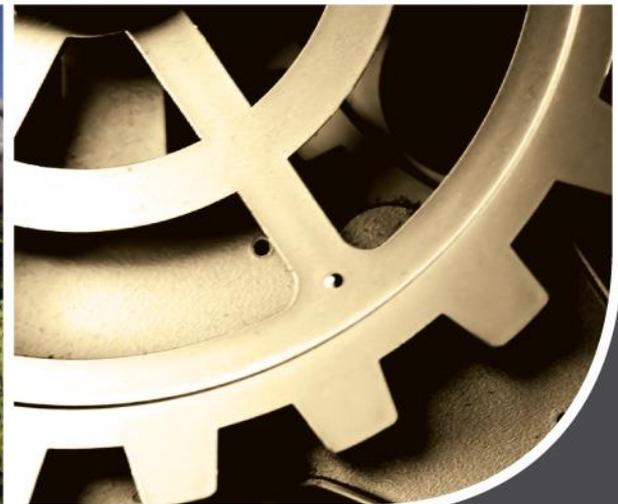


THE COID AMENDMENT BILL

Dr Lucas Mosidi
Director: Medical Services
Compensation Fund



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



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MANDATE OF THE COMPENSATION FUND

Constitutional Mandate

- Established in terms of Section 27(1)(c) of the Constitution under the Bill of Rights to provide social security and appropriate social assistance

Legislative Mandate

- To provide compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees or for death resulting from such injuries or diseases and provide for matters connected therewith.

Statutory Establishment

- The Compensation Fund is established in terms of Section 15 of the Compensation for Occupational Injuries and Diseases Act as amended

VISION & MISSION

Our Vision



To be a world-class provider of sustainable compensation for occupational injuries and diseases, rehabilitation and reintegration services



Our Mission



To provide efficient, quality, client-centric and accessible COID service



To sustain financial viability



To ensure an organization which takes care of the needs of its staff for effective service delivery

CORE BUSINESS UNITS

COD Services

Insurance Underwriting and Beneficiary Services

- Claims Registration and Adjudication
- Benefit Payment (TTD, TD, CCA, Fatal Benefits, Funeral Benefits, Pensions)
- Employer Registrations
- Return of Earnings and Assessments
- Compliance and Audits

Medical Benefits

Medical Aid

- Medical Services (Policy and Regulation Services)
- Medical Claims (MSP Registrations, Medical Aid, Tariff Determinations, Electronic Invoice Switching)
- Managed Care (Pre-authorisations, Case Management)

Rehabilitation Services

Employee Reintegration Services

- Vocational Rehabilitation Programmes
- Social Reintegration Programmes
- Provision of Assistive Technology

BRIEF HISTORY OF THE COMPENSATION FUND

| Company | Public/ Private | Year Started | Industry Sector |
|----------------------------|-----------------|--------------|-----------------|
| Compensation Fund | Public | 1941 | All |
| Rand Mutual Assurance | Private | 1894 | Mining/Steel |
| Federated Employers Mutual | Private | 1936 | Construction |

1. The first Workmen's Compensation Act (WCA) was passed in 1914.
2. High burden of proof of negligence and litigation costs rendered employees' rights minimal
3. Coverage was only provided for injuries where blame proven against employer
4. Coverage of certain diseases incorporated only in 1917.
5. Insurance of employees was not compulsory and enforceable till 1930.
6. Before 1914, half the mines belonged to RMA. When new bill to make insurance compulsory in 1931 was passed, all mining companies registered with RMA.
7. Mining companies were now exempted from the 1931 Bill.

BRIEF HISTORY OF THE COMPENSATION FUND

8. The WCA of 1934 made insurance compulsory through private companies and not government
9. Benefits increased but so did premiums at the dismay of Labour Unions
10. This led to 57 private insurance companies emerging to take advantage of the opportunity
11. Due to this competition amongst players, the Federated Employers Mutual Assurance was then formed in 1936.
12. Formation of coalition government with Labour Party shifted compensation politics and in 1941, the new WCA bill was passed in which all accidents were to be reported to the WC Commissioner.
13. There were to be no more private compensation agreements between employers and employees.
14. The aim of the 1941 Act was to institute a state scheme with increased benefits.

