

REPUBLIC OF SOUTH AFRICA

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# ROAD ACCIDENT BENEFIT SCHEME BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 40788 of 18 April 2017)  
(The English text is the official text of the Bill)*

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(MINISTER OF TRANSPORT)

[B 17—2017]

ISBN 978-1-4850-0378-6

No. of copies printed ..... 800

## GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To provide for a social security scheme for the victims of road accidents; to establish the Road Accident Benefit Scheme Administrator to administer and implement the scheme; to provide a set of defined benefits on a no-fault basis to persons for bodily injury or death caused by or arising from road accidents; to exclude liability of certain persons otherwise liable for damages in terms of the common law; and to provide for matters connected therewith.

## PREAMBLE

AS the existing fault-based compensation system administered by the Road Accident Fund, established by the Road Accident Fund Act, 1996 (Act No. 56 of 1996), is not effectively achieving the purpose for which it was created;

AS there is a need for an effective benefit system, which is reasonable, equitable, affordable and sustainable in the long-term, which optimises limited resources and facilitates timely and appropriate health care and rehabilitation to lessen the impact of injuries and which provides financial support to reduce the income vulnerability of persons affected by injury or death from road accidents;

AS there is a need to expand and facilitate access to benefits by providing them on a no-fault basis;

AS there is a need to simplify claims procedures, reduce disputes and create certainty by providing defined and structured benefits; and

AS there is a need to establish administrative procedures for the expeditious resolution of disputes that may arise and to alleviate the burden on the courts,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

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### DEFINITIONS AND OBJECTIVES

#### Definitions

1.	In this Act, unless the context indicates otherwise—	
	“ <b>Administrator</b> ” means the Road Accident Benefit Scheme Administrator established by section 3;	20
	“ <b>assistive devices</b> ” means devices that increase a person’s ability to carry out activities of daily living, including prosthetic and orthotic devices, spectacles and hearing aids;	
	“ <b>average annual national income</b> ” means the amount determined by the Minister in terms of section 60(1)(g);	25
	“ <b>beneficiary</b> ” means a claimant who is granted a benefit;	
	“ <b>benefit</b> ” means a benefit provided for in Chapter 6;	
	“ <b>Board</b> ” means the Board of the Administrator contemplated in section 7;	
	“ <b>bodily injury</b> ” means a physical or psychological injury as well as damage to the victim’s assistive devices, caused by or arising from a road accident;	30
	“ <b>Chief Executive Officer</b> ” means the Chief Executive Officer of the Administrator appointed in terms of section 20;	
	“ <b>child</b> ”, in relation to a deceased breadwinner, means a biological or adopted child, including a posthumous child, under the age of 18 years;	
	“ <b>claim</b> ” means a claim for a benefit;	35
	“ <b>claimant</b> ” means a person who has submitted a claim;	
	“ <b>deceased breadwinner</b> ” means a person with dependants whose death is caused by or arose from a road accident;	
	“ <b>dependant</b> ” means—	
	(a) any spouse of the deceased breadwinner;	40
	(b) any child of the deceased breadwinner; or	
	(c) any other person who was dependant on the deceased breadwinner, provided such person was legally entitled to support from the deceased breadwinner and would have received such support had the breadwinner not died;	
	“ <b>emergency health care service</b> ” means any health care service which is immediately required in an emergency situation in order to preserve the injured person’s life or bodily functions, or both;	45
	“ <b>funeral</b> ” means to cremate or to inter the deceased in a grave or burial place;	
	“ <b>health care service provider</b> ” means a health care provider or a health establishment, as defined in the National Health Act, 2003 (Act No. 61 of 2003);	50
	“ <b>immediate family member</b> ” means a spouse, parent, grandparent or a sibling or descendant above the age of 18;	
	“ <b>injured person</b> ” means a person who suffered a bodily injury, as defined in this Act;	
	“ <b>long-term personal care</b> ” means both medical and non-medical services provided for an extended period of time to an injured person who is unable to fully execute activities of daily living;	55

- “**medical practitioner**” means a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974);
- “**medical report**” means a medical report required to be submitted to the Administrator in terms of this Act;
- “**medical scheme**” means a medical scheme registered as such under the Medical Schemes Act, 1998 (Act No.131 of 1998); 5
- “**Minister**” means the Minister of Transport;
- “**occupational therapist**” means a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974);
- “**other suitable expert**” means a person, other than a student or intern, registered 10 in a profession registrable under the Health Professions Act, 1974 (Act No. 56 of 1974), or the Allied Health Professions Act, 1982 (Act No. 63 of 1982);
- “**pre-accident annual income cap**” means the amount determined by the Minister under section 60(1)(h);
- “**prescribe**” means prescribe by regulation; 15
- “**qualifying person**” means a person who potentially qualifies for a benefit in terms of this Act but has not submitted a claim;
- “**regulations**” means the regulations made by the Minister under section 60;
- “**road accident**” means an incident caused by or arising from— 20
- (a) the driving of a vehicle;
  - (b) entering or exiting a vehicle;
  - (c) leaving a vehicle stationary;
  - (d) the movement of a vehicle as a result of gravity;
  - (e) a vehicle coming to a standstill; or
  - (f) evasive action taken to avoid a collision with a vehicle; 25
- “**Road Accident Fund**” means the entity established by section 2 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996);
- “**rules**” means the rules made by the Board under section 61;
- “**spouse**”, in relation to a deceased breadwinner, means— 30
- (a) a person who was the spouse of the deceased breadwinner in a marriage concluded in accordance with the Marriage Act, 1961 (Act No. 25 of 1961);
  - (b) a person who was a spouse of the deceased breadwinner in a marriage recognised in terms of section 2 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
  - (c) a person who was the partner of the deceased breadwinner in a civil union 35 concluded in accordance with the Civil Union Act, 2006 (Act No. 17 of 2006);
  - (d) a person who was a spouse of the deceased breadwinner in a union recognised as a marriage in accordance with the tenets of any religion;
  - (e) a person who was the partner of the deceased breadwinner in a permanent domestic life-partnership in terms of which the parties had established a 40 contractual reciprocal duty of support; or
  - (f) a person who was a spouse or life partner of the deceased breadwinner in terms of the laws of a foreign country;
- “**this Act**” includes any schedule hereto and any regulation or rule made or notice published in terms of this Act; 45
- “**vehicle**” means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, caravan, agricultural or other implement designed to be drawn by such a vehicle; and
- “**vocational training**” means training aimed at assisting the beneficiary to maintain employment, obtain employment, or regain or acquire vocational 50 independence.

