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WORKERS' COMPENSATION LEGISLATION IN VANUATU

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INTRODUCTION

Nearly 17 years after being passed by the Parliament of Vanuatu, the Workmen's Compensation Act[1] came into force in 2004. The Act may not only have set a record for the number of years it sat dormant but, comprising only 6 short sections and a schedule with a total length of less than 4 full pages, it must be a contender for the shortest workers' compensation legislation anywhere.[2] In this article, I examine the provisions of the Vanuatu legislation and how they are likely to affect the interests of employees, employers, insurers and the general public of Vanuatu. Because of its brevity, what the legislation does *not* contain, says as much as what it spells out. In view of seventeen years of dormancy before enactment and no history of workers' compensation in Vanuatu, any conclusions about policy must be drawn inferentially from the legislation itself and the interests of those who will be affected by it. In order to elucidate the interests and the implicit policy which emerges, comparisons are also made with workers' compensation schemes in other jurisdictions.

POLICY BACKGROUND OF WORKERS' COMPENSATION

Workers compensation legislation is not unique to Vanuatu of course. Like most workers' compensation legislation, the Vanuatu Act modifies the common law, which otherwise governs liability for compensation arising from injuries suffered in the workplace. Under the common law principles of tort, recovery by an employee for damages resulting from injury at work is dependant upon the injured employee being able to prove in court that the injury and resulting damages resulted from negligence or some other fault on the part of someone who, in an overwhelming proportion of cases, would be the employer.[3] Until the Vanuatu Act was passed, the common law was the sole basis for recovery of compensation for injuries suffered at work in Vanuatu.

Workers compensation legislation originated in industrialized countries at around the end of the 19th century.[4] In a newly industrialized world, lawmakers eventually came to recognize that the inequity of the common law as a basis for entitlement. It favoured employers, who in practical and financial terms generally had far greater access to evidence, lawyers, and the courts; and in whose favour the onus of proof operated. Along with this came the gradual realization that the increasing toll exacted by industrial accidents imposed a cost, not only to individual employees, but to society in general. Views about who should shoulder the burden of these individual and social costs shifted more to the employer who could pass it on to society as a part of the cost of doing business.
Workers' compensation legislation has, from the beginning, been based on *no fault* recovery which means that it does not depend on a worker establishing common law liability on the part of an employer. Although there are different legislative models, based on differing policies, it can broadly be characterized

as a form of social insurance. It generally opens up recovery in relation to a broad range of injuries and disabilities arising in the workplace and eliminates the need for protracted court proceedings, at least to establish "fault" and therefore entitlement in relation to an injury. The Vanuatu legislation adheres to this broad principle of all workers compensation legislation in that it provides at least basic no fault compensation to employees. However, the extent of coverage is limited by several factors, as discussed in the following parts of this article.

EXTENT OF COVERAGE

The Vanuatu legislation has broad application and applies to "all contracts of employment" in Vanuatu or any ship or aircraft registered in Vanuatu.[5] This includes contracts of employment with the government, which is the largest single employer in the country. Consistent with similar legislation elsewhere, it does not cover other forms of "work" such as contracts for services or self employment, nor does it encroach on the realm of subsistence labour, where formal employment principles do not operate and which encompasses a vast portion of Vanuatu society.[6]
From this we may infer that the Vanuatu legislation is not intended as a general compensation scheme to provide compensation for the inability to support oneself, but rather a more limited scheme which affects only that part of society, primarily in the two urban areas, where most of the formal employment in the country exists. With respect to the subsistence economy, the government has, by limiting the scope of workers' compensation, left people to rely upon traditional social support systems, particularly where the "fault" lies with the injured party.

The Act provides entitlement to employees who are spouses, parents, children or grandchildren of an employer. This is made clear only by implication in section 3(3)(c) which specifically exempts employers from maintaining insurance coverage in respect of employees who fall within these categories.