Source: Budlender – 1984.

BRIEF HISTORY OF THE COMPENSATION FUND

15. Despite different changes to the WCA, the benefits were still limited due to prevailing political landscape during that period
16. In 1993, the Compensation for Occupational Injuries and Diseases Act (COID Act of 1993) replaced the WCA
17. This became the law which covered all categories of workers without any discrimination.
18. It also established a statutory entity to be called the Compensation Fund, in terms of section 15 which will then administer the COID Act.
19. The first amendment to the COID Act was passed in 1997.
20. The process to amend the current Act commenced in 2014 to allow for the inclusion of Rehabilitation and return-to-Work and the inclusion of the COID Inspectorate
21. The current amendment is expected to be passed in the next year or two (2020/21)

Source: Budlender – 1984.

THE COID AMENDMENT BILL

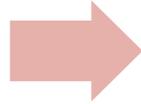
To amend the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 so as to substitute, insert, delete and repeal certain sections and definitions; to provide coverage for domestic employees, to provide for rehabilitation, re- integration and return to work of occupationally injured and diseased employees; to regulate the use of health care services; to provide for the reopening of claims; to provide for criminal and administrative penalties; to regulate compliance and enforcement, to provide for no fault based compensation system and to provide for matters connected therewith.

- The Preamble

AMENDMENTS

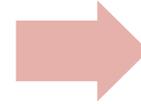
Current Provisions in the Act

- The Act expressly excludes **Domestic Workers** from the category of **employees** for purposes of benefits under the Act.



Domestic Worker

- In order to eliminate such discrimination, the Bill removes the express exclusion of domestic workers as employees. This is in conformity with international labour standards.



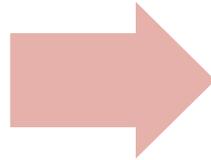
Domestic Employer

- Both the domestic employer and employees will be required to register as such respectively in accordance with the provisions of the Act.

AMENDMENTS

Amendment of section 1 (Definitions)

- Financial year means the period between the first day of March in any year and last day of February in the following year



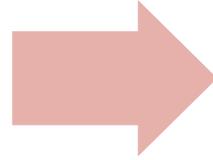
Financial Year

- The definition of the “**Financial year**” has been aligned with the Public Finance Management Act, 1 of 1999. Financial year is defined in the Bill as the period between the first day of April in any year and the last day of March in the following year, both dates included.

AMENDMENTS

Current provisions in the Act

- Replacement of **“mandator”** and **“contractor”**. This creates confusion in an event where there is a **contractor and sub-contractor**



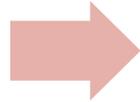
Mandator/ Contractor

- Replacement of **“Mandator”** and **“Contractor”** with **Contractor and Sub-contractor** respectively. The purpose is to clarify who is the employer liable in a case where there is a contractor and sub-contractor.

AMENDMENTS

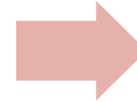
Current provisions in the Act

- Currently **NEDLAC** does not have powers to nominate eligible persons to serve in the Compensation Board, as this is done directly by constituencies.
- Currently **NEDLAC's** Community as a constituency is not represented in the Board composition
- The Act refers to a period of not exceeding 4 years which has too much ambiguity



Composition of CF Board

- The Bill empowers **National Economic Development and Labour Council** to nominate persons from whom members of the Board may be appointed by the Minister to represent the interests of organised business, organised labour, public and the State. The term of office of a Board member will be limited to two terms.



Composition of CF Board

- Provisions dealing with disqualification from membership of Board members, resignation and removal from office as well as the establishment of the Board Secretariat, are dealt with in details in the Bill.

AMENDMENTS

Current provisions in the Act

- The Director General is the Accounting Authority.

Accounting Authority

- The Bill propose that the Compensation Commissioner be the Accounting Authority for the Fund. This means that the Commissioner will effectively take over the administration of the Act, functions and powers of the Director-General in virtually all respects.
- The Bill proposes that an independent chairperson be appointed to chair the Compensation Board.