## Objectives of Act

2. The objectives of this Act are to—
- (a) provide an effective benefit scheme in respect of bodily injury or death caused by or arising from road accidents, which benefit scheme is reasonable, 55 equitable, affordable and sustainable;
  - (b) exclude from civil liability certain persons responsible for bodily injuries or death caused by or arising from road accidents;
  - (c) establish the Administrator;
  - (d) establish procedures for the assessment and determination of claims and 60 disputes; and

- (e) provide for transitional arrangements regarding the board, staff, assets, rights and obligations of the Road Accident Fund.

## CHAPTER 2

### ROAD ACCIDENT BENEFIT SCHEME ADMINISTRATOR

<b>Establishment</b>	5
3. (1) The Road Accident Benefit Scheme Administrator is hereby established. (2) The Administrator is a juristic person.	
<b>Financial year</b>	
4. The financial year of the Administrator is the period of 12 months beginning on 1 April each year, and ending on 31 March the following year.	10
<b>Duties</b>	
5. The Administrator must—	
(a) assist injured persons, dependants and immediate family members to submit claims;	
(b) receive claims, medical reports and notices;	15
(c) assess, accept or reject claims for benefits and establish and maintain a database of claimants and beneficiaries;	
(d) facilitate access to early, effective and appropriate health care services, rehabilitation, and vocational training, if appropriate, for injured persons;	
(e) enter into agreements with public and private health care service providers as set out in section 31;	20
(f) adopt measures to detect, investigate and prevent fraudulent and corrupt activities regarding claims and the provision of benefits; and	
(g) keep such accounting and related records as required by law.	
<b>Powers</b>	25
6. The Administrator may—	
(a) employ personnel;	
(b) purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stock, securities and any other kind of movable or immovable property;	30
(c) sell, lease, mortgage, encumber, dispose of, exchange, cultivate, develop, build upon, improve or in any other way deal with its property;	
(d) manage and utilise its resources for purposes connected with or resulting from the exercise of its powers and the performance of its duties;	
(e) subject to national legislation, invest any money and realise, alter or reinvest such investments or otherwise deal with such money or investments;	35
(f) subject to national legislation, borrow money and secure the payment thereof in such manner as it may deem fit;	
(g) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments, excluding share certificates;	40
(h) insure itself against any loss, damage, risk or liability which it may suffer or incur;	
(i) undertake or sponsor research and appropriate programmes or projects designed to—	
(i) facilitate timeous access to health care services;	45
(ii) facilitate independent living, social rehabilitation and life enhancement assistance for injured persons;	
(iii) enhance public awareness regarding the causes of road accidents and the provisions of this Act; and	
(iv) increase road safety;	50
(j) investigate the causes of road accidents, the injuries sustained in road accidents, means of reducing road accidents and any other matter concerning claims or the provision of benefits in terms of this Act;	
(k) establish and maintain a road accident database;	

- (l) establish and maintain a medical and trauma database relating to road accidents;
- (m) conclude any agreement and engage or consult persons regarding any matter contemplated in this Act; and
- (n) take any other action or step which is incidental or conducive to the exercise of its powers or the performance of its duties. 5

### CHAPTER 3

#### GOVERNANCE

##### *Part A*

##### *Board* 10

#### **Composition and appointment**

7. (1) The Administrator is governed by a Board consisting of the following members:
- (a) The Chief Executive Officer;
  - (b) no more than 12 members appointed by the Minister, with qualifications in, and at least 10 years experience in one or more of the fields of medicine, disability management, medical health insurance, hospital management, public finance, public transport, information technology systems, actuarial science and law; 15
  - (c) the Director-General of the national Department of Transport, or his or her delegate; 20
  - (d) the Director-General of the National Treasury, or his or her delegate;
  - (e) the Director-General of the national Department of Health, or his or her delegate; and
  - (f) the Director-General of the national Department of Social Development, or his or her delegate. 25
- (2) Before the members of the Board contemplated in subsection (1)(b) are appointed, the Minister must, through the national media, invite nominations from members of the public for these positions on the Board.
- (3) The Minister must publish the list of nominees, their qualifications and experience by notice in the *Gazette*. 30
- (4) With the exception of academic employees of higher education institutions, as defined in the Higher Education Act, 1997 (Act No. 101 of 1997), the members of the Board contemplated in subsection (1)(b) may not be persons employed by the State.
- (5) The Minister must, within 30 days from the date of appointment of a member of the Board, notify Parliament of the appointment and give notice of the appointment in the *Gazette*. 35
- (6) The Chief Executive Officer and the Directors-General are *ex officio* members of the Board, but may not vote at its meetings.

#### **Chairperson and Deputy Chairperson**

8. (1) The Minister must appoint a Chairperson and Deputy Chairperson from amongst the members of the Board contemplated in section 7(1)(b). 40
- (2) The Chairperson, or in his or her absence, the Deputy Chairperson shall preside at meetings of the Board.
- (3) Whenever both the Chairperson and the Deputy Chairperson of the Board are absent or unable to fulfil the functions of the Chairperson, the members of the Board must designate any other member of the Board contemplated in section 7(1)(b) to act as Chairperson of the Board during such absence or inability. 45

#### **Term of office**

9. (1) The members of the Board contemplated in section 7(1)(b) hold office for a period of three years and may be re-appointed for one further period not exceeding three years. 50
- (2) Notwithstanding anything to the contrary in this Act, if it is impractical to follow the process contained in this Act for the appointment of members contemplated in section 7(1)(b), the Minister may appoint interim Board members and an interim



Chairperson and Deputy Chairperson, for a period not exceeding 12 months, provided that the Minister must, within 30 days after their appointment, notify Parliament and publish the particulars of the appointees by notice in the *Gazette*.

### **Vacancies**

**10.** Whenever a position contemplated in section 7(1)(b) becomes vacant before the expiry of the member's term of office, the Minister may appoint any competent person with the qualifications and experience referred to in that section to serve for the unexpired portion of the term of office, without following the other provisions of section 7. 5

### **Disqualifications** 10

**11.** A person is disqualified from being a member of the Board if that person—

- (a) is a minor;
- (b) has at any time been declared insolvent or his or her estate sequestrated;
- (c) has ever been, or is, removed from an office of trust on account of misconduct;
- (d) is or becomes subject to an order of court holding him or her to be mentally ill or unfit; 15
- (e) was within the previous 10 years, or is, convicted of theft, fraud, forgery or any offence involving dishonesty; or
- (f) is otherwise disqualified from serving as a director in terms of the Companies Act, 2008 (Act No. 71 of 2008). 20

### **Committees**

**12.** The Board may establish committees and may, subject to such conditions as it may impose, delegate or assign any of its powers or duties to a committee.