INJURIES, NOT DISEASES

A prerequisite for recovery under the Vanuatu legislation is that an employee must suffer an "injury from any accident arising out of and in the course of his employment."[7] This strict formulation reflects wording used in early legislation in some other jurisdictions which has been interpreted narrowly to exclude coverage for industrial disease.[8] In some jurisdictions, law reform has since extended this narrow basis for recovery by replacing the expression "and" with "or" and by excluding the word, "injury".[9] Given existing statutory interpretation of the expression used in Section 1, it is likely that the Vanuatu legislation excludes coverage for a disability arising from a disease or disability which is not an "injury" and which may be said not to arise "in the course of" employment. It hardly needs to be said that workers in Vanuatu, as elsewhere, perform a variety of duties in the course of their employment; some of which potentially could result in a disabling disease.
The distinction between injury, for which coverage is available, and disease for which it is not is one without an apparent rational policy. To apply a policy which would provide financial coverage to a worker who is disabled (by either injury or disease) in the course of their employment, would require the Supreme Court of Vanuatu, if called upon to do so, to interpret the word "injury" at variance with its plain meaning.[10]

CALCULATION OF COMPENSATION

Worker's compensation legislation is concerned with providing income for continuation of the livelihood of an employee and his or her family in the event of a workplace injury. In most jurisdictions it includes the family of a worker who dies as a result of workplace injury. The preamble of the Act indicates that the general purpose of the Act is to provide for "compensation for injuries and death suffered by workmen".

Section 1 provides that "[A]n employer shall pay compensation to any of his employees who suffers injury from any accident...." However, the legislation does not state the specific purpose of compensation; that is, what it is intended to compensate *for*. It does not refer to loss of earnings, nor does it mention other categories of potential compensation such as medical expenses, rehabilitation costs or compensation for pain and suffering. The amount of compensation is set out in the table contained in section 3 of the schedule. The table is based on a finite list specific physical losses (mostly involving amputations or loss of use of a limb). Maximum compensation for 100% permanent disability or death is capped at three years' earnings or 2 million vatu, whichever is less. (Schedule, section 1) This cap is less than the actual loss which a 100% disability would create for some workers (particularly those who would have worked for more than three years but for their injury) and, in order to avoid a conclusion that the amount is arbitrary, must be viewed at best as a calculated balance between the interests of employers and workers.

The schedule which forms part of the Act sets out a list of specific injuries, each of which is deemed to amount to a certain percentage disability. This approach is not uncommon in worker's compensation and other insurance disability schemes and a schedule of this sort is often disparagingly referred to in legal and insurance circles as a "meat chart." It is a way of standardizing what is otherwise a confusing morass of subjective and objective loses and streamlines an otherwise heavy burden of administrative and adjudicative work in assessing losses in individual cases. Under the new Act, for instance, the loss of two limbs, feet or eyes all amount to 100% disability. A loss of a thumb is 20%. A loss of an eye is 40%.[11] These standardized amounts do not take into account individual circumstances of workers and preclude any legal concern over whether an individual worker is actually being over or under compensated for a loss suffered.

There is no provision in the Schedule for a total disability from an injury which does not fit within the itemized bodily losses (for instance, severe brain damage or spinal injury). Arguably the language of the preamble, section 1, and the definition of "total disability" in the schedule make it sufficiently clear to indicate that these sorts of disability are compensable. But this is not certain and the language of the legislation will require judicial interpretation to establish entitlement in such cases. If compensation is found to be available for disabilities arising from injuries not set out in the schedule, then a court will be forced to accept expert opinion evidence regarding the extent of a disability rather than taking an amount from the schedule. This would create two categories for the calculation of compensation; a totally objective (and to a degree, arbitrary) amount for those injuries listed in the schedule, where no expert opinion is required as to the extent of disability, and an amount based on medical opinion concerning specific disability in cases where the disability arises from a cause other than an injury found in the schedule. To the extent that one means of calculation would be geared to the actual disability in each case while the other is not, there would be a lack of uniformity and therefore, a degree of unfairness arising from the two categories. However, this approach is better than one which would exclude coverage for workers whose disability does not arise from an injury set out in the schedule.

Whether the level of compensation pursuant to the Schedule is appropriate in a general sense depends upon one's perspective. If one infers that the underlying policy of the legislation is to provide workers with the compensation they need to cover financial losses arising from an injury at work, it will prove to be insufficient in many cases.[12] If one takes into account other losses such as rehabilitation and the cost of advancing a claim in court, it is even less so. From the perspective of employers including the government (as the largest employer in Vanuatu) the obligations under the Act increase the cost of doing business.[13] Much of this cost will be passed on to society in general. Of this cost, a large proportion will, as is the case in other jurisdictions with workers' compensation, be expended in the insurance and claims process rather than in payouts to injured employees. Some of this portion of the cost might have been eliminated in providing a uniform summary means of determining claims.[14]