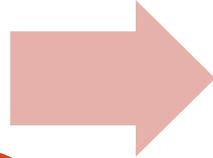
Accounting Authority

- Further to the above and In order to strengthen the financial management of the Fund, assets and liabilities will from time to time be valued by an actuary appointed by the Commissioner to determine the sufficiency and the liquidity of the Fund.

AMENDMENTS

Current provisions in the Act (Section 22)

- Sec 22 (3) (a) stipulates that if the accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable.



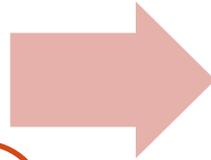
Contributory Negligence

- Section 22 is amended by deletion of subsection (3) (b) in order to do away with the fault-based compensation system and introduce the no fault system as the current system is not effectively achieving the purpose of the Act the section has been aligned with the definition of serious and wilful misconduct.

AMENDMENTS

Current provisions in the Act (Section 22)

- **22(5)** For the purposes of this Act the conveyance of an employee by **or on behalf of the employer** [free of charge] to or from his or her place of employment **or any place** for the purposes of his or her employment by means of [a vehicle driven by] **any mode of transportation in furtherance of the business of the employer** [himself or one of his employees and specially provided by his employer for the purpose of such conveyance], **shall be deemed to take place in the course of such employee's employment.** ".
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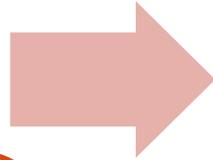
Accidents during training (Section 25)

- **Section 25** of the principal Act is hereby amended - (a) by the addition of the following subparagraph **(d) undergoing any work-related training in furtherance and pursuance of the employer's business**

AMENDMENTS

Current provisions in the Act (Section 30)

- Currently the Act refers to mutual associations and this creates a monopoly and is against section 217 of the Constitution of the Republic



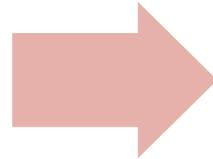
Mutual Associations

- Replacing the term “**mutual association**” with “**licensee**”. The reason for the use of licensee is to remove the monopoly enjoyed by Rand Mutual Association and the Federated Employee Mutual Association. Any entity carrying on the business of Financial Services will be legible to apply for a license in terms of section 30.

AMENDMENTS

Current provisions in the Act

- The Act currently provides that the appropriate forum to deal with COIDA related disputes is the **High Court**



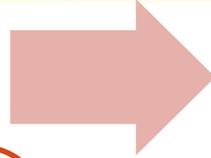
Dispute Court Jurisdiction

- The proposed AMENDMENTS provides that the appropriate forum to deal with COIDA related disputes is the **Labour Court**. Wherever High Court occurs in the Act has been substituted for the **Labour Court**.

AMENDMENTS

Current provisions in the Act (Section 26)

- Currently the Act apportions liability where the employee refuses to only submit to medical treatment
- The Act does not provide for the impact or rehabilitation on the employee's ability to return to meaningful work



Apportionment of Liability

- **26 (b)** if, in the opinion of the [Director -General] **Commissioner** the death [was caused,] or the disablement was caused, prolonged or aggravated, by the [unreasonable refusal or wilful neglect of the] **employee's unreasonable refusing to submit to medical aid or rehabilitation programs** in respect of any injury or disease, whether caused by the accident or existing before the accident.

AMENDMENTS

Current provisions in the Act (Section 36)

- Currently the Act provides that both the employee and the Fund may claim damages from third parties where the third party is liable for damages in respect of an injury or disease
- It also provides that the employee may claim compensation from the Fund and also institute action in a court of law for damages.



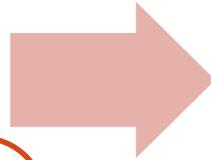
RAF not a third party

- **Section 36:** For the purposes of this section the Road Accident Fund shall not be a third party from which the Compensation Fund can recover damages or compensation paid in terms of this Act.
- In the event where an employee is involved in an accident on a road not arising out of and in the course of an employee's employment at the time of the accident, the employee shall not be entitled to compensation in terms of this Act.

