

WORK CARE BILL 2025
(BILL NO. 7 OF 2025)

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BILL NO. 7 OF 2025

A BILL

FOR AN ACT TO ESTABLISH THE WORK CARE FUND AND PROVIDE FOR
COMPENSATION BENEFITS FOR INJURED WORKERS AND PUPILS, 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 Work Care Act 2025.

(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—

- (a) an accident arising out of and in the course of employment, including any incident that causes a prescribed disease; or
- (b) an accident occurring on any school premises or during a school event or activity;

“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;

“Board” means the Work Care Board established under section 6;

“compensation” means compensation as provided for by this Act;

“court” means the Employment Relations Tribunal or Employment Relations Court, provided that the Minister may by order declare that in any area of Fiji or for any case or class of cases, proceedings under this Act may be brought in any other court;

“controlling authority” means the controlling authority specified in the certificate of registration or recognition of a school in accordance with section 16(9) of the Education Act 1966;

“dependant” means a member of the family of a worker—

- (a) who is wholly or in part dependent on the worker’s earnings at the time of the worker’s death;
- (b) who would but for the incapacity due to an accident has been so dependent, and, where the worker, being the parent or grandparent of an illegitimate child, leaves the child so dependent on his or her earnings; or
- (c) who, being an illegitimate child, leaves a parent or grandparent so dependent on his or her earnings, includes the illegitimate child, a parent or grandparent respectively; and
- (d) includes a dependant of the pupil at the time of the accident, provided that a person is not deemed to be a partial dependant of another person unless he or she was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for a person in his or her class and position;

“earnings” include gross wages paid to a worker by the employer;

“employer” means—

- (a) the Government and any body of persons corporate or unincorporate or the personal representative of a deceased employer;
- (b) where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter may, for the purposes of this Act, be deemed to continue to be the employer of the worker while he or she is working for that other person; or

(c) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club may, for the purposes of this Act, be deemed to be the employer;

“Fund” means the Work Care Fund established under section 17;

“Government” means the Government of the Republic of Fiji and for the purpose of avoiding doubt the Minister by notice in the Gazette may include or exclude any person from this definition;

“medical aid” means medical, surgical and hospital treatment, skilled nursing services, and the supply of medicines within Fiji or with the approval of the permanent secretary responsible for health, outside Fiji, and the supply, maintenance, repair and renewal of any artificial appliances or apparatus;

“medical practitioner” means a medical practitioner registered under the Medical and Dental Practitioner Act 2010;

“Minister” means the Minister responsible for employment;

“Ministry” means the Ministry responsible for employment;

“no fault compensation scheme” means the no fault compensation scheme established under section 22;

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a worker in any employment in which he or she was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his or her earning capacity in any employment which he or she was capable of undertaking at that time, provided that every injury specified except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified therein against such injury or injuries amounts to 100% or more is deemed to result in permanent partial incapacity;

“Permanent Secretary” means the permanent secretary responsible for employment;

“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 in relation to a worker, includes occupational disease;

“pupil” includes a person of any age for whom education is provided under the Education Act 1966 and any person enrolled on any school register;

“total incapacity” means such incapacity where the worker or pupil is totally incapacitated as a result from an injury or from any combination of injuries arising out of employment or school event that amounts to a 100% incapacity of the worker or the pupil;

“worker” means any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is expressed or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or any longer period (and includes personnel and officers in the Fiji Police Force, the Fiji Corrections Service, the Republic of Fiji Military Forces personnel and officers engaged in military duties in foreign countries) but does not include the following persons —

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employers trade or business not being a person employed for the purposes of any game or recreation and engaged or paid through a club;
- (b) a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in his or her own home or on other premises not under the control or management of the person who gave out the materials or articles (outworker);
- (c) a person who is granted permission to win minerals, receiving a proportion of the minerals won by him or her or the value thereof (tributer);
- (d) a member of the employer’s family dwelling in the employer’s house or the curtilage thereof; or
- (e) any class of persons whom the Minister may, by order, declare not to be a worker for the purposes of this Act;

“Work Care inspector” means a Work Care inspector appointed or authorised by the Permanent Secretary for the purposes of this Act;

“Work Care Inspectorate” means the Work Care Inspectorate of the Ministry as appointed by the Minister under this Act; and

“Work Care Service” means all the officers within the unit that processes the workplace and school accidents compensation cases and includes the Work Care Inspectorate and other administration staff within the unit.