### **Meetings**

**13.** (1) The Board must meet as often as the business of the Administrator may require. 25

(2) The Board must devise the procedures for its meetings and decisions and those of its committees, provided that—

- (a) a quorum for any meeting of the Board or a committee shall be a majority of the members entitled to vote; 30
- (b) if there is disagreement, decisions of the Board or a committee shall be taken by a majority of votes cast; and
- (c) the person presiding at a meeting of the Board shall have a casting vote in addition to his or her deliberative vote.

(3) The Board or a committee may invite any person to attend a meeting for the purpose of advising or informing it on any matter. 35

### **Remuneration and reimbursement**

**14.** The members of the Board contemplated in section 7(1)(b) are entitled to such remuneration and allowances for the attendance of Board meetings as the Minister may determine in consultation with the Minister of Finance. 40

### **Duties**

**15.** (1) The Board must—

- (a) fulfil the functions of an accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) devise strategies and policies to— 45
  - (i) monitor and evaluate the work performance of the Administrator;
  - (ii) ensure that the assessment of claims and the provision of benefits are conducted effectively and efficiently by the Administrator;
  - (iii) ensure that adequate information technology systems enable and support the operations, financial controls, risk and performance management of the Administrator; 50

- (iv) ensure that effective human resource development and succession planning for executive and senior management positions are put in place by the Administrator;
  - (v) ensure that the Administrator develops and maintains sound working relationships with relevant organs of state and stakeholders; and 5
  - (vi) achieve the objectives of this Act;
  - (c) make the rules contemplated in section 61; and
  - (d) advise the Minister in respect of any matter relevant to its functions, including any proposal for an amendment of this Act.
- (2) The Board may, in writing, delegate any of the powers entrusted or duties assigned to the Administrator in terms of this Act, to an employee of the Administrator. 10
- (3) A delegation to an employee in terms of subsection (2)—
- (a) is subject to any limitations and conditions the Board may impose;
  - (b) may either be to a specific individual or to the holder of a specific post in the Administrator; 15
  - (c) may authorise the employee to sub-delegate, in writing, the delegated power or duty to another employee, or to the holder of a specific post in the Administrator; and
  - (d) does not divest the Board of the responsibility concerning the exercise of the power or the performance of the assigned duty. 20
- (4) The Board may confirm, vary or revoke any decision taken by an employee as a result of a delegation in terms of subsection (2), subject to any rights that may have become vested as a consequence of the decision.

### **Conduct**

- 16.** (1) A member of the Board may not be employed or contracted to a position that will conflict with the proper performance of his or her functions. 25
- (2) A member of the Board may not—
- (a) attend, participate in, vote or influence the proceedings during a meeting of the Board or a committee if, in relation to the matter before the Board or a committee, that member has an interest, including a financial interest, that precludes him or her from acting in a fair, unbiased and proper manner; or 30
  - (b) make private use of, or profit from, any confidential information obtained as a result of performing his or her functions as a member of the Board.
- (3) For the purposes of subsection (2)(a), a financial interest means a direct material interest of a monetary nature, or to which a monetary value may be attributed, and does not include an interest held in any fund or investment if the member who holds the interest cannot influence the decisions of that fund or investment. 35

### **Resignation**

- 17.** A member may resign from the Board by written notice to the Minister.

### **Removal** 40

- 18.** The Minister must remove a member of the Board if that member—
- (a) is or becomes disqualified as contemplated in section 11;
  - (b) fails to satisfactorily perform the functions of office; or
  - (c) becomes unable to continue to perform the functions of office.

### **Dissolution of Board by Minister** 45

- 19.** (1) (a) Notwithstanding section 18, the Minister may dissolve the entire Board if the Minister, on good cause, loses confidence in the ability of the Board to perform its functions effectively and efficiently.
- (b) The Minister may dissolve the Board only—
- (i) after having given the Board a reasonable opportunity to make representations; 50 and
  - (ii) after having considered any representations received.

- (c) If the Minister dissolves the Board in terms of this section, the Minister—
- (i) may appoint a Commissioner to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and
  - (ii) must, as soon as it is feasible but not later than six months after the dissolution of the Board, appoint new members to the Board and for this purpose section 7 applies with the changes required by the context. 5
- (2) (a) The costs associated with the appointment and functioning of the Commissioner shall be for the account of the Administrator.
- (b) The appointment of the Commissioner terminates at the first meeting of the new Board. 10

## *Part B*

### *Chief Executive Officer*

#### **Appointment**

- 20.** (1) The Minister must, upon recommendation of the Board, appoint a suitably qualified and experienced person as Chief Executive Officer on such terms and conditions of employment as may be determined by the Minister. 15
- (2) The Chief Executive Officer is appointed for a period not exceeding five years, which period may be extended for one further period of five years.

#### **Acting Chief Executive Officer** 20

- 21.** (1) During a vacancy in the office of the Chief Executive Officer or in the event of the Chief Executive Officer being legally incapacitated or unable to perform the functions of the office for a period exceeding one month, the Minister must, upon the recommendation of the Board, appoint an acting Chief Executive Officer.
- (2) Any provision of this Act relating to the Chief Executive Officer applies with the changes required by the context to an acting Chief Executive Officer. 25

#### **Accountability**

- 22.** The Chief Executive Officer is accountable to the Board.

#### **Duties**

- 23.** The Chief Executive Officer must— 30
- (a) appoint, determine the conditions of employment of and dismiss the staff of the Administrator, excluding executive management positions;
  - (b) manage the employees and day-to-day business of the Administrator;
  - (c) implement the strategies, policies, directives and resolutions adopted by the Board; 35
  - (d) direct performance by the Administrator of its duties;
  - (e) formulate internal directions in respect of the management of the Administrator;
  - (f) whenever necessary, issue guidelines regarding the manner in which claims must be administered by the employees of the Administrator; and 40
  - (g) advise the Board regarding any matter referred to him or her by the Board.

#### **Employees at executive management level**

- 24.** (1) The Board, in consultation with the Chief Executive Officer, appoints and dismisses executive managers.
- (2) The Board determines the organisational structure and positions which constitute executive management. 45

#### **Dismissal**

- 25.** The Minister may for good reason, on recommendation of the Board, dismiss or suspend the Chief Executive Officer.

