

# BILL NO. 43 OF 2020

## A BILL

FOR AN ACT TO PROVIDE FOR HOME LOAN ASSISTANCE FOR THE  
PAYMENT OF MORTGAGE MONIES AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the COVID-19 Response (Home Loan Assistance) Act 2020.

(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—

“COVID-19 pandemic” means the COVID-19 pandemic as characterised by the World Health Organization on 11 March 2020;

“COVID-19 relief period” means the period commencing on 1 April 2020 and ending on the date of commencement of this Act;

“financial institution” has the meaning given in section 2(1) of the Banking Act 1995;

“FNPF” has the meaning given in section 4(1) of the Fiji National Provident Fund Act 2011;

“FNPF preserved entitlement” has the meaning given to “preserved entitlement” in section 4(1) of the Fiji National Provident Fund Act 2011;

“FNPF relief assistance” means the FNPF COVID-19 withdrawal scheme made available to FNPF members affected as a result of the COVID-19 pandemic, other than home loan assistance to be provided to FNPF members in accordance with section 4;

“Minister” means the Minister responsible for finance;

“mortgage” has the meaning given in section 2 of the Property Law Act 1971;

“mortgage money” has the meaning given in section 2 of the Property Law Act 1971;

“mortgagee”, in relation to a mortgagor to whom this Act applies, has the meaning given in section 2 of the Property Law Act 1971; and

“mortgagor” means a person who is—

- (a) a mortgagor in accordance with section 2 of the Property Law Act 1971; and
- (b) eligible for FNPF relief assistance.

*Application*

**3.—(1)** This Act applies to—

- (a) a mortgage in effect in the COVID-19 relief period, even if the mortgage came into effect, was varied, or both, before or in that period; and
- (b) a mortgagor who, at the commencement of this Act, has an existing arrangement with a mortgagee as a result of the COVID-19 pandemic, for relief of the mortgagor’s payments of mortgage money, including the deferment of such payments.

(2) This Act has effect notwithstanding any provision of any other written law or any mortgage or other written agreement executed by a mortgagor and mortgagee, and accordingly, to the extent that there is any inconsistency between this Act and any other written law, mortgage or agreement, this Act prevails.

*Access to FNPF preserved entitlement for payment of mortgage money*

**4.—(1)** Subject to subsection (2), a mortgagor to whom this Act applies may withdraw an amount from his or her FNPF preserved entitlement in accordance with the provisions of the Fiji National Provident Fund Act 2011, for the purpose of making payments of mortgage money to the mortgagee.

(2) Subsection (1) applies only—

- (a) after 31 March 2021;

- (b) after the mortgagee has made every possible effort, and exhausted every available avenue, to provide relief of the mortgagor's payments of mortgage money, including to assist the mortgagor in having his or her payments of mortgage money deferred to a later time, and the mortgagor is still unable to make payments; and
- (c) if the mortgaged property is the mortgagor's principal place of residence.

*Restrictions on mortgagee*

**5.—**(1) If a mortgagor withdraws an amount from his or her FNPF preserved entitlement in accordance with section 4, the mortgagee must not, from the date the FNPF preserved entitlement is approved to the date appointed under section 7—

- (a) recover, or attempt to recover, any payment of mortgage money in default from the mortgagor;
- (b) enforce the mortgage or other charge over the mortgagor's property; and
- (c) initiate, or continue, a proceeding against the mortgagor for any default of payment of mortgage money in any court or tribunal.

(2) For the avoidance of doubt, subsection (1) does not apply if the default in payment of mortgage money occurred before the COVID-19 relief period.

(3) A mortgagee that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

*Mortgagees to provide information*

**6.** A mortgagee must, immediately after the commencement of this Act, provide to the Reserve Bank of Fiji all relevant information in respect of each mortgagor to whom this Act applies, as applicable to the mortgagee.

*Minister to appoint date*

**7.** The Minister may, after taking into consideration the Fijian COVID Safe Economic Recovery Framework and after undertaking consultations with the Office of the Prime Minister, the Reserve Bank of Fiji, financial institutions and other stakeholders in key economic sectors, appoint, by notice in the Gazette, a date on which the provisions of this Act no longer have effect.

*Regulations*

**8.** The Minister may 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, including prescribing offences and penalties not exceeding—

- (a) in the case of an individual, a fine of \$10,000; or
- (b) in the case of a body corporate, a fine of \$100,000.