TEMPORARY DISABILITY

Regardless of whether the amount of compensation is deemed to be adequate in a particular case of

permanent disability, workers and courts have a greater problem to face in relation to injuries which result only temporary disability. A significant area of doubt exists with respect to this type of disability. This doubt arises from ambiguity in the Act. It makes the calculation of compensation in respect of temporary disability guesswork at best. Section 1 of the Act says that "an employer shall pay compensation to any of his employees who suffer injury from *any* accident..." On a literal reading, this clearly encompasses any accident, regardless of the length of any disability period that results. It would appear therefore that a person who is temporarily disabled from an injury is entitled to compensation. This conclusion tends to be reinforced by the Schedule which, in a confusing way defines "total disability" to mean an "injury" of a "temporary or permanent nature." [15] But if Parliament intended there to be compensation in relation to temporary disability, it provided no basis for the calculation of compensation in such cases. The duration of the term of total disability which is proportionate the maximum available for 3 years' earnings would be the logical means of calculation. It would have been useful for the Act to have said as much. However, this would also create apparent inequities.[16] The relatively small amounts available using such calculation would make it unlikely that workers who are disabled for relatively short periods of time will pursue a claim in court.

RELATIONSHIP TO COMMON LAW ENTITLEMENT

There are three main ways in which worker's compensation can co-exist with underlying common law remedies. In some jurisdictions, workers' compensation displaces a worker's right to common law compensation.[17] In others, such as New South Wales, a claimant has the right to elect to make a claim against an employer either pursuant to pre-existing tort principles or under workers' compensation legislation. A claimant who is forced to make such an election and who elects to abandon a remedy pursuant to workers' compensation legislation and proceed pursuant to common law would have to expect that potential common law compensation exceeding that available pursuant to workers' compensation legislation in order to justify the risk of not proving liability. A third alternative, which exists in some jurisdictions is for a claim for damages pursuant to common law to be available to employees in addition to workers' compensation entitlement.[18]

The Vanuatu Act does not specify what relation workers' compensation has to the underlying common law. It is important to note therefore, that it does not specifically *remove* a Court's jurisdiction to deal with claims of negligence pursuant to common law principles. It follows that a court in Vanuatu would likely feel entitled to award common law damages in addition to workers' compensation.

However, if the Court has jurisdiction to award compensation pursuant to both pre-existing common law and the new Act, it opens up a number of potential problems relating to overlapping compensation. Should such a case arise, it will have to be judicially determined whether, when an employee is entitled to common law damages based on fault, the award should be reduced by an amount available under the Act.[19] Given that it is the employer who is potentially liable for both types of compensation, double recovery would also mean a degree of double liability on the part of the employer. There are two ways to address this. One is to view it as double jeopardy, double compensation and therefore inherently unfair. On the other hand, it may be argued that the new Act creates a new "head of damage" which is distinguishable from general damages, special damages and others heads of damage available pursuant to common law. As noted above, the Workmen's' Compensation Act does not specify what the statutory compensation is intended to compensate *for* and therefore makes it difficult to determine whether it is intended to replace any other head of damages.

In most cases where there are overlapping benefits, any excess would be in the form of common law compensation. That is, where fault is proved, common law entitlement to compensation would likely exceed statutory compensation under the Act. In some cases however, an entitlement under the Act might exceed what is recoverable pursuant to a successful common law claim. This is particularly likely to arise in relation to death claims, where a worker's estate is entitled to the maximum that would have been payable to the deceased worker had his or her injury resulted in a total permanent disability. The facts

surrounding such a claim at common law might restrict the estate to a relatively smaller amount than is available pursuant to the new Act. This further complicates issues which arise from the legislation with respect to double recovery and double liability.

TIMING OF PAYMENTS

The greatest time of need is when a worker is first disabled. Medical and rehabilitative expenses and urgent family expenses impose great financial stresses on an average family. In some jurisdictions, where workers' compensation is administered by an agency, there is provision for immediate payment to the worker or their family.[20] A worker in Vanuatu seeking compensation pursuant to the Act would have no means to compel payment any sooner than the time it would take to obtain a final judgment in court. In this sense, the new Act does not represent any real advantage for a worker or his or her family in a time of great need. The Act might have given the power to a Magistrate to order periodic payments pending a final judgment. This would have been a simple matter to include in the legislation and would not have had any significant complicating effects on the remainder of the Act.

THE CLAIMS PROCESS

Workers Compensation legislation in some jurisdictions creates a tribunal or special court to deal with disputes concerning entitlement to workers' compensation.[21] These are sometimes called commissions or boards. The legislation creating them usually contains a privative clause which specifically removes a court's jurisdiction in relation to their statutory jurisdiction.[22] The Vanuatu legislation is silent on this issue, making no reference to any body or tribunal. As a result, the Supreme Court and Magistrates Court of Vanuatu retain jurisdiction to adjudicate contested claims for compensation.

