.
- 1.10 As an alternative, if any person who suffered personal injury or the legal representative of any person who suffered death, as a result of a motor vehicle accident, decides not to accept the compensation offered by the Commission, that person is at liberty to institute a proceeding, claim or action in a court or tribunal for compensation under common law.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the Act will come into force on a date or dates appointed by the Minister responsible for justice (**‘Minister’**) by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of the terms used throughout the Bill.
- 2.3 Clause 3 of the Bill stipulates that the Act binds the State.
- 2.4 Clause 4 of the Bill establishes the Accident Compensation Commission Fiji and provides for the composition of the Commission.

- 2.5 Clause 5 of the Bill stipulates the meeting requirements of the Commission.
- 2.6 Clause 6 of the Bill provides for the appointment of the chief executive officer of the Commission.
- 2.7 Clause 7 of the Bill outlines the functions of the chief executive officer of the Commission. The chief executive officer of the Commission is responsible to the Commission for the management of the Commission.
- 2.8 Clause 8 of the Bill provides for the appointment of the officers and employees, including acting, temporary or casual officers and employees of the Commission. This clause also outlines that the Commission may appoint medical referees, medical committees, specialists, consultants, agents and other persons to assist and advise the Commission in the exercise of its powers and functions.
- 2.9 Clause 9 of the Bill outlines the functions and powers of the Commission.
- 2.10 Clause 10 of the Bill authorises the Commission to issue guidelines and directions for the performance of the Commission's functions and powers.
- 2.11 Clause 11 of the Bill states that the Commission may delegate to its officers, employees, agents or consultants as it thinks fit, any of its functions and powers.
- 2.12 Clause 12 of the Bill provides the funding details of the Commission. This clause also outlines the requirements for the Commission in terms of financial reporting and audit of accounts.
- 2.13 Clause 13 of the Bill outlines the requirement for the Commission to publish an annual report after the end of each financial year.
- 2.14 Clause 14 of the Bill provides for the disclosure of conflicts of interest in any matter under discussion by any member of the Commission or any officer, employee, agent or consultant of the Commission.
- 2.15 Clause 15 of the Bill deals with confidentiality of information.
- 2.16 Clause 16 of the Bill states that an act or decision of the Commission is not invalid only because of a defect or irregularity in, or in connection with, the appointment of the members of the Commission or in the case of an acting appointment, that the occasion for acting had not arisen or had ceased.
- 2.17 Clause 17 of the Bill provides for the protection of liability against the Commission and any member of the Commission and any officer, employee, agent or consultant of the Commission from civil or criminal proceedings unless it is shown that the Commission did not act in good faith or without reasonable care.

- 2.18 Clause 18 of the Bill provides for the scope of the accident compensation. The Commission is to provide compensation to all persons in respect of personal injury or death suffered as a result of an accident in Fiji. It further states that the Commission will either make a lump sum payment under the no fault compensation scheme or a lump sum payment awarded by a judgment of a court or tribunal.
- 2.19 Clause 19 of the Bill establishes the no fault compensation scheme for compensation for accidents causing personal injury or death.
- 2.20 Clause 20 of the Bill sets out the application requirements for a compensation claim made to the Commission.
- 2.21 Clause 21 of the Bill stipulates that upon receipt of an application for compensation, the Commission must as soon as practicable consider and determine the application. In making a determination, the Commission may require the applicant or any other person to provide such particulars and information as the Commission deems necessary.
- 2.22 Clause 22 of the Bill states that the Commission will make a decision on an application for a compensation claim upon considering all relevant particulars and information. This decision of the Commission is final and not subject to any appeal or review before any court or tribunal.
- 2.23 Clause 23 of the Bill allows for the applicant to convey in writing to the Commission its acceptance of the Commission's decision and the amount of compensation offered by the Commission. The Commission will thereafter make payment to the person who suffers personal injury or to the person who is entitled to receive the payment.
- 2.24 Clause 24 of the Bill provides that the acceptance of compensation for personal injury or death under the no fault compensation scheme is an absolute bar to any proceeding against the Commission or any other person for damages or compensation for personal injury or death as a result of an accident for which the compensation was accepted and paid by the Commission.
- 2.25 Clause 25 of the Bill provides an option to the applicant for non-acceptance of the Commission's decision under the no fault compensation scheme. Such applicant may then institute a proceeding, claim or action in a court or tribunal for compensation for the personal injury or death under common law.
- 2.26 Clause 26 of the Bill provides for the Commission to consider proceedings instituted in a court or tribunal against any person for personal injury or death as a result of an accident in Fiji.

- 2.27 Clause 27 of the Bill provides for non-acceptance of compensation offered under the proposed section 26. If such person(s) decide not to accept the decision of the Commission and the amount prescribed by the Commission in its decision then the person is entitled to continue with the proceeding, claim or action in a court or tribunal for compensation for the personal injury or death under common law.
- 2.28 Clause 28 deals with proceedings for personal injury or death in a court or tribunal.
- 2.29 Clause 29 states that the Commission is to satisfy judgments of a court or tribunal in Fiji awarding compensation for any personal injury or death as a result of an accident in Fiji.
- 2.30 Clause 30 of the Bill establishes a fund for the payment of compensation for any personal injury or death as a result of an accident in Fiji. The Accident Compensation Fund would be administered and managed by the permanent secretary responsible for finance.
- 2.31 Clause 31 of the Bill repeals the existing Act and the Motor Vehicles (Third Party Insurance) Regulations 1949. This clause further clarifies that from 1 January 2018, no person is required to obtain third party insurance from an insurance company under the existing Act.
- 2.32 Clause 32 of the Bill outlines the transitional provisions of the Bill. Prior to 1 January 2018, a third party insurance policy issued by an insurance company under the existing Act will continue to be valid. The insurance company issuing any such policy is required to continue to provide insurance cover under the existing Act until the expiry of that policy for any motor vehicle personal injury or death.
- 2.33 Clause 33 of the Bill stipulates that any claim for compensation for personal injury or death arising from a motor vehicle accident in Fiji before 1 January 2018 involving a motor vehicle covered by a policy of insurance under the existing Act must be dealt with in accordance with the existing Act and if after 1 January 2018 then the claim for compensation must be made by way of an application to the Commission.
- 2.34 Clause 34 provides for the offences under the Act.
- 2.35 Clause 35 the Bill authorises the Minister, following consultations with the Commission to make regulations prescribing matters that are required or permitted by the Bill to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act and generally for achieving the purposes of the Act.

2.36 Clause 36 of the Bill authorises the Minister to amend the Schedule by notice in the Gazette.

2.37 Clause 37 of the Bill provides for consequential amendments to other laws.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General