*Consequential amendments*

**9.** The Fiji National Provident Fund Act 2011 is amended as set out in the Schedule.

SCHEDULE  
(Section 9)

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CONSEQUENTIAL AMENDMENTS

*Fiji National Provident Fund Act 2011*

1. The Fiji National Provident Fund Act 2011 is amended by—

- (a) in section 4(1) after the definition of “RBF inspector”, inserting the following new definition—

““Registrar” has the meaning given to it in section 2(1) of the Land Transfer Act 1971;”;

- (b) in section 48(4), deleting “section 58” and substituting “sections 58 and 58A”;

- (c) after section 58, inserting the following new sections—

*“Home loan assistance*

58A. Subject to this Act, amounts in respect of an FNPf member are payable, out of the member’s preserved entitlement, for home loan assistance in accordance with Schedule 3A.

*Charge on relevant property*

58B.—(1) Notwithstanding sections 58 and 58A, amounts in respect of an FNPf member are payable, out of the member’s preserved entitlement, for housing finance assistance and home loan assistance if an aggregate of the amounts are secured by a charge on the relevant property pursuant to subsection (2).

- (2) For the purposes of subsection (1)—

- (a) a charge on the relevant property must be registered by the Registrar against the title of the land charged, upon the filing with the Registrar by the Chief Executive Officer or any officer of FNPf authorised in writing by the Chief Executive Officer of a memorandum setting out the description of the land charged and the amounts for the housing finance assistance and home loan assistance; and

- (b) when any such charge has been satisfied, the Chief Executive Officer or any officer of FNPf authorised in writing by the Chief Executive Officer must deposit with the Registrar a memorandum of satisfaction and the Registrar must register the same against the title of the land.

- (3) Where the relevant property for the purposes of subsection (1) is—

- (a) State land or is constructed on State land; or

- (b) iTaukei land or is constructed on iTaukei land,

an aggregate of the amounts of the housing finance assistance and home loan assistance may be secured by a mortgage, charge or other security over any real property of the FNPf member which, in the opinion of the Board, is of sufficient value, or by a guarantee given by a bank in possession of a valid licence under the Banking Act 1995.

(4) For the purposes of subsection (1), where the relevant property is on *hanua pau* or *hanua ne 'on tore* in Rotuma or on land in Rabi whether it be Banaban land or not, the charge on such lands must be recorded in the Register.

(5) When the charge on land described in subsection (4) has been satisfied, the Chief Executive Officer or any officer of FNPf authorised in writing by the Chief Executive Officer must, in the case of Rotuma, deposit a certificate of satisfaction with the District Officer and, in the case of Rabi, with the Island Scribe, and the officers must enter a memorial of satisfaction in the Register.

(6) Subsection (1) applies only if amounts in respect of an FNPf member have been payable, out of the member's preserved entitlement, under both sections 58 and 58A.

(7) For the avoidance of doubt, subsection (1) does not apply—

- (a) if an FNPf member withdraws an amount from his or her preserved entitlement under section 58 but does not withdraw an amount from his or her preserved entitlement under section 58A; and
- (b) if an FNPf member withdraws an amount from his or her preserved entitlement under section 58A but does not withdraw an amount from his or her preserved entitlement under section 58.”; and

(d) after Schedule 3, inserting the following new Schedule—

“SCHEDULE 3A  
(Section 58A)

HOME LOAN ASSISTANCE

*Purpose of withdrawals*

1.—(1) The purposes for which amounts are payable under this Schedule from an FNPf member's preserved entitlement are limited to the FNPf member's mortgaged property being his or her principal place of residence.

(2) To avoid doubt, amounts from an FNPf member's preserved entitlement are not payable under this Schedule for making payments of mortgage money for more than one mortgage property.

*Maximum amounts of payments*

2.—(1) The maximum amount payable from an FNPF member's preserved entitlement is 50% of the balance of the entitlement at the date the COVID-19 Response (Home Loan Assistance) Act 2020 comes into force.

(2) The maximum amount payable from an FNPF member's general entitlement is 100% of the balance of the entitlement at the date of the application under clause 4.

*Payment restrictions*

3.—(1) A payment under this Schedule in respect of the FNPF member's payment of mortgage money may only be made to the mortgagee as set out in the rules made by the Board.

(2) A payment under this Schedule may only be made in instalments, in accordance with a schedule of payments approved by the Board.

*Board approval required*

4.—(1) Amounts are not to be paid under this Schedule unless the Board, on application, approves.

(2) The application must be made as set out in the rules made by the Board, and accompanied by the documents and statements required by those rules.

(3) The Board may require the FNPF member to give it further information in connection with the application. The Board is not bound to deal further with the application until the requirement is satisfied.