Objectives

3. The objectives of this Act are to—

- (a) ensure compensation is paid under the no fault compensation scheme for the personal injury or death of workers and pupils;

- (b) provide for efficient compensation processing services;
- (c) consolidate, integrate and implement employment and school accident compensation policies; and
- (d) promote sustainable and productive social protection standards in workplaces and schools.

Application

4.—(1) This Act applies to all employers, workers and pupils in workplaces and schools within the territorial waters, land and air space of Fiji.

(2) This Act also applies to workplaces within a Fiji registered or Government owned ship or aircraft of any kind, whether or not a ship or aircraft is within the territorial waters, land or airspace of Fiji.

(3) Subject to subsection (4), this Act applies to workers employed by the Government in the same way and to the same extent as if the employer were a private person.

(4) If—

- (a) an officer or soldier of the Republic of Fiji Military Forces suffers personal injury or death while engaged in, or as a result of being engaged in, military peacekeeping operations overseas; and
- (b) external compensation is payable to the officer or soldier, or to his or her estate or dependants for the personal injury or death, then—
 - (i) if the external compensation paid equals or exceeds the compensation payable under this Act for the personal injury or death, no compensation is to be paid under this Act to the officer or soldier, or to his or her estate or dependants as the case may be;
 - (ii) if the external compensation paid is less than the compensation payable under this Act for the personal injury or death, an additional amount is to be paid to the officer or soldier, or to his or her estate or dependants as the case may be, so as to bring the total amount of compensation paid up to the amount payable under this Act; or
 - (iii) if compensation for death or personal injury has been paid under this Act to an officer or soldier, or to his or her estate or dependants, but the amount of external compensation payable for the death or personal injury exceeds the amount so paid, the officer or soldier is, or his or her estate or dependants are, entitled to receive the balance of the external compensation so payable.

(5) In subsection (4), “external compensation” means compensation for personal injury or death payable to an officer or soldier of the Republic of Fiji Military Forces, or his or her estate or dependants, by the United Nations or other international body which deployed the officer or soldier on peacekeeping duties.

Act to bind the State

5. This Act binds the State.

PART 2—ADMINISTRATION

*Division 1—Work Care Board**Establishment of Work Care Board*

6. This section establishes the Work Care Board responsible to the Minister for the governance of the Work Care Service.

Appointment of Board members

7.—(1) The Board consists of the Permanent Secretary as chairperson, and 9 other members appointed by the Minister which must consist of the following—

- (a) 3 members from workers' organisations;
- (b) 3 members from employers' organisations; and
- (c) 3 members that are representatives of the Government.

(2) The Minister must invite employers' and workers' organisations to submit to him or her the names of the persons they recommend to be appointed as members.

(3) The Minister must, before appointing a person to be a member, consider all recommendations made to him or her.

(4) The chairperson of the Board must appoint a suitable person from the Work Care Inspectorate as the secretary of the Board.

(5) The Board may regulate its own procedure and must keep proper records of its proceedings.

Powers and functions of Board

8.—(1) The powers and functions of the Board are—

- (a) to advise the Minister on matters relating to compensation for accidents arising out of and in the course of employment and accidents occurring in school premises and related matters;
- (b) to inquire into and report to the Minister on matters referred to it by the Minister;
- (c) in liaison with the Work Care Inspectorate, to facilitate the development of national work care regulations and standards for the Minister's consideration; and
- (d) any other function under this Act or any other written law.

(2) The Board has the powers necessary to carry out its functions under this Act or any other written law.

Meetings

9.—(1) The chairperson must call at least one meeting of the Board every 3 months for the performance of its functions and exercise of its powers.

(2) At a meeting of the Board—

- (a) the chairperson and at least 4 other members constitute a quorum;
- (b) if the chairperson is not present, the chairperson's nominee is to preside;
- (c) if neither the chairperson nor the nominee is present, the other members present at the meeting must elect one member among themselves to preside at the meeting;
- (d) any questions arising must be determined by a majority vote of the members present and voting; and
- (e) in the event of an equality of votes, the chairperson has a casting vote.

(3) The Board, with the approval of the chairperson, may invite any person it considers appropriate to act in an advisory capacity to the Board in its deliberations.

Administration

10.—(1) A member of the Board holds office for a term not exceeding 3 years as specified in the instrument of the member's appointment, and is eligible for reappointment for one additional term only.

(2) A member of the Board or an advisory committee is entitled to allowances which are to be fixed by the Minister.

(3) A member of the Board may resign from his or her office by giving 30 days' written notice of the resignation to the Minister.