AMENDMENTS

Current provisions in the Act (Section 39)

- Currently the Act provides that where the employer fails to report an accident in the prescribed manner, the employer shall be guilty of an offence and a fine may be imposed.
- This has not resulted in increased compliance and has not deterred employers from serial non-compliance.



Prescribed penalties imposed

- **Section 39** of the principal Act is hereby amended- (a) by the substitution for subsections(6),(8) and (9) of the following subsections respectively:
- "(6) An employer, excluding an employer referred to in section 84 subsection (1)(a)(i),(ii) and (iii) who fails to comply with subsection 1 shall be [guilty of an offence] **liable to a penalty of 10% of the declared annual earnings of that particular year;** (8) **Commissioner may impose a [fine] penalty equal to the full amount of compensation payable plus interest from the date of the accident**

AMENDMENTS

Current provisions in the Act (Section 41)

- Currently the Act provides that the employee may submit the information or document in support of a claim as it may be prescribed or directed (alignment of wording and inclusion of obligation)
- Employees not reimbursed for expenses incurred that is consumed by the Fund in dealing with their claim

Particulars in support of a claim

- **Section 41** of the principal Act is hereby amended- (a) by the substitution for subsection (1) of the following subsection:
- "(1) An employee who has met with an accident shall, when reporting the accident or thereafter at the request of the employer or [commissioner] **Commissioner, furnish such information and documents as [may be] prescribed [or as the employer or commissioner may direct.] and any such documents that may be requested.**

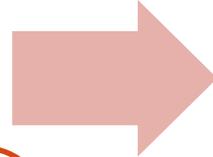
Particulars in support of a claim

- (3) if the employee independently obtained medical report in terms of this section at his/her own costs the Commissioner shall reimburse such medical expenses in full where the Commissioner accepts the report

AMENDMENTS

Current provisions in the Act (Section 42)

- Currently the Act provides for examination for purposes of determining the extent of disablement



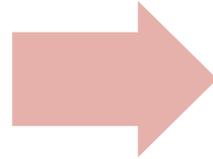
Independent Medical Examination (IME)

- **42 (a)** by the substitution for the heading of the following heading: "Employee to submit to medical examination and **rehabilitation**"; (b) by the insertion after subsection (1) of the following subsection: 1A An employee contemplated in subsection 1 shall if required to do so submit himself or herself to an **examination for purposes of rehabilitation.**

AMENDMENTS

Current provisions in the Act (Section 47)

- Currently the Act provides no prescribed fine for not paying TTD and most employees are deprived of this benefit without consequences to the employer



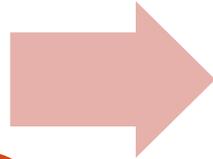
Payment of TTD

- **Section 47:** An employer who fails to comply with paragraph (a) shall be [guilty of an offence] **liable to a penalty equal to double the full amount of three 3 months compensation payable plus interest."**

AMENDMENTS

Current provisions in the Act (Section 49)

- Section 49 (4) of the Act provides that pension expires when the employee dies. For the benefit of the dependants of the employee who died while receiving monthly pension in terms of the Act



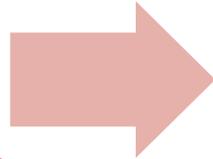
Payment of pension

- This section has been amended to delete the part that says the pension expires when the employee dies.
- Compensation benefits in the form of pension will continue to apply to the surviving dependents.
- **Section 49: (4) The Commissioner may at any time review pension awards for the purpose of re- assessing permanent disablement."**

AMENDMENTS

Current provisions in the Act (Section 68)

- The Act provides for prosecution of employers who fail to report occupational diseases. This approach is not achieving the desired results. Prosecution of employer who fail to report occupational diseases has been replaced by imposition of a fine for such non-compliance.



