

BILL NO. 8 OF 2020

A BILL

FOR AN ACT TO AMEND THE FIJI NATIONAL PROVIDENT FUND ACT 2011

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fiji National Provident Fund (COVID-19 Response) (Amendment) Act 2020.

(2) This Act comes into force on 1 April 2020.

(3) In this Act, the Fiji National Provident Fund Act 2011 is referred to as the “Principal Act”.

Section 4 amended

2. Section 4(1) of the Principal Act is amended in the definition of “mandated contribution” after “37” by inserting “or 40B”.

Division 3A inserted

3. The Principal Act is amended after section 40 by inserting the following new Division—

“DIVISION 3A—CONTRIBUTIONS TO THE FNPF DURING THE
CORONAVIRUS DISEASE (COVID-19) PANDEMIC

Application of this Division

40A.—(1) This Division applies on and from 1 April 2020 to 31 December 2020.

(2) For the purposes of section 40B(1) and for the avoidance of doubt, in relation to employment undertaken in the month of December in 2020, “last day of each following month” means 31 January 2021.

Mandated contributions

40B.—(1) Despite Division 3 of this Part, no later than the last day of each following month an employer must—

- (a) pay to the Board, for each person who was an employee of the employer for all or part of the month, the amount of contributions calculated in accordance with this section; and
- (b) give the Board a remittance statement complying with the requirements of the regulations in relation to those payments.

Penalty — \$5,000.

(2) Strict liability applies to subsection (1).

(3) It is a defence to a prosecution for an offence against subsection (1) in respect of an employee that the employee was an exempt employee of the employer.

(4) The amount of contributions for an employee for a month is the amount equal to 10% of the total wages payable to the employee by the employer for the month. The amount must be rounded up to the nearest cent.

Recovery of contributions from employee

40C.—(1) Despite any provision of a written law or contract to the contrary, an employer may recover from the employee an amount equal to 50% of the amount paid as mandated contributions for the month, rounded up to the nearest cent. The amount may be recovered only by deduction from the employee’s wages for the month in respect of which the contributions are paid.

(2) A person commits an offence if—

- (a) the person recovers an amount from an employee of an employer;
- (b) the recovery is on account of a payment of mandated contributions by the employer or a related company of the employer; and

- (c) the contributions in respect of which the amount was recovered are not paid as required by this Division.

Penalty — \$25,000, or imprisonment for 3 years, or both.

- (3) Strict liability applies in respect of subsection (2)(a) and (c).

Penalty amounts

40D.—(1) If an employer fails to pay, in full, the contributions for a particular month required by this Division, the employer must also pay to the Board, as penalty, for each employee concerned, for each month or part of a month during which the contributions are unpaid—

- (a) \$100 for each employee concerned, for each month or part of a month during which the contributions are unpaid; or
- (b) if a higher amount is prescribed by the regulations, the higher amount for each employee concerned, for each month or part of a month during which the contributions are unpaid.

(2) If a penalty amount is due and payable under this section, the Board may, on application by an employer, waive some or all of the amount.

(3) If the amount due is recovered from an employer under this section for a failure to pay contributions, the employer may not be prosecuted for an offence against section 40B in respect of the failure.”.

Section 65 amended

4. Section 65 of the Principal Act is amended by—

- (a) in paragraph (d), deleting “and”; and
- (b) after paragraph (d), inserting the following new paragraph—
 - “(da) by utilising surplus in the Retirement Income Fund to make payments to one or more classes of annuitants in accordance with the regulations; and”.

Section 108A amended

5. Section 108A of the Principal Act is amended by deleting “or section 38(3)” and substituting “, 38(3) or 40B(1)(a)”.

March 2020

**FIJI NATIONAL PROVIDENT FUND (COVID-19 RESPONSE)
(AMENDMENT) BILL 2020**

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 Fiji National Provident Fund (COVID-19 Response) (Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Fiji National Provident Fund Act 2011 (**‘Act’**).

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 1 April 2020.

2.2 Clause 2 of the Bill amends the definition of “mandated contribution” in section 4(1) of the Act to include the mandated contributions under section 40B.

2.3 Clause 3 of the Bill amends the Act by introducing a new Division in Part 3 to reduce the mandated contributions for employers and employees from 10% and 8% respectively, to 5%.

2.4 Clause 4 of the Bill amends section 65 of the Act by inserting a new paragraph to authorise the Fiji National Provident Fund Board (**‘Board’**) to utilise the surplus funds in the Retirement Income Fund (**‘Fund’**) in order to make additional payments to annuitants in accordance with the regulations.

2.5 The principal purpose of the Fund is to support the obligations of the Board to make payments under basic annuities. Under section 65(b) of the Act, amounts standing to the credit of the Fund may be used to make authorised investments. The surplus made from these investments may be transferred to the Fiji National Provident Fund in accordance with the regulations. This amendment allows the surplus to also be used to increase the payments to annuitants.

- 2.6 Payments to annuitants will be as prescribed by regulations and will also be made in line with similar requirements as those used for transfers of the surplus to the Fiji National Provident Fund under section 65(d) of the Act and regulation 39 of the Fiji National Provident Fund Regulations 2014. These include the following:
- (i) that the actuary must certify in writing that the payments will not affect the validity of the current funding and solvency certificate issued under the Act; and
 - (ii) that the Board must obtain written confirmation from the Reserve Bank of Fiji that it has no objection to the payments being made.
- 2.7 The Board will also issue guidelines to specify the classes of annuitants that are eligible for the payments, the method of calculation of the amounts of the payments, the duration of the payments and also to require that the Board be satisfied that the payments represent an equitable use of the surplus.
- 2.8 Clause 5 of the Bill amends section 108A of the Act to include the mandated contributions under section 40B.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General