**CHAPTER 4****FINANCE****Financing of Administrator**

**26.** (1) In respect of its liabilities provided for in Chapter 6, the Administrator must be financed on a fully funded basis, benefits must be paid from its reserves and its liabilities may not exceed accumulated reserves after adjustment at year end. 5

(2) The Administrator is funded from—

- (a) the Road Accident Benefit Scheme levy as provided for in the Customs and Excise Act, 1964 (Act No. 91 of 1964); and
- (b) moneys as may be appropriated by Parliament. 10

**CHAPTER 5****LIABILITY OF ADMINISTRATOR AND OTHER PERSONS****Limitation of Administrator's liability**

**27.** (1) The Administrator shall not be liable to provide a benefit, nor is the liability of any person excluded, in respect of bodily injury or death caused by or arising from the use of a vehicle to perpetrate any terrorist activity, as defined in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004). 15

(2) The Director-General of the Department of Labour or an employer or mutual association may not recover compensation that they are obliged to pay in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), from the Administrator. 20

(3) If the Administrator is liable to provide a benefit to a claimant or beneficiary who is—

- (a) an employee of an employer contemplated in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); 25
- (b) a member of the South African National Defence Force contemplated in the Defence Act, 2002 (Act No. 42 of 2002);
- (c) a beneficiary contemplated by the Military Pensions Act, 1976 (Act No. 84 of 1976); or 30
- (d) a beneficiary contemplated in the Military Veterans Act, 2011 (Act No. 18 of 2011),

the Administrator shall be entitled to deduct, in the manner set out in the rules, from that benefit any payment made in terms of the legislation specified in paragraphs (a), (b), (c) and (d) in respect of bodily injury or death caused by or arising from the road accident. 35

(4) If, at the time of the road accident, an injured person or deceased breadwinner was not a citizen or permanent resident of the Republic or the holder of a valid permit or visa issued in terms of the Immigration Act, 2000 (Act No. 13 of 2002), or the Refugees Act, 1998 (Act No. 130 of 1998), the liability of the Administrator is limited to payment for the provision of emergency health care services provided to such injured person or deceased breadwinner, while he or she was alive. 40

**Exclusion of liability of owner, driver and employer of driver**

**28.** No civil action for damages in respect of bodily injury or death of any person caused by or arising from a road accident shall lie against—

- (a) the owner or driver of a vehicle involved in the road accident; or 45
- (b) the employer of the driver.

## CHAPTER 6

### BENEFITS

#### Categories of benefits

**29.** Subject to this Act, the Administrator shall be liable to provide the following benefits: 5

- (a) The health care services provided for in Part A of this Chapter;
- (b) the income support benefit provided for in Part B of this Chapter;
- (c) the family support benefit provided for in Part C of this Chapter; and
- (d) the funeral benefit provided for in Part D of this Chapter,

in the case of bodily injury or death caused by or arising from a road accident that occurred at any place in the Republic, irrespective of the negligence or other wrongful conduct of the owner or driver or employer of the driver of a vehicle involved in the road accident. 10

#### *Part A*

#### *Health care services* 15

#### Liability of Administrator in respect of health care services

**30.** (1) Subject to this Act, the Administrator shall be liable to pay for health care services reasonably required for the treatment, care and rehabilitation of injured persons provided in the Republic, including but not limited to—

- (a) transport required to receive any health care service; 20
- (b) pre-hospital care and inter-facility transfer;
- (c) emergency and acute care;
- (d) hospitalisation and outpatient services;
- (e) accommodation required to receive any health care service;
- (f) rehabilitative care; 25
- (g) vocational ability assessment and training;
- (h) long-term personal care;
- (i) assistive devices;
- (j) structural changes to homes, vehicles and the workplace; and
- (k) medical reports required under this Act. 30

(2) In assessing whether a health care service is reasonably required for the treatment, care or rehabilitation of an injured person, the Administrator must consider whether the health care service is—

- (a) required for the purpose of restoring the injured person's health to the extent practicable; 35
- (b) appropriate and of a quality required for that purpose;
- (c) performed only on a number of occasions necessary for that purpose;
- (d) given at a time or place appropriate for that purpose;
- (e) of a type normally provided by a health care service provider; and
- (f) provided by a health care service provider who is qualified to provide that service and who normally provides the health care service. 40

#### Contracted health care service providers

**31.** (1) Subject to section 217 of the Constitution of the Republic of South Africa, 1996, the Administrator may enter into agreements with public and private sector health care service providers to provide for— 45

- (a) the delivery of health care services to injured persons;
- (b) the submission of proof that the bodily injury was caused by or arose from a road accident;
- (c) an agreed fee structure, which may differ from the prescribed tariff;
- (d) medical, health care and rehabilitation policies, protocols or standards to be 50 complied with by the contracted health care service provider;
- (e) the keeping of records of bodily injuries and treatment provided and the provision of such records to the Administrator;
- (f) pre-authorisation in respect of non-emergency health care services; and

(g) any other matter related to the provision of health care services to injured persons.

(2) No person, other than the Administrator, shall be liable to a contracted health care service provider in respect of a health care service provided to an injured person unless—

- (a) the health care service provided falls outside the terms of the agreement between the Administrator and the contracted health care service provider; or
- (b) the person is a medical scheme.

(3) If payment is made to a contracted health care service provider in the circumstances contemplated in subsection (2)(a) or (b), the Administrator shall not be liable to the contracted health care service provider but to the person or medical scheme making the payment, in the manner set out in section 32.

### **Non-contracted health care service providers**

**32.** (1) The Administrator shall be liable to pay a non-contracted health care service provider, or any person who paid such a health care service provider, for any health care service provided to an injured person, provided that—

- (a) a claim and proof that the bodily injury was caused by or arose from a road accident, must be submitted in the manner set out in the rules;
- (b) the Minister may, after consultation with the Minister of Health, limit the liability of the Administrator for the provision of any health care service to a reasonable tariff and treatment protocol which must be prescribed; and
- (c) if there is no prescribed tariff for a medical health care service, the liability of the Administrator shall be limited to the reasonable costs of the health care service.

(2) (a) The Administrator may, in the manner set out in the rules, require its prior approval in respect of non-emergency health care services.

(b) The Administrator may not be liable in respect of the provision of any non-emergency health care service if prior approval had been required but not obtained.

### **Individual treatment and rehabilitation plan**

**33.** (1) The Administrator may determine at any time that future health care services should be provided to a beneficiary in terms of an individual treatment and rehabilitation plan, provided that—

- (a) the Administrator must provide information to the beneficiary regarding the process to be followed, the beneficiary's rights and the consequences of the adoption of the plan;
- (b) the beneficiary, any health care service provider or prospective health care service provider of the beneficiary and any employer or prospective employer of the beneficiary, must be given an opportunity to participate in the preparation and costing of the plan to the extent that they are willing and able to do so;
- (c) the Administrator must request the beneficiary to consent to the plan prepared for him or her and may only adopt a plan without the written consent of the beneficiary if, the beneficiary is incapable of consenting to the plan or unreasonably withholds his or her consent; and
- (d) if the beneficiary is not able to provide informed consent to the plan due to a legal disability or other vulnerability or physical condition, the Administrator may make application for the appointment of a curator or curators to assist the beneficiary.