In a jurisdiction as small as Vanuatu where the relatively small number of workers' compensation claims is unlikely to justify the cost of maintaining and administering a tribunal or specialized court, it makes sense to allow the courts to retain jurisdiction over injuries and compensation arising in the workplace. On the other hand, tribunals usually offer some advantages over court. In a tribunal, the rules of evidence and procedure are relaxed and, in most cases, determinations are not bound by precedent. They are generally designed to be places where claims can be fairly adjudicated without great expenditure of time, expense and the inevitable complexities of lawyer driven proceedings. Further, commissions are able to operate in an inquisitorial manner, relieving the claimant of the burden of carrying forward a claim an adversarial context. It is particularly inappropriate to impose this burden on injured workers in Vanuatu where the costs[23] of access to courts are disproportionately high as is the need of an average worker for competent advice and representation to prosecute a claim. In Vanuatu, most workers have little knowledge of the law and are without practical access to the courts.[24] The maximum jurisdiction of the Magistrates Court is 1,000,000 vatu which means that any claim for compensation exceeding that amount must be prosecuted in the Supreme Court.[25] Practically speaking, this would require legal representation.[26]

Insofar as the Act could have provided exclusive jurisdiction to the Magistrates Court and specified that rules of procedure and evidence be simplified and modified to embrace the inquisitorial model, the Vanuatu legislation represents a missed opportunity.[27] These measures would have avoided the cost of an independent administrative tribunal while at the same time; they would have given injured workers potentially easier access to a more simplified dispute resolution process.

OBLIGATION TO MAINTAIN INSURANCE

Section 3 of the Act imposes on employers an obligation to "insure and maintain insurance" against liability. It does not impose any minimum level of coverage or amount of deductible, leaving this entirely within the hands of an employer. Further, the Act does not require that insurance carriers meet minimum standards including solvency. It appears to satisfy the bare requirements of the Act for an employer to

simply incorporate a shelf company and enter into a non arm's length contract of insurance with it. This would allow a means of avoiding the apparent intention of the legislation. On the other hand, this flexibility, in theory at least, allows mutual, cooperative and captive insurance companies to be incorporated in Vanuatu to specifically manage workers' compensation risk.[28] It is unlikely that this would occur in Vanuatu as the existing commercial insurance market comprises a small number of agents and brokers.[29]

The offence of failure to comply with the obligation to maintain insurance is punishable by a fine of up to 100,000 vatu.[30] Although this penalty might be an adequate deterrent to ensure that some employers maintain insurance, some employers might willingly risk such a fine in order to avoid having to purchase insurance.[31] This is particularly so in view of the very low rate of enforcement of laws in Vanuatu generally.

The Government and persons who employs only "his spouse, parent, child or grandchildren" are exempt from the obligation to insure against liability under the Act. The exemption of the Government makes sense as it has assets against which any judgment could be enforced in the case of non payment. Family members are seldom employed by other family members and in any event family members in Vanuatu would not normally consider themselves to be legally bound in a contractual relationship. Other customary obligations would normally deal with obligations in the case of disability of a family member (whether it arises from workplace injury or elsewhere). This exemption is therefore suited to the circumstances of Vanuatu.

CONCLUSIONS

The Workers' Compensation Act introduces into Vanuatu a modest form of workers compensation. The narrow basis of entitlement, which appears to include only injuries and not other forms of total or partial disability, discriminates against workers whose disability arises out of and in the course of employment but not as a result of an injury. The Act, with its narrow coverage, the modest level of compensation and its silence about the underlying common law does not make a significant change in the law of compensation in Vanuatu, even within the sector of society where employment takes place. Areas of productivity involving subsistence labour are left completely untouched.

The Act does not create a specialized apparatus to administrate or adjudicate claims for compensation. This is appropriate in view of the modest level of development of Vanuatu. However, the government has preserved the adversarial context by means of which it is difficult for employees, who are relatively disempowered, to avail themselves of the remedy the legislation is ostensibly designed to provide. This diminishes the overall benefit of the legislation to injured workers. It would have been relatively simple for Parliament to avoid this disadvantage by providing that Magistrates Court have jurisdiction of all claims, that the procedural and evidential requirements be simplified and that interim payment by awarded pending final determination of compensation in cases where this is warranted in view of an injured worker's circumstances.