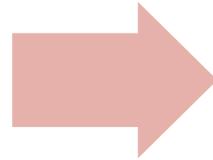
Notice of occupational disease

- This approach is not achieving the desired results. Prosecution of employer who fail to report occupational diseases has been replaced by imposition of a fine for such non-compliance.

AMENDMENTS

Current provisions in the Act (Section 70)

- The challenge with the Act currently is that the scope of medical advisory panels is limited to the occupational diseases only; it does not cover the occupational injuries.



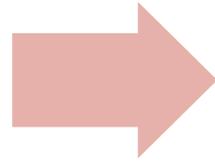
Medical Advisory Panels

- This section has been amended to broaden the scope of the medical advisory panel to include occupational injuries.

AMENDMENTS

Current provisions in the Act (Section 76)

- The Act currently limits the consultations for determination of fees of medical aid to specific health organisations.



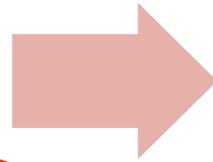
Fees for medical aid

- The amendment to expand the scope of consultation to include all health care organisations.

AMENDMENTS

Current provisions in the Act

- The current Act does not provide much on the enforcement of the Act except to indicate that employers who fail to comply with the Act will be guilty of an offence. This penalty has always been difficult to implement as only the courts have powers to declare individuals guilty of any offence.



Compliance and enforcement of the Act

- In order to ensure full compliance with the Act, provision is made for the appointment of inspectors who will specifically deal with all non-compliance issues. Inspectors will have all the powers under the new Act to inspect and issue compliance orders which will eventually be made orders of court.

NEW INSERTIONS

INSERTION OF CHAPTER VII A: REHABILITATION AND RE-INTERGRATION

- ✓ Chapter VII A introduces rehabilitation, re-integration and return to work into the Act on the basis of a policy framework that was developed after an intensive research. The rehabilitation, re-integration and return to work programs as outlined in the new Chapter shall be implemented by all employers.
- ✓ In order to address amongst the tendency on part of some employers to dismiss employees on the basis of occupational injuries and or diseases, the new chapter seeks to introduce the concept of multi-disciplinary based process of rehabilitation and reintegration of injured or employees who contracted occupational diseases. This means an employer will have to exhaust all rehabilitation and reintegration processes before laying off an employee.
- ✓ Employers will be incentivized for full compliance with the provisions of this Chapter by way of discounts on their annual assessments.
- ✓ Chapter VII A makes provision for the appointment of Disability Managers by the Fund whose main responsibility will be to co-ordinate the implementation of rehabilitation and reintegration programs in consultation with Case Managers appointed by employers in the workplace.

NEW INSERTIONS

Disability

- by the insertion after the definition of "**Disablement**" of the following definition: "**Disability** ' means for purposes of rehabilitation in terms of this Act a permanent long-term or recurring physical or mental disability which substantially limits the prospects of a person to obtain by virtue of any service employment or profession the means needed to enable that person to provide for maintenance;

Rehabilitation

- "**Rehabilitation**' means measures, **services and facilities also in the form of clinical, vocational and social rehabilitation** provided for in Chapter VIIA of the Act provided with a view to the reintegration of employees exposed to an occupational injury or disease **back into work and to enable them to attain and maintain where reasonable and practicable maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.**

NEW INSERTIONS

Rehabilitation (Chapter VIIA)

- **70A. (1)** Subject to the provisions of this Act the Compensation Fund may provide as the case may be **facilities, services and benefits aimed at rehabilitating employees suffering from occupational injuries or diseases, to return to their work and to reduce any disability resulting from their injuries or** diseases.