(4) The office of a member of the Board becomes vacant if the member—

- (a) dies;
- (b) fails to attend 3 consecutive meetings of the Board without the prior approval of the chairperson; or
- (c) for any other reason is not able to perform the functions of his or her office.

(5) The Minister may terminate the appointment of a member of the Board for any of the following reasons—

- (a) the member is suffering from a mental or physical condition such that he or she cannot properly carry out the duties of the office;
- (b) the member is guilty of misbehaviour warranting removal from office;
- (c) the member has become insolvent;
- (d) the member, either in Fiji or overseas, has been disqualified from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services; or
- (e) the member has committed a serious contravention of the code of conduct.

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

Code of conduct

11.—(1) The Board must formulate a code of conduct applicable to members of the Board.

(2) The code of conduct must be consistent with this Act and other written laws.

(3) A member of the Board must comply with the code of conduct.

(4) Failure to comply with the code of conduct is not an offence but may form the basis for disciplinary action including termination.

Interests and confidentiality

12.—(1) A member of the Board—

(a) must declare any direct or indirect interest in a workplace under his or her supervision; and

(b) must not make use of or reveal, including after leaving Government service, working processes or confidential information which may come to his or her knowledge in the course of his or her duties as a member of the Board.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

*Division 2—Work Care Inspectorate**Powers and functions of Permanent Secretary*

13. The powers and functions of the Permanent Secretary are to—

(a) oversee the administration and operation of the Work Care Inspectorate;

(b) manage the levy and other contributions paid into the Work Care Fund;

(c) report to the Minister on matters relating to compensation that are referred to him or her by the Board;

(d) advise the Minister on matters relating to this Act and the Work Care Inspectorate; and

(e) exercise the powers and perform any function conferred on him or her in accordance with this Act and any other written law.

Delegation of powers

14.—(1) The Permanent Secretary may delegate his or her powers under section 13(a), (c), (d) and (e) to a Work Care inspector if it is necessary or beneficial to the objectives of this Act or any other written law to do so.

(2) The Permanent Secretary must issue a certificate of delegation or identification card to a Work Care inspector appointed for the purposes of this Act.

(3) When exercising any function under this Act, an officer delegated powers under subsection (1) must, if required by a person affected by the exercise of such function, produce the certificate of delegation or identification card to that person.

Authority to process compensation claims

15. The Work Care Inspectorate through the authority of the Permanent Secretary may—

- (a) receive notifications and applications for compensation for personal injury or death resulting from an accident;
- (b) investigate cases of personal injury and death resulting from an accident;
- (c) process claims of outstanding wages to be paid to a worker during a temporary incapacity period; and
- (d) facilitate the payment of lump sum compensation payable under this Act.

Powers and duties of Work Care inspectors

16. A Work Care inspector may at all reasonable times—

- (a) enter and examine a workplace where or about which, there is reason to believe that a worker is employed or a pupil is engaged in school activity, as the case may be, which resulted in an accident;
- (b) require an employer to produce any worker employed by the employer and any document or record which the employer is required to keep under this Act or any other document or record relating to the employment or school accident compensation;
- (c) interview the employer or a worker or pupil on a matter connected with employment or school accident compensation under this Act, and may seek information from any other person whose evidence is considered to be necessary;
- (d) inquire from an employer or a person acting on an employer's behalf in relation to his or her functions under this Act;
- (e) copy or make extracts from a document or records in the possession of an employer which relate to a worker or pupil;
- (f) advise and assist employers, workers, self-employed persons or the general public on particular or general employment and school accident compensation matters under this Act; and
- (g) provide information, advice or awareness sessions to employers, workers, pupils, self-employed persons, applicants, organisations and the general public on matters under this Act.

PART 3—WORK CARE FUND*Establishment of Work Care Fund*

17.—(1) This section establishes a fund to be known as the Work Care Fund for the payment of compensation for personal injury and death as a result of an accident.

(2) The Fund consists of—

- (a) levies that are payable by any person under this Act or any other written law;
- (b) all monies which are appropriated by Parliament for the purposes of the Fund;
- (c) all monies which are lawfully received for the Fund, including under any written law;
- (d) any official development assistance paid into the Fund as approved by the Government; and
- (e) all interest and other income derived from the money and investments comprising the Fund.

Payments from Fund

18.—(1) The amounts standing to the credit of the Fund must be applied only on the advice of the Board for the purposes of—

- (a) payment of compensation benefits as prescribed under this Act;
- (b) rehabilitation, education, training or research associated with accident compensation;
- (c) efficient and effective processing of employment and school accident compensation cases; and
- (d) anything expressly authorised by or under this Act.