The Act has given the Supreme Court of Vanuatu the difficult task of sorting out the meaning of important provisions of the legislation. This additional source of litigation will add to the Supreme Court's already significant backlog. Questions about the extent of coverage, the calculation of compensation and the relationship to existing forms of compensation will all have to be determined by judges from the imprecise wording of the legislation. Moreover, the lack of specificity in the legislation will make it difficult for parties to a dispute to anticipate what a court will do in their case. Until the courts have had a chance to clarify the meaning of the some of the confusing aspects of the legislation, this will present a disincentive to parties who wish to achieve a settlement.

The Workmen's Compensation Act is likely to be more welcome among insurance agents, brokers, underwriters and adjusters than it is to be among injured workers. The relatively small amount recoverable

and the limited types of injuries for which compensation is to be awarded, together with the relative difficulty workers would have in dealing with insurance companies' lawyers in an adversarial proceeding in Vanuatu make it likely that many injured workers will be unable to benefit from the legislation. Of those who do, many are unlikely to have their actual financial losses compensated fully or in a timely way. On the other hand, employers will be able to pass on the cost of insurance to their customers.[32] The already high cost of doing business in Vanuatu will increase as compliance with the new Act increases. Much of that cost will benefit offshore insurance companies and the expatriates within Vanuatu who run the insurance business.

A certain economy of language is desirable in legislation but in this Act, brevity, together with the quality of drafting and apparent lack of a coherent policy has produced an awkward and unworkable piece of legislation that leaves many questions for the courts to work out at the expense of workers and employers. With only 6 sections, the Vanuatu Workmen's Compensation Act must be criticized for leaving much unsaid. The new legislation could and should be amended or replaced with legislation that provides both a greater benefit to workers and a smaller burden on the courts without significantly increasing the cost to either employers or Vanuatu society.

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[1] Workmen's Compensation Act No. 2 of 1987; assented to on 11th June, 1987, commenced, January 1st, 2004. The gender specific name of this legislation is inconsistent with the undertakings of Vanuatu pursuant to CEDAW convention. These undertakings were assumed subsequent to the passing of the Act but prior to its coming into force. It is also inconsistent with the gender-neutral titles of similar legislation in other jurisdictions.

[2] Compare to 622 sections which comprise the more typical Queensland Workers Compensation and Rehabilitation Act No. 27 of 2003. A more comparable act in a comparable jurisdiction is the Solomon Islands Workmen's Compensation Act [Cap. 78], which, although relatively compact, contains 33 sections, schedules, court rules and forms running to 45 pages.

[3] The underlying law of fault lies predominantly but not exclusively within the common law. Some statute law, such as that covering occupiers' liability and contributory negligence also pre-exist the new Act and have become enmeshed with the common law. As shorthand in this article they are included in the expression "common law".

[4] Workmen's Compensation Act 1897.

[5] Section 5. This section is badly drafted in that it creates confusion between contracts of employment and places of employment.

[6] In Vanuatu, there is often no clear delineation between customary obligations in a subsistence context and formal employment.

[7] Section 1(1)

[8] Vandyke v Fender [1970] 2 All ER 335 at page 340, per Lord Denning. Further, in this case "out of and in the course of" has been interpreted to exclude eligibility where an injury occurs while travelling to or from work except in cases where the employee was obliged to make use of that particular transport.

[9] Fleming on Torts 8th Edition, page 520

[10] It is interesting to note that standard insurance policies offered to employers in response to the new Act go beyond the scope of the Act and provide coverage for industrial disease.

[11] Amounting to maximum compensation of 2 million, 400,000 and 800,000 vatu respectively.

[12] A relatively young worker with a working life ahead of him or her, who is totally disabled, would suffer more many times the maximum three years' loss of earnings provided by the legislation.

[13] It is interesting to note that prior to the new Act, many Vanuatu businesses voluntarily insured employees in accordance with the requirements of the Solomon Island legislation.

[14] Infra, sub-heading 9.

[15] 2. (a) "total disability" means an injury, whether of a temporary or permanent nature, which incapacitates an employee for any employment which he was capable of undertaking at the time of the accident.

[16] Consider for example the case of an employee whose disability lasts slightly less than three years, which is the basis of maximum entitlement. He or she would receive as much as another worker whose injury (at the same level of earnings) creates a lifetime disability.

[17] Canadian jurisdictions, except where a third party may be liable pursuant to common law in which case an employee may make an election to proceed pursuant to tort principles or claim workers' compensation.