(4) The Board is not to approve the payment of amounts under this Schedule unless satisfied that—

- (a) the FNPF member is entitled to the payment; and
- (b) adequate arrangements are in place to ensure that the payments will be made and applied in accordance with this Schedule.”.

December 2020

## **COVID-19 RESPONSE (HOME LOAN ASSISTANCE) 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 COVID-19 pandemic has, amongst other challenges, brought about loss of employment and reduced salaries and wages for workers. As a result, many Fijians are finding it extremely difficult to keep up with their mortgage payments.
- 1.2 The COVID-19 Response (Home Loan Assistance) Bill 2020 ('**Bill**') seeks to provide some financial relief for those with mortgages to pay off.
- 1.3 The Bill allows affected Fijians who are members of the Fiji National Provident Fund ('**FNPF**') to withdraw funds from their preserved account to assist them in their mortgage payments.
- 1.4 An FNPF member would only be able to withdraw funds from their preserved account if:
  - (i) the mortgaged property is the FNPF member's principal place of residence; and
  - (ii) the FNPF member has an existing arrangement with the mortgagee for temporary relief of their mortgage payments.
- 1.5 FNPF would then place a charge on the mortgaged property. Any money received from a mortgage sale would then be credited into the FNPF member's preserved account.
- 1.6 It is prudent to note that accessing a preserved account for home loan assistance is a means of last resort – an FNPF member would only be able to withdraw funds from their preserved account after the mortgagee has made every possible effort, and exhausted every available avenue, to assist the FNPF member in making mortgage payments.

- 1.7 The Bill also places a freeze on any recovery of mortgage payments and enforcement of mortgages by the mortgagees.

## **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2 of the Bill provides for the meaning of certain terms used throughout the Bill.

- 2.3 Clause 3 of the Bill sets out the application provision and states that the provisions of the Bill apply to a mortgage in effect in the COVID-19 relief period, even if the mortgage came into effect, was varied, or both, before or in that period.

- 2.4 Clause 3 of the Bill also states that the provisions of the Bill apply to a mortgagor who, at the commencement of the new legislation, has an existing arrangement with a mortgagee as a result of the pandemic, for temporary relief of the mortgagor's payments of mortgage money, including the deferment of such payments.

- 2.5 Furthermore, clause 3 of the Bill states that the provisions of the Bill apply notwithstanding any provision of any other written law or any mortgage or other written agreement executed by a mortgagor and mortgagee, and if there is any inconsistency between the provisions of the Bill and any other written law, mortgage or agreement, the provisions of the Bill would prevail once the Bill is enacted.

- 2.6 Clause 4 of the Bill allows an FNPF member who is unable to keep up with their mortgage payments to access their preserved entitlement. The FNPF member must be a person who is eligible for the FNPF relief assistance schemes designed to assist FNPF members affected by the pandemic. This applies only after 31 March 2021, after the mortgagee has made every possible effort, and exhausted every available avenue, to provide temporary relief of the mortgagor's payments of mortgage money, and if the mortgaged property is the mortgagor's principal place of residence.

- 2.7 Clause 5 of the Bill prohibits a mortgagee from carrying out the following from the date the FNPF preserved entitlement is approved to the date appointed under clause 7 of the Bill:

- (i) recovering, or attempting to recover, any payment of mortgage money in default from the mortgagor;
- (ii) enforcing the mortgage or other charge over the mortgagor's property; and



- (iii) initiating, or continuing, a proceeding against the mortgagor for any default of payment of mortgage money in any court or tribunal.
- 2.8 These restrictions do not apply if the default in payment of mortgage money occurred before the COVID-19 relief period. The COVID-19 period refers to the period commencing on 1 April 2020 and ending on the date the new legislation comes into force.
- 2.9 Clause 6 of the Bill requires all mortgagees to provide relevant information in relation to their mortgagors to the Reserve Bank of Fiji immediately after the commencement of the new legislation.
- 2.10 Clause 7 of the Bill allows the Minister to appoint, by notice in the Gazette, a date on which the provisions of the new legislation no longer have effect, after taking into consideration the Fijian COVID Safe Economic Recovery Framework and after undertaking consultations with the Office of the Prime Minister, the Reserve Bank of Fiji, financial institutions and other stakeholders in key economic sectors.
- 2.11 Clause 8 of the Bill empowers the Minister to make regulations to give effect to the provisions of the new legislation.
- 2.12 Clause 9 of the Bill provides for consequential amendments to the Fiji National Provident Fund Act 2011 to give effect to the provisions of the new legislation.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General