(2) The Fund must be administered and managed by the Permanent Secretary.

(3) The Permanent Secretary 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 Fund which must include a balance sheet and an account of income and expenditure.

(4) The Permanent Secretary must cause the statement of accounts to be audited by the Auditor-General.

(5) The Permanent Secretary 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.

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

PART 4—COMPENSATION FOR PERSONAL INJURY AND DEATH

Division I—Entitlement to compensation

Accident compensation

19.—(1) Subject to the provisions of this Act, compensation must be paid for any injury or death suffered by a worker or pupil as a result of any accident.

- (2) The Ministry must, in accordance with this Act, pay compensation to—
- (a) an injured worker, or the dependants of a deceased worker, for personal injury or occupational disease or death arising out of and in the course of employment; or
 - (b) an injured pupil, or the next of kin of the deceased pupil, for injuries or death arising out of any school accident.
- (3) The compensation payable by the Ministry under this Act for any personal injury or death as a result of an accident is as follows—
- (a) a lump sum under the no fault compensation scheme; or
 - (b) a lump sum awarded by a judgment, not exceeding the maximum or fixed amount that may be paid under the no fault compensation scheme as prescribed by this Act.

Persons entitled to benefit

20.—(1) In respect of an accident occurring on any school premises or during a school event or activity, the compensation is payable to or for the benefit of the pupil, or where death results from the personal injury, to or for the benefit of his or her next of kin under the Succession, Probate and Administration Act 1970.

(2) In respect of an accident arising out of and in the course of employment, the compensation is payable to or for the benefit of the worker or his or her dependants as provided by this Act.

(3) Where there are both total and partial dependants, nothing in this Act is construed as preventing compensation being allotted partly to the total and partly to the partial dependants.

(4) Where a dependant dies before a claim in respect of death is made under this Act, or, if a claim has been made, before an order for the payment of compensation has been made, the personal representative of the dependant has no right to compensation.

Distribution of compensation

21.—(1) Any compensation payable where the death of a pupil has resulted from a personal injury must be distributed in accordance with the order of priority of entitlement under the Succession, Probate and Administration Act 1970.

(2) Any compensation payable where the death of a worker has resulted from a personal injury must be paid into court, and the court may order any sum so paid in to be apportioned among the dependants of the deceased worker or any of them in such proportion as the court thinks fit, or in the discretion of the court, be allotted to any one dependant, and the sum so allotted to any dependant is paid to him or her or invested, applied or otherwise dealt with for his or her benefit in such manner as the court thinks fit.

(3) Where, on application being made to a court, it appears that on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order made under this subsection ought to be varied, such court may make such order for the variation of the former order as in the circumstances of the case it may think just.

No fault compensation scheme

22.—(1) This section establishes the no fault compensation scheme for compensation for any personal injury or death resulting from an accident.

(2) Under the no fault compensation scheme, the Ministry must make a lump sum payment in respect of personal injury or death suffered as a result of an accident, 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 under this part.

(3) Notwithstanding subsection (2), no compensation is payable under this Act in respect of any incapacity or death resulting from deliberate self-injury.

Duty to report accidents

23.—(1) An employer must give notice of an accident causing the personal injury or death of a worker to the Permanent Secretary in the manner prescribed by regulations.

(2) The controlling authority must give notice of an accident causing the personal injury or death of a pupil to the Permanent Secretary in the manner prescribed by regulations.

Failure to report accidents

24.—(1) If an employer or controlling authority fails to comply with section 23 without reasonable cause, a Work Care inspector must issue the employer or controlling authority with a demand notice in the prescribed form.

(2) If the employer or controlling authority fails to comply with the requirements of the demand notice issued under subsection (1), the employer or controlling authority commits an offence and is liable to a fine as prescribed in the regulations.

(3) A fixed penalty notice specifying the fixed penalty must be issued to the employer or controlling authority in the form prescribed in the regulations.

Application for compensation

25.—(1) Nothing contained in this Act prevents any applicant from making an application for compensation directly with the Ministry for any personal injury or death as a result of an accident, whether for the applicant or on behalf of another person.

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

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

Consideration of application

26.—(1) Upon receipt of an application for compensation, the Permanent Secretary must as soon as practicable consider the application.

(2) In considering an application, the Permanent Secretary may require the worker or pupil or any other person to provide such particulars and information as the Ministry deems necessary, including particulars of the accident and 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 on conviction to—

- (a) in the case of an individual, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; and
- (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 Permanent Secretary 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 Ministry deems necessary.