(2) For the purpose of preparing an individual treatment or rehabilitation plan, the Administrator may require a beneficiary to be assessed by a health care service provider, at the cost of the Administrator.

(3) Once the Administrator determines an individual treatment and rehabilitation plan for a beneficiary—

- (a) the Administrator may direct that health care services required under the plan be provided by a contracted health care service provider or any other health care service provider appointed by the Administrator; and
- (b) the liability of the Administrator for payment for health care services shall be limited to the health care services provided in terms of the plan.

**Part B****Income support benefit****Liability of Administrator in respect of income support benefits**

- 34.** (1) Subject to this Act, the Administrator shall be liable to provide—
- (a) a temporary income support benefit to injured persons; and 5
  - (b) a long-term income support benefit to injured persons,
- provided that no temporary or long-term income support benefit shall be paid to a person who is not ordinarily resident in the Republic.
- (2) For the purpose of subsection (1) a person, other than a citizen or permanent resident of the Republic, shall be deemed not to be ordinarily resident in the Republic if he or she—
- (a) was absent from the Republic for a period longer than six months per year calculated over the consecutive three-year period immediately preceding the road accident or any consecutive three-year period following the road accident; or 15
  - (b) fails to submit, within a reasonable period after being requested to do so by the Administrator, an affidavit or solemn declaration commissioned in the Republic confirming that he or she remains ordinarily resident in the Republic and furnishing his or her place of residence in the Republic.
- (3) For the purpose of this part, the Administrator shall not take into account an income illegally earned by the injured person. 20

**Temporary income support benefit**

- 35.** (1) The Administrator shall be liable to pay a temporary income support benefit to an injured person, provided that a claim must be submitted in the manner set out in the rules and must include— 25
- (a) proof of the injured person's pre-accident income in the manner provided in subsection (2), failing which the injured person must be deemed, for purposes of determining the benefit, to have earned the pre-accident income contemplated in subsection (3); and
  - (b) proof of the injured person's inability to perform his or her pre-accident occupation or work or earn an income and that the inability is caused by or arose from a road accident, in the manner provided in subsection (4). 30
- (2) A claim for a temporary income support benefit must be supported by proof of the injured person's pre-accident income in the following manner:
- (a) In the event that the injured person was required to file a tax return in terms of the applicable tax legislation the claim must be supported by a tax assessment for the applicable year or years, up to three years preceding the road accident; 35
  - (b) in the event that the injured person earned more than the average annual national income but was not required to file a tax return in any of the three years preceding the road accident, the claim for those years must be supported by payslips issued by the injured person's employer, or a contract of employment or letter of appointment, provided that if such documentation does not exist or is not available, the claim may be supported by any other verifiable documentary evidence or an affidavit or solemn declaration in support of the income earned; and 40 45
  - (c) the highest annual income during the three years preceding the road accident, less taxation, if any was subtracted, must be used in the calculation of the temporary income support benefit.
- (3) The injured person must be deemed, for the purpose of this Act, to earn the average annual national income if— 50
- (a) the injured person failed to submit acceptable proof of income with the claim; or
  - (b) during the three years preceding the road accident, the injured person was economically inactive, for whatever reason, including studying, being unemployed, or electing not to exercise a trade, occupation or profession for gain. 55
- (4) A claim for a temporary income support benefit must, in the manner set out in the rules, be accompanied by—
- (a) in the case of an injured person contemplated in subsection (2)(a) and (b), a

- medical report by a medical practitioner, compiled after conducting a physical examination of the injured person, confirming that the injured person is unfit to perform his or her pre-accident occupation or work due to a physical or psychological injury caused by or arising from a road accident and stipulating the period that the incapacity is likely to endure; 5
- (b) in the case of an injured person contemplated in subsection (3), a medical report by a medical practitioner, compiled after conducting a physical examination of the injured person, confirming that a physical or psychological injury caused by or arising from the road accident materially and detrimentally affects the ability of the injured person to earn an income and stipulating the period that such detrimental effects are likely to endure; 10
- (c) any further specialist medical report called for by the Administrator in order to assess the ability of the injured person to perform his or her pre-accident occupation or to earn an income, or to assess whether the inability was caused by or arose from a road accident; and 15
- (d) confirmation by the injured person that his or her inability to perform his or her pre-accident occupation or work or to earn an income is due to a physical or psychological injury caused by or arising from a road accident, provided that, if the injured person is unable to provide such confirmation, it may be provided by any other person with knowledge of the reasons for the injured person's inability to earn an income. 20
- (5) The amount and duration of the temporary income support benefit is to be determined as follows:
- (a) In the case of injured persons contemplated in subsection (2)(a) and (b), the injured person's pre-accident income, less taxation, must be used in the calculation of the benefit, provided that the amount used in the calculation— 25
- (i) may not exceed the pre-accident income cap; and
- (ii) may not be less than the average annual national income;
- (b) in the case of injured persons contemplated in subsection (3), the injured person's deemed income must be used in the calculation of the benefit; 30
- (c) the period of entitlement to the temporary income support benefit is the period specified by the medical practitioner after the physical examination contemplated in subsection (4)(a) or (b), as the case may be, provided that the following periods are excluded:
- (i) The first 60 days after the date of the road accident; 35
- (ii) any period commencing two years after the date of the road accident;
- (iii) any period before the injured person reached the age of 18 years; and
- (iv) any period after the injured person has reached the age of 60 years;
- (d) the amount of the temporary income support benefit, for any year, must be calculated in accordance with the formula provided in item 1 of Schedule 1; 40
- (e) the Administrator must pay a temporary income support benefit by way of monthly instalments, but the Administrator may offer to a claimant or beneficiary a commutation of the temporary income support benefit and to pay a lump sum, and for that purpose section 36(10) applies with the changes required by the context. 45
- (6) The Administrator may accept a claim for a temporary income support benefit subject to conditions, including a requirement that the beneficiary submits further medical reports, regarding his or her ability to earn an income.
- (7) A temporary income support beneficiary is not entitled to inflationary adjustments of the amount of the benefit paid by the Administrator but the Minister may, with the concurrence of the Minister of Finance, subject to affordability, from time to time, adjust the temporary income support benefit to take into account the effects of inflation. 50

### **Long-term income support benefit**

- 36.** (1) The Administrator shall be liable to pay a long-term income support benefit to an injured person, provided that a claim must be submitted in the manner set out in the rules and must include— 55
- (a) details of income earned subsequent to the road accident and any representations or additional information which the injured person wishes to submit regarding his or her post-accident vocational ability;
- (b) in the case of an injured person who did not receive a temporary income support benefit— 60