[18] As is the case in the Solomon Islands. Workers Compensation Act, Section 27.

This was also the case in New Zealand. Fleming on Torts, 8th Edition, page 522.

[19] Particular difficulties arise in relation to the assessment of compensation if both actions are not heard at the same time. A court, if obliged to reduce an award (based on the principle of mitigation) by an amount not yet considered on the evidence has little option but to make an estimate. This could be prevented if the Act had provided that where both remedies are available and disputed, a court should not proceed to award compensation in relation to one without considering evidence in relation to the other. However this would complicate matters from a procedural and evidential point of view if a court was directed to proceed in an inquisitorial manner in relation to statutory claim and not directed to alter the adversarial proceedings in relation to the common law.

[20] Section 9 of the Solomon Islands Act provides that the Magistrate's Court may make periodic payments from the time of the lodging of the application for compensation.

[21] Workers Compensation Act of British Columbia, Cap. 492, RSBC 1996, s. 96. In New South Wales, a specialized court, the Compensation Court, a specialized tribunal had jurisdiction to adjudicate matters pursuant to the Workplace Injury Management and Workers Compensation Act, 1998. This court was abolished in 2002 when the Compensation Court Repeal Act came into force. That legislation gives the District Court, a court of more general jurisdiction to deal with these matters.

[22] Although such privative clauses have not been strong enough to oust a court's jurisdiction to issue a prerogative writ in judicial review proceedings.

[23] And risks – if an employer hires a lawyer and a worker does not, the worker faces the risk of huge legal costs being awarded against him or her in the event of a loss. The employer does not. The rules of procedure would not impose similar costs against an unsuccessful employer who would risk only having to pay filing fees and disbursements of a successful worker.

[24] Lawyers in Vanuatu typically charge 10,000 to 20,000 vatu per hour. The minimum wage is 22,000 vatu per month. It costs 8,000 vatu to file a claim in Magistrates Court and 20,000 vatu to file a claim in Supreme Court. Although the Public Solicitors Office has a constitutional mandate to provide legal advice to "needy" people, the capacity of the office to do so is limited.

[25] By contrast, the Solomon Islands Act gives exclusive jurisdiction to the Magistrate's Court. The Act contains special rules of procedure for the adjudication of these claims in order to simplify and expedite their adjudication. Further, a number of deeming provisions create presumptions in favour of workers in the proof of claims. An employer is obliged to disclose statement of earnings and a Magistrate is empowered to order independent medical examinations. These all serve to make the dispute resolution procedure in the court more accessible to an injured worker and fairer to both parties.

[26] One US dollar equals approximately 1.35 Australian dollars (June 2006). Although the National language of Vanuatu is Bislama, the language of legislation is English, a language that only a minority are fully fluent in.

[27] The inquisitorial model already exists in common law jurisdictions in the form of coroner's hearings. Administrative and other specialized tribunals, which operate within the bounds of the principles of fairness but with simplified rules of procedure and evidence are not uncommon. In Vanuatu for example, there is the Disciplinary Appeal Board set up to deal with employment matters under the Teaching Service Act, Cap. 171 and the Public Service Disciplinary Board under the Public Service Act, Cap. 129.

[28] Whether the risk pool is sufficiently large in Vanuatu to maintain the required level of reserves and liquidity for a viable insurance scheme is doubtful.

[29] The Australian market, which is by comparison huge compared to Vanuatu, has itself been characterized as being too small to allow competition among underwriters of workers' compensation insurance. Win-Li Toh, Playford, Michael and Neary Jenni, Workers' Compensation Systems: What Works? 8th Accident Compensation Seminar, PriceWaterhouseCoopers Actuarial and Superannuation Services Pty Limited, November 25, 2000, page 5.

[30] Section 3(2).

[31] Even basic knowledge among many employers and employees is lacking. The coming into force of the Act was not preceded by any information campaign for either employers or workers. In a paid informational advertisement in the *Vanuatu Daily Post*, September 11, 2004 issue, Barry Bailey, General Manager of QBE Insurance (Vanuatu) Ltd. is quoted as saying: "We're concerned that many businesses don't seem to know about this legislation so we are trying to get the word out." Further, he is quoted as saying: "I wouldn't say there has been a flurry of activity since the legislation was enacted." These observations were published nearly 9 months after the act came into force.

[32] Interestingly, perhaps the only category of those who cannot – domestic employers – are excluded from the obligation to maintain insurance.