(5) The Permanent Secretary may refuse compensation for the personal injury if the worker or pupil who is injured fails to undergo further medical assessment under subsection (4).

Decision of Permanent Secretary

27.—(1) The Permanent Secretary 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 his or her decision in writing.

(2) Any person who is aggrieved by a decision of the Permanent Secretary under this Act may appeal the decision to the High Court on a question of law.

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

Acceptance of compensation offered under the no fault compensation scheme

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

(2) If the applicant does not convey the applicant's acceptance of the Permanent Secretary's decision in writing to the Permanent Secretary within the prescribed time, the Permanent Secretary may in his or her discretion extend the time for acceptance if the applicant satisfies the Permanent Secretary 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, the applicant is deemed to have not accepted the decision of the Permanent Secretary.

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

Acceptance of compensation to be bar to any proceeding

29.—(1) The acceptance of compensation offered under the no fault compensation scheme is an absolute bar to any proceeding, claim or action in any court or tribunal against the Ministry 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 Ministry.

(2) The Ministry 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 Ministry 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

30.—(1) If an applicant, having made an application for compensation to the Permanent Secretary, decides not to accept the decision of the Permanent Secretary and the amount prescribed by the Permanent Secretary in his or her decision as compensation for personal injury or death under the no fault compensation scheme, 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) Notwithstanding subsection (1), an applicant who chooses not to accept compensation under the no fault compensation scheme and institutes a proceeding, claim or action in a court or tribunal for compensation for the personal injury or death under common law, must not return to the Ministry for a reconsideration of his or her application.

(3) 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

31.—(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 compensation for personal injury or death as a result of an accident must serve a copy of all pleadings and documents on the Ministry.

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

- (a) immediately notify the Ministry and provide the Permanent Secretary with all pleadings and documents;
- (b) provide all such other particulars or information and take all such steps as the Permanent Secretary may require; and

- (c) not 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, without the written consent of the Permanent Secretary, and the Ministry 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 compensation for personal injury or death as a result of an accident until the court or tribunal is satisfied that the Permanent Secretary 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 Ministry may —

- (a) undertake settlement of any proceeding, claim or action in a court or tribunal against any person for 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 Ministry 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 made by the Ministry, require any person who is injured by any such accident to undergo a medical examination as the Ministry requires in order to ascertain the nature and extent of injuries sustained by the person, and where he or she refuses or fails to attend any medical examination, the court or tribunal must stay any such proceeding, claim or action until such time the person undergoes the medical examination.

Compensation not to be assigned, charged or attached

32. Any compensation payable under this Act must not be assigned, charged or attached, or passed to any other person by operation of law nor any claim be set off against such compensation.

Division 2—Medical treatment and fees for medical aid of a worker

Medical examination and treatment of worker

33.—(1) In respect of an accident arising out of and in the course of employment, where a worker has given notice of an accident, the employer may, as soon as reasonably possible after the date on which notice has been given, arrange to have the worker medically examined free of charge, by a medical practitioner and is named by the employer and any worker who is in receipt of periodical payments under section 38, submit himself or herself for such medical examination as may be required by the employer.

(2) The worker may, when required, undergo medical examination or treatment at the time and place notified to the worker by the employer or medical practitioner, provided such time and place are reasonable.

(3) In the event of the worker being, in the opinion of a medical practitioner, unable or not in a fit state to attend to the medical practitioner named by the employer, that fact is notified to the employer, and the medical practitioner so named may fix a reasonable time and place for a personal examination of the worker and send him or her notice accordingly.

(4) If the worker fails to submit himself or herself for the examination, his or her right to compensation is suspended until the examination has taken place, and if the failure extends for a period of 15 days from the date when the worker was required to submit himself or herself for examination under subsection (2) or (3), no compensation is payable unless the court is satisfied that there was reasonable cause for the failure.

(5) A worker is entitled to have his or her own medical practitioner present at the examination at his or her own expense.

(6) During the period of temporary incapacity, the employer must arrange to submit the worker for normal medical treatment by a medical practitioner approved by the employer at the expense of the employer.

(7) Normal medical treatment includes any specialist treatment which the medical practitioner may advise the worker to undergo.

(8) If the worker has failed to submit himself or herself for treatment by a medical practitioner when required under this section, or having submitted himself or herself for such treatment, has disregarded the instructions of the medical practitioner then, if it is proved that the failure or disregard was unreasonable in the circumstances of the case and that the personal injury has been aggravated thereby, the personal injury and resulting incapacity is deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself or herself for treatment by, and duly carried out the instructions of, the medical practitioner, and compensation, if any, is payable accordingly.