- (i) proof of the injured person's pre-accident income in the manner provided in section 35(2)(a) or (b), as the case may be, failing which the injured person must be deemed, for purposes of determining the benefit, to have earned the pre-accident income contemplated in section 35(3);
  - (ii) confirmation by the injured person that his or her inability to earn an income is due to a physical or psychological injury caused by or arising from a road accident, provided that, if the injured person is unable to provide such confirmation, it may be provided by any other person with knowledge of the reasons for the injured person's inability to earn an income;
  - (c) an assessment of the injured person conducted by an occupational therapist or other suitable expert relating to the injured person's post-accident vocational ability, subject to subsections (2), (3) and (4); and
  - (d) any further specialist medical report called for by the Administrator in order to assess the ability of the injured person to earn an income or to assess whether the inability was caused by or arose from a road accident.
- (2) An injured person who wishes to claim a long-term income support benefit must subject himself or herself to such assessment, conducted by an occupational therapist or other suitable expert in the manner set out in the rules, to determine the injured person's post-accident vocational ability, including an assessment of—
- (a) the nature of the physical or psychological injury and the vocational disability caused by or arising from the road accident and the period that such disability is likely to endure; and
  - (b) with reference to any relevant circumstance, including the age of the injured person and his or her qualifications, training, skills and experience, the range of occupations or paid work which the injured person can perform.
- (3) The Board, in consultation with the Health Professions Council of South Africa, may make rules specifying—
- (a) guidelines for the assessment of the injured person's post-accident vocational ability;
  - (b) training programmes for the assessors contemplated in subsection (2); and
  - (c) accreditation criteria for the assessors contemplated in subsection (2).
- (4) In the event that the Board has made rules requiring training accreditation in terms of subsection (3), the assessment contemplated in subsection (2) may only be performed by a trained and accredited assessor.
- (5) (a) The Administrator must determine, with reference to all relevant information, including the availability of employment, other income-generating opportunities, and passive income available to an injured person and the details of income received subsequent to the road accident, an amount which approximately represents the injured person's annual post-accident earning capacity.
- (b) Subject to section 40(3), the Administrator may, at any time, increase such amount with reference to the actual income received by a beneficiary of a long-term income support benefit or any other relevant consideration.
- (6) (a) In determining the injured person's earning capacity in terms of subsection (5)(a), no insurance money or pension which has been or may be paid as a result of the bodily injury, shall be taken into account.
- (b) For the purposes of paragraph (a)—
- (i) **“insurance money”** includes any proceeds or any refund of premiums and any payment of interest on such premiums; and
  - (ii) **“pension”** includes a refund of contributions and any payment of interest on such contributions, and also any payment of a gratuity or other lump sum by a pension or provident fund or by an employer in respect of a person's employment.
- (7) The amount and duration of the long-term income support benefit is to be determined as follows:
- (a) In the case of injured persons contemplated in section 35(2)(a) and (b), the injured person's pre-accident income, less taxation, must be used in the calculation of the benefit, provided that the amount used in the calculation—
    - (i) may not exceed the pre-accident income cap per year; and
    - (ii) may not be less than the average annual national income;
  - (b) in the case of injured persons contemplated in section 35(3), the injured person's deemed income must be used in the calculation of the benefit;

- (c) the period of entitlement to the long-term income support benefit must exclude—
- (i) the period ending two years after the date of the road accident;
  - (ii) any period before the injured person reached the age of 18 years; and
  - (iii) any period after the injured person has reached the age of 60 years;
- (d) the amount of the long-term income support benefit, calculated for any year, must be calculated in accordance with the formula provided in item 2 of Schedule 1;
- (e) subject to subsection (10), the Administrator must pay a long-term income support benefit by way of monthly instalments.
- (8) The Administrator may accept a claim for a long-term income support benefit subject to conditions, including—
- (a) the submission of further medical or vocational ability assessments regarding the beneficiary's ability to work or his or her post-accident earning capacity;
  - (b) the submission of further or periodic statements detailing the income earned by the beneficiary; and
  - (c) participation by the beneficiary in a vocational training programme.
- (9) A long-term income support beneficiary is not entitled to inflationary adjustments of the amount of the benefit paid by the Administrator but the Minister may, with the concurrence of the Minister of Finance, subject to affordability, from time to time, adjust the long-term income support benefit by notice in the *Gazette* to take into account the effects of inflation.
- (10) The Administrator may, having regard to the need to manage working capital efficiently and economically, and in accordance with pre-determined policy, offer to a claimant or a beneficiary of an income support benefit a commutation of the benefit for any period and pay to the claimant or beneficiary a lump sum in full and final settlement of the Administrator's liability for that period.

### **Vocational training programmes**

37. (1) The Administrator may, at any time, require a temporary or long-term income support beneficiary to participate in a vocational training programme, provided that—
- (a) the Administrator must provide information to the beneficiary regarding the process to be followed, the beneficiary's rights and the consequences of not participating in the programme;
  - (b) the beneficiary and any employer or potential employer of the beneficiary must be given an opportunity to participate in the preparation and costing of the programme to the extent that they are willing and able to do so;
  - (c) the Administrator must request the beneficiary to consent in writing to participate in the vocational training programme and may only require the beneficiary to participate in a programme without the written consent of the beneficiary if the consent is unreasonably withheld.
- (2) Once the Administrator requires a temporary or long-term income support beneficiary to participate in a vocational training programme—
- (a) the Administrator may direct that the programme be provided by a service provider contracted by the Administrator; and
  - (b) the continuation of an income support benefit must be made conditional on the beneficiary participating in such a vocational training programme.
- (3) The Minister may, with the concurrence of the Minister of Finance, prescribe limits on the provision of vocational training to beneficiaries, including a cap on the amount which the Administrator may spend per beneficiary.