Reintegration & RTW (Sect.16)

- **70A (2)** The rehabilitation benefits provided in subsection 1 may consist of:
 - (a) **clinical rehabilitation** and the **provision of assistive devices** for the purpose of physical and psychological recovery of the employee and to **reduce any disability** resulting from an occupational injury or disease;
 - (b) **vocational rehabilitation** to assist an employee to **maintain employment, obtain employment, retain or acquire vocational independence**; and
 - (c) **social rehabilitation** to assist in restoring an employee's independence and social integration to the maximum extent practicable. "

NEW INSERTIONS

Medical Expenses

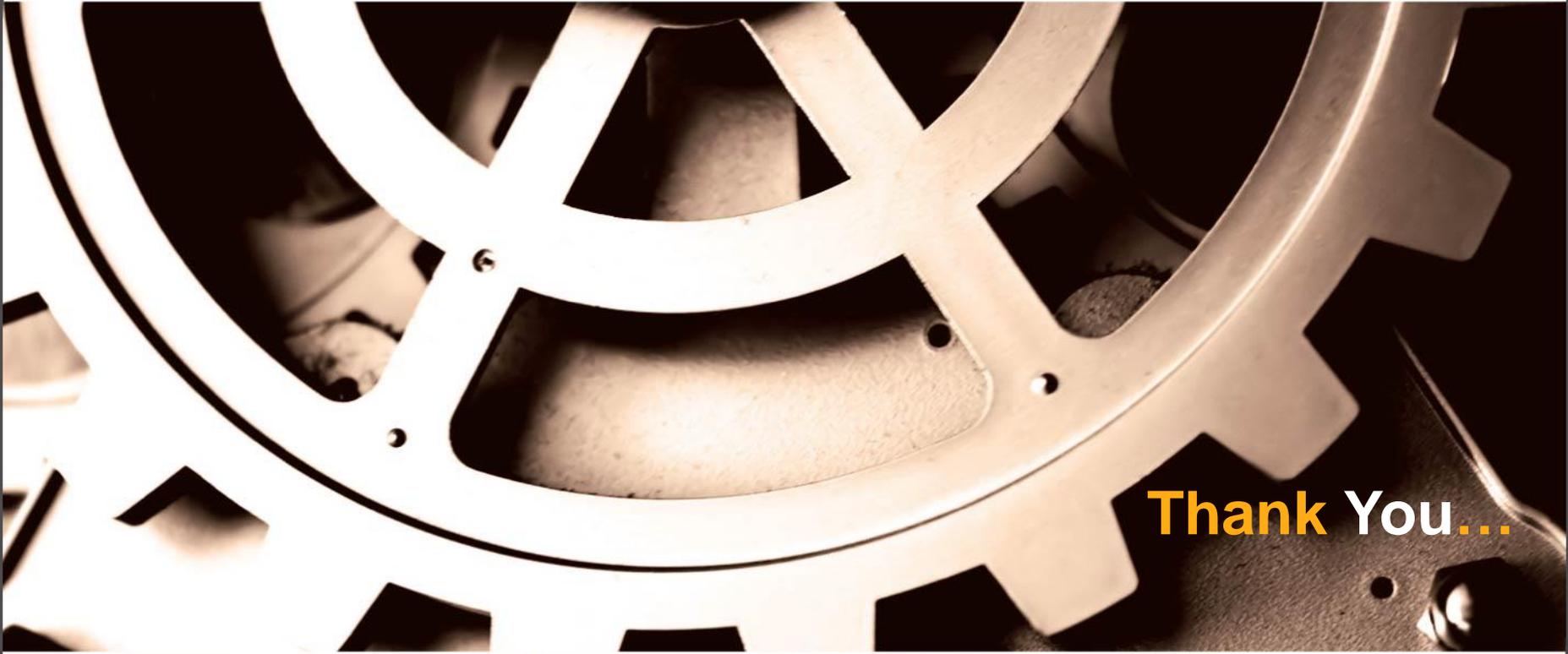
- **Section 73:** (3) Notwithstanding the provision of subsection 2 the medical practitioner may after the claim has been finalised or the period referred to in subsection 1 has lapsed apply for reopening of the claim and payment of further medical costs.

Medical Expenses

- **Section 73 :** (4) **Cession or relinquishment of medical claim void** - any provision of an agreement existing at the commencement of this Act or concluded thereafter in terms of which a service provider cedes or purports to cede or relinquishes or purports to relinquish any rights to medical claim in terms of this Act shall be void."

THE GAZETTE

GOVERNMENT GAZETTE 41985 OF 18/10/2018



Thank You...