(9) Where under subsection (4) a right of compensation is suspended, no compensation is payable in respect of the period of suspension.

Fees for medical aid

34. The fees and charges for medical aid to a worker within Fiji is in accordance with the scale as may be prescribed, and no claim for an amount in excess of a fee or charge in accordance with that scale may lie against any worker or his or her employer in respect of any medical aid.

Division 3—Compensation

Compensation in fatal cases

35.—(1) Where death results from the personal injury if the worker leaves any dependants dependent on his or her earnings, the amount of compensation of a sum equal to or not more than \$75,000 is payable.

(2) Where death results from the personal injury of the pupil, the amount of compensation of a sum equal to or not more than \$75,000 is payable.

Compensation in the case of permanent total incapacity

36. Where permanent total incapacity results from the personal injury, the amount of compensation of a sum equal to or not more than \$150,000 is payable.

Compensation in the case of permanent partial incapacity

37. Where permanent partial incapacity results from the personal injury, the amount of compensation of a sum equal to or not more than \$75,000 is payable.

Compensation in the case of temporary incapacity

38.—(1) Where temporary incapacity of the pupil, whether total or partial, results from the personal injury, the amount of compensation of a sum equal to or not more than \$75,000 is payable.

(2) Where temporary incapacity of the worker, whether total or partial, results from the personal injury, the compensation is the periodical payments hereinafter mentioned, payable at such intervals as may be agreed upon or as the court may order, or a lump sum calculated accordingly having regard to the probable duration and probable changes in the degree of the incapacity.

(3) The periodical payments is a weekly payment of two-thirds of the weekly earnings which the worker was earning at the time of the accident or is capable of earning in some employment or business after the accident, provided that—

- (a) neither the aggregate of the periodical payments nor the lump sum payable under the provisions of this subsection exceeds the lump sum which would be payable in respect of the same degree of incapacity under sections 36 and 37 as the case may be, if the incapacity is permanent;
- (b) the period covered by hospitalisation or absence from duty certified necessary by a medical practitioner is regarded as a period of temporary total incapacity irrespective of the outcome of the personal injury and any subsequent period but preceding final assessment of disability is regarded as a period of temporary partial incapacity both periods being continuous with each other, variations in payments notwithstanding, and the maximum duration of periodical payments under this section does not exceed 260 weeks;
- (c) in the event of either death, permanent partial incapacity or permanent total incapacity, after temporary incapacity, no deduction is made from the lump sum payable under sections 36 and 37 by reason of periodical payments or a lump sum payment having been made under this section.

(4) Where a worker in receipt of periodical payments under this section intends to leave the neighbourhood in which he or she was employed, for the purpose of residing elsewhere, he or she gives notice of such intention to the employer who may agree with the worker for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments.

(5) If the employer and worker are unable to agree, either party may apply to the court which have jurisdiction to order such redemption and to determine the amount to be paid or to order the continuance of the periodical payments, provided that any lump sum so ordered to be paid together with the periodical payments already made to the worker exceeds the lump sum which would be payable in respect of the same degree of incapacity under sections 36 and 37, as the case may be, if the incapacity is permanent.

(6) If a worker in receipt of periodical payments under this section leaves the neighbourhood in which he or she was employed, for the purpose of residing elsewhere, without giving notice as provided in subsection (4) or having given such notice leaves the neighbourhood without having come to an agreement with his or her employer for the redemption or continuance of such periodical payments, or without having made an application to the court under subsection (4), he or she is entitled to any benefits under the provisions of this Act during or in respect of the period of his or her absence.

(7) If the period of such absence exceeds 260 weeks, the worker ceases to be entitled to any benefit under this Act.

Proceedings to dispute weekly payments

39.—(1) An employer may elect to dispute the weekly payment under section 38 by making an application to the Permanent Secretary.

(2) An application to the Permanent Secretary under subsection (1) must—

- (a) only be made on the grounds that the accident did not arise out of and in the course of employment; and
- (b) be hand delivered or sent by post or electronic mail to the Permanent Secretary and the Work Care Service, or in such other manner as specified by the Permanent Secretary.