### **Part C**

#### ***Family support benefit***

#### **Liability of Administrator in respect of family support benefit**

38. (1) Subject to this Act, the Administrator shall be liable to provide a family support benefit to the dependants of a deceased breadwinner, provided that such dependants are ordinarily resident in the Republic.
- (2) For the purposes of subsection (1), a dependant, other than a citizen or permanent resident of the Republic, shall be deemed not to be ordinarily resident in the Republic if he or she—

- (a) was absent from the Republic for a period of longer than six months per year, calculated over the consecutive three-year period immediately preceding the death of the breadwinner or any consecutive three-year period following the death of the breadwinner; or
- (b) fails to submit, within a reasonable period after being requested to do so by the Administrator, an affidavit or solemn declaration commissioned in the Republic confirming that he or she remains ordinarily resident in the Republic and furnishing his or her place of residence in the Republic. 5
- (3) For purposes of this part, the Administrator shall not take into account income that was illegally earned by the deceased breadwinner. 10
- (4) The Administrator shall be liable to pay a family support benefit to a dependant, provided that a claim must be submitted in the manner set out in the rules and must include—
- (a) proof that the claimant is a dependant contemplated in paragraph (a), (b) or (c) of this Act’s definition of “dependant”; 15
- (b) proof that the death of the deceased breadwinner was caused by or arose from a road accident;
- (c) proof of the deceased breadwinner’s pre-accident income in the manner provided for in section 35(2)(a) and (b), failing which the deceased breadwinner must be deemed to have earned the pre-accident income contemplated in section 35(3); and 20
- (d) in the case of a claim by a spouse or spouses, proof of the pre-accident income of the spouse or spouses in the manner provided for in section 35(2)(a) and (b), if those subsections are applicable.
- (5) The pre-accident income of the deceased breadwinner, less taxation, or deemed income, as the case may be, must be used in the calculation of the family support benefit, provided that the pre-accident income used in the calculation— 25
- (a) may not exceed the pre-accident income cap; and
- (b) may not be less than the average annual national income.
- (6) The pre-accident income of the surviving spouse or spouses, less taxation, must be used in the calculation of the family support benefit, provided that the amount used in the calculation may not exceed the pre-accident income cap. 30
- (7) (a) In determining income earned in terms of subsection (4), no insurance money or pension which has been or may be paid as a result of the death of the deceased breadwinner, shall be taken into account. 35
- (b) For the purposes of paragraph (a)—
- (i) “**insurance money**” includes a refund of premiums and any payment of interest on such premiums; and
- (ii) “**pension**” includes a refund of contributions and any payment of interest on such contributions, and also any payment of a gratuity or other lump sum by a pension or provident fund or by an employer in respect of a person’s employment. 40
- (8) The amount of a family support benefit must be calculated in accordance with the applicable formula provided in item 3 of Schedule 1.
- (9) A dependant who is a surviving spouse is entitled to a family support benefit for a period of 15 years calculated from the date of death of the breadwinner or until he or she reaches the age of 60, whichever period is the shortest. 45
- (10) A dependant who is a child is entitled to a family support benefit until he or she reaches the age of 18.
- (11) A dependant who is not a spouse or a child is entitled to a family support benefit for as long as he or she would have been legally entitled to support and would have received such support had the breadwinner not died, or until he or she reaches the age of 60, whichever period is the shortest. 50
- (12) Subject to subsection (15), the Administrator must pay the family support benefit by way of monthly instalments. 55
- (13) The Administrator may accept a claim for a family income support benefit subject to conditions, including conditions—
- (a) in the case of a beneficiary other than a spouse or a child, requiring further or periodic proof that he or she remains a dependant; and
- (b) in the case of a spouse, the provision of statements relating to income earned. 60
- (14) A beneficiary of a family support benefit is not entitled to inflationary adjustments of the family support benefit paid by the Administrator but the Minister may, with the concurrence of the Minister of Finance, subject to affordability, from time

to time by notice in the *Gazette*, adjust the family support benefit to take into account the effects of inflation.

(15) The Administrator may, having regard to the need to manage working capital efficiently and economically, and in accordance with pre-determined policy, offer to a claimant or beneficiary of a family support benefit a commutation of the family support benefit for any period and to pay to the claimant or beneficiary a lump sum in full and final settlement of the Administrator's liability for that period. 5

#### ***Part D***

##### ***Funeral benefit***

#### **Liability of Administrator in respect of funeral benefit 10**

**39.** (1) Subject to this Act, the Administrator shall be liable, in respect of the funeral of a person whose death was caused by or arose from a road accident—

- (a) to pay an immediate family member of the deceased, the prescribed lump sum, in the manner set out in the rules, upon submission of—
  - (i) a copy of the death certificate issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992); and 15
  - (ii) proof that the death was caused by or arose from a road accident;
- (b) to pay any other person, if no immediate family member has made a claim in terms of paragraph (a), all reasonable expenses incurred in respect of the funeral of the deceased up to a maximum as prescribed, upon submission, in the manner set out in the rules of— 20
  - (i) a copy of the death certificate issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
  - (ii) proof that the death was caused by or arose from a road accident; and
  - (iii) a detailed invoice or invoices reflecting the expenses incurred. 25

(2) If it is impracticable to await a claim for a funeral benefit in terms of subsection (1) and the Administrator independently establishes its liability under this Act, the Administrator may—

- (a) pay an immediate family member; or
- (b) after consultation with an immediate family member, pay any other person, including a funeral undertaker, 30

the prescribed lump sum in respect of the funeral of the deceased without a claim being submitted, in which event the Administrator shall not be liable in terms of subsection (1).

(3) If the Administrator is unable to locate an immediate family member within a period of five days from the date of death, payment may be made in terms of subsection (2)(b) without consulting the immediate family member. 35

(4) The Minister may, with the concurrence of the Minister of Finance, subject to affordability, from time to time, adjust the amounts contemplated in subsections (1) and (2) by notice in the *Gazette* to take into account the effects of inflation. 40

#### ***Part E***

##### ***Benefit review***

#### **Termination, suspension and revision of benefits**

**40.** (1) Any benefit granted terminates upon the death of the beneficiary.

(2) Subject to the Promotion of Administrative Justice Act, 2002 (Act No. 3 of 2002), the Administrator may at any time— 45

- (a) terminate the continued entitlement to any benefit if the beneficiary—
  - (i) is no longer entitled to the benefit;
  - (ii) fails to comply with a condition imposed in respect of that benefit;
  - (iii) fails to comply within a reasonable period with a request made in terms of section 43; or 50
  - (iv) furnished false or misleading information as part of the claim submitted or information or documentation requested by the Administrator;
- (b) suspend the continued entitlement to any benefit if the beneficiary—
  - (i) unreasonably refuses to provide further medical reports or to submit to further medical assessments or vocational ability assessments; 55

- (ii) unreasonably refuses to undergo necessary medical or other treatment prescribed by a medical practitioner;
  - (iii) unreasonably refuses or fails to participate in an individual treatment or rehabilitation plan or a vocational training programme determined by the Administrator; or
  - (iv) unreasonably refuses to accept employment which is within his or her capabilities and from which he or she can generate income to provide fully or partially for his or her maintenance; or
  - (c) revise the benefit if good reason exists which justify the revision of the benefit.
- (3) The Administrator must afford an affected beneficiary with an opportunity to make representations, prior to terminating, suspending or revising any benefit, provided that—
- (a) if a beneficiary cannot be located, or fails, within a stipulated time period, to make written representations or to attend a hearing aimed at providing him or her with an opportunity to make representations, the Administrator may take a decision without regard to representations; and
  - (b) if the Administrator took a decision without regard to representations, that decision may later be reversed or altered with reference to any representations received from the beneficiary.

