

OPINION: Rogue regulations will deepen the rot in Compensation Fund

Tim Hughes | Business Day | 23 September 2021

THE government has gone rogue. In gazetting draconian, irrational and unreasonable regulations pertaining to the Compensation Fund the day after Parliament rose for recess, Employment & Labour Minister Thulas Nxesi cynically abused his executive power to avoid oversight and evade public scrutiny. By so doing he has undermined core constitutional principles and legislative good practice. The details of the rogue regulations are simple, but their implications are wide-ranging. At the stroke of a pen, on September 30 Nxesi will in effect remove the right of medical service providers to use the services of banks and third-party pre-funding administrators to ensure they are paid for treating injured workers. Such is the structural dysfunctionality of the Compensation Fund that even if they can navigate their way through the "CompEasy" system, medical service providers are forced to wait up to two years for payment. Yet unlike other state-managed funds, the Compensation Fund is not only solvent, but also bloated with R60-billion in assets and R26-billion in reserves via some R9-billion in annual contributions from 400 000 employers. The depth of the fund's dysfunctionality is borne out not by hearsay but by other government institutions. For 10 years the auditor general has published disclaimers and adverse opinions. So deep are its pathologies that this year the auditor general lamented that if not required by legislation it would withdraw from auditing the Compensation Fund.

In May, Parliament's standing committee on public accounts expressed outrage at the collapse of internal controls and "absolute chaos" at the fund. Nxesi declared that he was "mad about this" and promised that forensic auditors would be appointed at the end of June to get to the bottom of the rot.

Improvements promised

Accused by the committee of not taking Parliament seriously, the Minister, director-general and commissioner promised a slew of improvements and turnaround measures to improve an institution which, while mandated to help vulnerable injured workers, was "rotten to the core". Parliament's employment & labour committee has considered Compensation Fund matters on no fewer than 12 occasions this year.

Most importantly, Nxesi introduced the Compensation for Occupational Injuries and Diseases Amendment Bill, which after a Constitutional Court finding and public pressure finally provided for the inclusion of domestic workers as beneficiaries. Yet, for all its welcome improvements, the bill embedded a catastrophic and possibly unconstitutional clause that sought, for no given reason, to prevent medical service providers from ceding their claims to third-party administrators for payment by the fund. In response to measured, evidence-based and persuasive presentations by worker, employer, financial and medical bodies, Parliament removed the offending clause from the bill and instructed the Minister and department to develop regulations to ensure those dealing with the fund are registered. While Parliament is to be congratulated for its oversight functions with respect to the bill, at no point was it made clear why the offending clause was included in the original bill, nor the justification for Parliament directing regulations be drafted requiring third-party service providers to be registered. Even before the bill was considered by the National Council of Provinces, on September 10, the commissioner published regulations that by September 30 would in effect result in medical service providers no longer being able to use the services of third-party prefunding administrators to maintain their cash flow and allow them to treat injured workers while not having to wait two years for payment. The consequences of the department's tactic are dire. Most

importantly, many medical service providers will reluctantly cease treating injured workers as they will be unable to afford to. One assumes trade union and employer bodies will be outraged by the regulations and will lobby intensively to have them removed. Parliament has been outmanoeuvred by the commissioner, which sets a dangerous precedent that undermines the balance of power, oversight and accountability foundations on which our parliamentary democracy is built. An element of the rotten Compensation Fund that works efficiently, namely third-party administrators, risks being put out of business by the regulations, thereby potentially hastening the collapse of the fund itself. For the sake of injured workers, medical service providers and employers these disastrous, irrational and possibly illegal regulations must be withdrawn before it is too late.

- **Hughes is spokesperson for the Injured Workers' Action Group.**