Limitation period for notice of accident or application for compensation

40. A notice or application for compensation must be made within a period of 6 years from the date of the accident.

Proceedings independent of this Act

41.—(1) Where the injury was caused by the personal negligence or wilful act of the employer or the controlling authority or of some other person for whose act or default the employer or controlling authority is responsible, nothing in this Act prevents proceedings to recover damages being instituted against the employer or controlling authority in a civil court independently of this Act, provided that—

- (a) a judgment in such proceedings whether for or against the employer or controlling authority is a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same personal injury under this Act; and
- (b) a judgment in proceedings under this Act whether for or against the employer or controlling authority is a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act.

(2) If in any proceedings independent of this Act or on appeal it is determined that the employer or controlling authority is not liable under such proceedings, the court in which such proceedings are taken or the appellate tribunal may, if the plaintiff so chooses, proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and assess the amount of compensation payable, but may deduct from such compensation any extra costs which in the opinion of the court or appellate tribunal have been incurred by the employer by reason of the proceedings having been taken independently of this Act.

PART 5—MISCELLANEOUS

Regulations

42.—(1) The Minister, in consultation with the Board, may make regulations, not inconsistent with this Act 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 limiting the generality of subsection (1), the Minister may, in consultation with the Board, make regulations prescribing—

- (a) procedure, forms and fees;
- (b) limitations, exclusions and exemptions to 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 for expenses incurred where the person is required by the Ministry to undergo further medical assessments;
- (e) the levies which are payable into the Fund and the manner and time in which any such levies are to be paid;
- (f) the duties of employers and employees in relation to any personal injury or death as a result of an accident arising out of and in the course of employment and including the duty to report such personal injury or death;
- (g) the duties of persons associated with a school in relation to any personal injury or death as a result of an accident occurring on any school premises and including the duty to report such personal injury or death;
- (h) any matter relating to the functions, powers or responsibilities of the Work Care Service;
- (i) offences and penalties, not exceeding—
 - (i) in the case of an individual, 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; or
- (j) any matter whatsoever in relation to compensation for an accident under this Act.

(3) Where an arrangement has been made whereby sums awarded under this Act to beneficiaries residing overseas and sums awarded relating to a worker's compensation overseas at the request of the authority by which the award is made, transferred to and administered by a competent authority as the case may be, the Minister may make regulations for the transfer, in such manner as may be provided by the arrangement made, of any money in the disposition of the Ministry, applicable for the benefit of any person residing overseas.

Indemnification from liability

43. No proceedings, civil or criminal, lie against the Ministry, the Board or any employee of the Work Care Service for anything it, he or she may do or fail to do in the course of the exercise or intended exercise of the powers and functions under this Act or any other written law, unless it is shown that the person did not act in good faith or with reasonable care.

Consequential amendments

44.—(1) The Pensions Act 1983 is amended by—

- (a) in section 28(2A)(b), deleting “Accident Compensation Act 2017” and substituting “Work Care Act 2025”;
- (b) in section 28(3A), deleting “Accident Compensation Act 2017” and substituting “Work Care Act 2025”; and
- (c) in section 37(5), deleting “Accident Compensation Act 2017” and substituting “Work Care Act 2025”.

(2) The Fiji National Training Levy Order 1988 is amended in order 4B by deleting paragraph (b) and substituting the following—

“(b) 40% to be paid into the Work Care Fund”.

(3) The Mining Regulations 1966 is amended in regulation 95 in the definition of “serious injury”, by deleting “Accident Compensation Act 2017” and substituting “Work Care Act 2025”.

(4) The Quarries Regulations 1939 is amended in regulation 2 in the definition of “serious injury”, by deleting “Accident Compensation Act 2017” and substituting “Work Care Act 2025”.

April 2025

WORK CARE BILL 2025

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 Work Care Bill 2025 (**'Bill'**) provides for the processing and payment of compensation for personal injury or death under the no fault compensation scheme by the Work Care Service within the Ministry of Employment, Productivity and Workplace Relations (**'Ministry'**) for accidents arising out of and in the course of employment and accidents on school premises or during a school activity or event.
- 1.2 Under the Bill, the Work Care Fund is established and is to be administered and managed by the Permanent Secretary for Employment with cases to be processed by the Ministry.

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 Ministry by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions and interpretation of terms used throughout the Act.
- 2.3 Clause 3 of the Bill provides the objectives of the Act.
- 2.4 Clause 4 of the Bill provides for the application of the Act.
- 2.5 Clause 5 of the Bill provides that the Act binds the State.
- 2.6 Clause 6 of the Bill establishes the Work Care Board (**'Board'**).
- 2.7 Clause 7 of the Bill provides for the appointment of members of the Board.
- 2.8 Clause 8 of the Bill provides for the powers and functions of the Board.

