

ACT NO. 43 OF 2020

I assent.

J. K. KONROTE

President

[11 December 2020]

AN ACT

TO PROVIDE FOR HOME LOAN ASSISTANCE FOR THE PAYMENT OF MORTGAGE MONIES AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji —

Short title and commencement

1.—(1) This Act may be cited as the COVID-19 Response (Home Loan Assistance) Act 2020.

(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 —

“COVID-19 pandemic” means the COVID-19 pandemic as characterised by the World Health Organization on 11 March 2020;

“COVID-19 relief period” means the period commencing on 1 April 2020 and ending on the date of commencement of this Act;

“financial institution” has the meaning given in section 2(1) of the Banking Act 1995;

“FNPF” has the meaning given in section 4(1) of the Fiji National Provident Fund Act 2011;

“FNPF preserved entitlement” has the meaning given to “preserved entitlement” in section 4(1) of the Fiji National Provident Fund Act 2011;

“FNPF relief assistance” means the FNPF COVID-19 withdrawal scheme made available to FNPF members affected as a result of the COVID-19 pandemic, other than home loan assistance to be provided to FNPF members in accordance with section 4;

“Minister” means the Minister responsible for finance;

“mortgage” has the meaning given in section 2 of the Property Law Act 1971;

“mortgage money” has the meaning given in section 2 of the Property Law Act 1971;

“mortgagee”, in relation to a mortgagor to whom this Act applies, has the meaning given in section 2 of the Property Law Act 1971; and

“mortgagor” means a person who is—

- (a) a mortgagor in accordance with section 2 of the Property Law Act 1971; and
- (b) eligible for FNPF relief assistance.

Application

3.—(1) This Act applies to—

- (a) a mortgage in effect in the COVID-19 relief period, even if the mortgage came into effect, was varied, or both, before or in that period; and
- (b) a mortgagor who, at the commencement of this Act, has an existing arrangement with a mortgagee as a result of the COVID-19 pandemic, for relief of the mortgagor’s payments of mortgage money, including the deferment of such payments.

(2) This Act has effect notwithstanding any provision of any other written law or any mortgage or other written agreement executed by a mortgagor and mortgagee, and accordingly, to the extent that there is any inconsistency between this Act and any other written law, mortgage or agreement, this Act prevails.

Access to FNPF preserved entitlement for payment of mortgage money

4.—(1) Subject to subsection (2), a mortgagor to whom this Act applies may withdraw an amount from his or her FNPF preserved entitlement in accordance with the provisions of the Fiji National Provident Fund Act 2011, for the purpose of making payments of mortgage money to the mortgagee.

(2) Subsection (1) applies only—

- (a) after 31 March 2021;

- (b) after the mortgagee has made every possible effort, and exhausted every available avenue, to provide relief of the mortgagor's payments of mortgage money, including to assist the mortgagor in having his or her payments of mortgage money deferred to a later time, and the mortgagor is still unable to make payments; and
- (c) if the mortgaged property is the mortgagor's principal place of residence.

Restrictions on mortgagee

5.—(1) If a mortgagor withdraws an amount from his or her FNPF preserved entitlement in accordance with section 4, the mortgagee must not, from the date the FNPF preserved entitlement is approved to the date appointed under section 7—

- (a) recover, or attempt to recover, any payment of mortgage money in default from the mortgagor;
- (b) enforce the mortgage or other charge over the mortgagor's property; and
- (c) initiate, or continue, a proceeding against the mortgagor for any default of payment of mortgage money in any court or tribunal.

(2) For the avoidance of doubt, subsection (1) does not apply if the default in payment of mortgage money occurred before the COVID-19 relief period.

(3) A mortgagee that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

Mortgagees to provide information

6. A mortgagee must, immediately after the commencement of this Act, provide to the Reserve Bank of Fiji all relevant information in respect of each mortgagor to whom this Act applies, as applicable to the mortgagee.

Minister to appoint date

7. The Minister may, after taking into consideration the Fijian COVID Safe Economic Recovery Framework and after undertaking consultations with the Office of the Prime Minister, the Reserve Bank of Fiji, financial institutions and other stakeholders in key economic sectors, appoint, by notice in the Gazette, a date on which the provisions of this Act no longer have effect.

Regulations

8. The Minister may make regulations 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, including prescribing offences and penalties not exceeding—

- (a) in the case of an individual, a fine of \$10,000; or
- (b) in the case of a body corporate, a fine of \$100,000.

Consequential amendments

9. The Fiji National Provident Fund Act 2011 is amended as set out in the Schedule.