

EDITORIAL COMMENT: Broken fund needs fixers

Business Day, 4 February 2021

WITH the stroke of a legislative pen the government proposes to wipe out a services sector that has played a crucial role in acting as an intermediary between medical service providers and the Compensation Fund. If the fund were operating optimally and not in the dysfunctional way it is, there would perhaps be no need for intermediaries. But even in this case it should be left to the medical service providers themselves and not to the government to decide how they manage their businesses. The controversial proposal is contained in a section of the Compensation for Occupational Injuries and Diseases Amendment Bill, which is before Parliament's employment and labour committee. The section would render void all existing and future cessions or relinquishments of medical claims or any rights to medical claims from the date of the commencement of the act.

Unless a transition period is provided for, this would mean an entire services sector would be abolished overnight, possibly opening the way for a constitutional challenge on the grounds of a violation of the right of individuals freely to choose their occupation, trade or profession.

The Compensation Fund is notoriously dysfunctional, as highlighted year after year by the auditor-general.

Medical service providers who treat injured and sick workers find it extremely difficult to register and submit claims and often have to wait up to two years to be paid out. Rather than be caught up in this bureaucratic quagmire, many prefer to pay a fee to dedicated third-party administrators who buy their claims and take over processing them. This has been the practice for more than 20 years. If it were not for this method of securing payment, many medical service providers would opt not to treat workers who are injured or become ill at work, as the SA Medical Association has warned.

This practice of outsourcing will be prohibited by the proposed bill.

Also prohibited would be the ability of medical service providers who do not use third-party administrators to use their debtors' books as collateral to obtain bank overdrafts. If signed into law, the prohibitions will come shortly after the inclusion for the first time of about a million domestic workers as beneficiaries of the fund after a Constitutional Court judgment.

Not only will this place more pressure on an already overburdened fund, but it will deprive domestic workers of the opportunity to get assistance with lodging their claims.

The department's rationale for the proposed prohibition is thin. An official said this week that the Department of Employment & Labour, under which the Compensation Fund falls, wants the fund to deal directly with its clients in the same manner as other insurance companies and medical aid schemes do. He said this was in the best interests of workers, businesses and the fund. There was no need to incur additional costs in the claims process, he said.

No consideration seems to be given to what the fund's medical service provider clients want, as apparently, they were not consulted about the proposal. The official proffered a pie-in-the sky argument that the functionality of the fund was a separate issue from the prohibition and would have to be dealt with separately.

But the two are intrinsically intertwined. If the fund operated optimally, there would be no need for external administrators. Those opposed to the proposed amendment argue that third-party administrators assist the fund in that they pre-vet claims to ensure they are compliant. One possible reason for the proposed amendment is that administrators with their aggregated power have often successfully taken the Compensation Fund to court to get paid. Individual medical service providers would find it harder to do so. Hopefully, the labour committee will conclude that the proposed prohibition is ill advised and remove it from the bill.