- 2.9 Clause 9 of the Bill provides for the meetings of the Board.
- 2.10 Clause 10 of the Bill provides for the administration of the Board.
- 2.11 Clause 11 of the Bill provides for the formulation of a code of conduct for members of the Board.
- 2.12 Clause 12 of the Bill provides for the declaration of interests and maintaining of confidentiality by members of the Board.
- 2.13 Clause 13 of the Bill provides the powers and functions of the Permanent Secretary in relation to the administration of the Act.
- 2.14 Clause 14 of the Bill provides that the Permanent Secretary may delegate some of his or her powers under section 13 of the Act to a designated Work Care inspector.
- 2.15 Clause 15 of the Bill provides that the Work Care Inspectorate through the authority of the Permanent Secretary may process compensation claims, carry out investigations and facilitate associated payments.
- 2.16 Clause 16 of the Bill provides for the powers and duties of Work Care inspectors.
- 2.17 Clause 17 of the Bill provides for the establishment of the Work Care Fund.
- 2.18 Clause 18 of the Bill provides for payments from the Fund.
- 2.19 Clause 19 of the Bill provides that compensation must be paid for any injury or death suffered by a worker or pupil as a result of any accident.
- 2.20 Clause 20 of the Bill outlines the persons entitled to benefit from the payment of compensation.
- 2.21 Clause 21 of the Bill provides for the distribution of the compensation payable in cases of a deceased worker or pupil.
- 2.22 Clause 22 of the Bill provides for the establishment of the no fault compensation scheme, but specifies that no compensation is payable for any incapacity or death resulting from a deliberate self-injury.
- 2.23 Clause 23 of the Bill imposes a duty on an employer or the controlling authority of a school to report employment and school accidents causing personal injury or death, respectively.
- 2.24 Clause 24 of the Bill provides a penalty for failure by an employer or controlling authority to report an employment or school accident, respectively.
- 2.25 Clause 25 of the Bill provides for the making of an application for compensation.

- 2.26 Clause 26 of the Bill provides for the consideration of an application for compensation.
- 2.27 Clause 27 of the Bill provides that any person who is aggrieved by a decision of the Permanent Secretary under this Act has the right to appeal that decision to the High Court on a question of law.
- 2.28 Clause 28 of the Bill provides for the manner in which compensation offered under the no fault compensation scheme may be accepted.
- 2.29 Clause 29 of the Bill provides that acceptance of compensation offered under the no fault compensation scheme is an absolute bar to any proceeding, claim or action in any court or tribunal against the Ministry or any other person for damages or compensation for personal injury or death as a result of the employment or school accident for which the compensation was accepted and paid by the Ministry.
- 2.30 Clause 30 of the Bill provides that an applicant who chooses not to accept compensation under the no fault compensation scheme and instead institutes proceedings for compensation under common law cannot thereafter return to the Ministry for a reconsideration of the application.
- 2.31 Clause 31 of the Bill provides for the serving of a copy of pleadings and documents and notification of the Ministry by any person instituting proceedings in a court or tribunal for compensation for employment or school accidents causing personal injury or death.
- 2.32 Clause 32 of the Bill provides that compensation payable under the Act is not capable of being assigned, charged or attached nor can any claim be set off against such compensation.
- 2.33 Clause 33 of the Bill provides for medical examination and treatment of a worker.
- 2.34 Clause 34 of the Bill provides for fees for medical aid.
- 2.35 Clause 35 of the Bill provides for compensation in fatal cases.
- 2.36 Clause 36 of the Bill provides for compensation in the case of permanent total incapacity.
- 2.37 Clause 37 of the Bill provides for compensation in the case of permanent partial incapacity.
- 2.38 Clause 38 of the Bill provides for compensation in the case of temporary incapacity and the payment of two-thirds of weekly earnings for workers.

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- 2.39 Clause 39 of the Bill provides that an employer may dispute to pay the two-third weekly earnings of a worker on the grounds that the accident did not arise out of and in the course of employment.
- 2.40 Clause 40 of the Bill provides for the limitation period for a notice of accident or application for compensation.
- 2.41 Clause 41 of the Bill provides for proceedings independent of this new legislation.
- 2.42 Clause 42 of the Bill provides that the Minister in consultation with the Board may make regulations prescribing certain matters.
- 2.43 Clause 43 of the Bill provides for indemnification from liability.
- 2.44 Clause 44 of the Bill provides for the laws to be consequentially amended.

3.0 MINISTERIAL RESPONSIBILITY

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

G. E. LEUNG
Attorney-General