### **Substitution of recipient of certain benefits** 20

41. The Administrator may, on good cause shown, substitute any beneficiary with a curator, appointed by a competent court on application by the Administrator, to receive the benefit on behalf of a beneficiary.

## **CHAPTER 7**

### **CLAIMS PROCEDURE** 25

#### **Procedure for claiming benefits**

42. (1) The forms and procedures applicable to the following claims must be set out in the rules:
- (a) A claim for a health care service benefit provided for in Part A of Chapter 6;
  - (b) a claim for a temporary and long-term income support benefit provided for in Part B of Chapter 6;
  - (c) a claim for a family support benefit provided for in Part C of Chapter 6; and
  - (d) a claim for a funeral benefit provided for in Part D of Chapter 6.
- (2) Other than payment for contracted health care service providers and for a funeral benefit in terms of section 39(2), the Administrator shall not be liable for the provision of a benefit until a claim for such benefit is submitted in the manner set out in the rules.
- (3) If necessary, the Administrator may assist any injured person or other qualifying person to submit a claim in accordance with this Act, including making an application for the appointment of a curator if the qualifying person is unable to prepare and submit a claim in terms of this Act.

#### **Obligations of claimant and beneficiary**

43. (1) Notwithstanding anything to the contrary in any law, and to assist the Administrator to make a determination in terms of this Act, the Administrator may require any claimant or beneficiary to—
- (a) attend an interview by the Administrator or its agents;
  - (b) furnish a written statement or affidavit to the Administrator regarding any aspect of a claim or benefit;
  - (c) furnish the Administrator with further particulars of the road accident or any other relevant information regarding any aspect of a claim or a benefit;
  - (d) furnish a document in his or her possession or under his or her control, relevant to a claim or a benefit, to the Administrator; and
  - (e) provide his or her consent to the Administrator to access records held by third parties relevant to his or her claim or benefit.
- (2) The Administrator shall not be obligated to process any claim until a claimant has complied with any requirement imposed on him or her in terms of this section.

(3) The Administrator may suspend any benefit until a beneficiary has complied with any requirement imposed on him or her in terms of this section.

#### **Information to be furnished to Administrator by third parties**

**44.** (1) Notwithstanding anything to the contrary in any law or any agreement between the claimant or beneficiary and a third person, and to assist the Administrator to perform the duties in section 5(a), (c), and (d) of this Act—

- (a) the Road Traffic Management Corporation, established by the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), must furnish, at the request of the Administrator, the Administrator with all relevant records relating to a road accident involving a qualifying person, a claimant or a beneficiary;
  - (b) the South African Police Service, established by the South African Police Service Act, 1995 (Act No. 68 of 1995), must furnish, at the request of the Administrator, the Administrator with all relevant records relating to a road accident involving a qualifying person, a claimant or a beneficiary;
  - (c) a health care provider defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003), who provides public health care and a public health establishment, also defined in that section, must furnish, at the request of the Administrator, the Administrator with all relevant medical records of a claimant or a beneficiary, or in the case of a qualifying person, any information relevant to determine whether the person was involved in a road accident and the details of any health care provider that treated such person;
  - (d) a health care provider defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003), who provides private health care and a private health establishment, also defined in that section, must furnish, at the request of the Administrator, the Administrator with all relevant medical records of a claimant or a beneficiary, or in the case of a qualifying person, any information relevant to determine whether the person was involved in a road accident and the details of any health care provider that treated such person;
  - (e) a medical scheme and an administrator defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must furnish, at the request of the Administrator, the Administrator with all relevant information relating to the entitlements of a claimant or a beneficiary;
  - (f) a financial institution defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), must furnish, at the request of the Administrator, the Administrator with all relevant information relating to the accounts of a claimant for, or a beneficiary of, an income support benefit or family support benefit or of a deceased breadwinner in respect of whom the claim was submitted;
  - (g) the South African Social Security Agency established by the South African Social Security Agency Act, 2004 (Act No. 9 of 2004), must furnish, at the request of the Administrator, the Administrator with all relevant records in its possession relating to a claimant for, or a beneficiary of, an income support benefit or family support benefit;
  - (h) the Director-General of the Department of Labour and the Unemployment Insurance Commissioner, designated as such in terms of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), must furnish, at the request of the Administrator, the Administrator with all relevant records in their possession relating to a claimant for, or a beneficiary of, an income support benefit;
  - (i) the Compensation Commissioner, appointed in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), must furnish, at the request of the Administrator, the Administrator with all relevant records in their possession relating to a claimant for, or a beneficiary of, an income support benefit; and
  - (j) the Department of Home Affairs must furnish, at the request of the Administrator, the Administrator with all relevant records in its possession relating to a claimant or a beneficiary, including death and birth certificates, identity documentation, marriage or residence status.
- (2) (a) In order to assist qualifying persons, the Administrator may invoke subsection (1)(a) to (d) to obtain the records and information of such persons without their consent.

(b) Except for the instances contemplated in paragraph (a), the Administrator may not invoke subsection (1) to obtain the records and information of claimants or beneficiaries without their consent, provided that if such consent is unreasonably withheld, the Administrator shall not be obligated to process a claim or may suspend a benefit.

(3) The Administrator may only invoke the powers in this section to perform the duties specified in subsection (1). 5

(4) The Administrator must preserve the secrecy and confidentiality of records and information obtained pursuant to it invoking the powers in subsection (1).

#### **Powers of Administrator to investigate**

**45.** (1) The Administrator may, in the performance of its functions, inquire into any matter concerning claims or the provision of benefits in terms of this Act, and may for such purpose— 10

(a) through its employees who are commissioners of oath under the Justice of Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), administer an oath to any person or cause that person to make an affirmation, if such a person wishes to provide evidence to the Administrator regarding any claim or benefit; and 15

(b) conduct an investigation and for that purpose—

(i) subpoena any person who can furnish information of material importance concerning the matter under investigation, or who is reasonably assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear within a reasonable period before its employees or representatives charged to conduct the investigation, and to furnish such information or to produce such book, document or thing, as the case may be; 20 25

(ii) through its employees who are commissioners of oath under the Justice of Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), administer an oath or affirmation or take a solemn declaration or attested declaration from the subpoenaed person; and

(iii) through its representative, question the subpoenaed person. 30

(2) A subpoena to appear before the Administrator must be in the prescribed form and served by the sheriff in the prescribed manner.

(3) The rules with regard to privilege, which are applicable in the case of a person who has been subpoenaed to give evidence or to produce a book, document or thing before a court of law, apply in respect of the examination of a person and the production of a book, document or thing contemplated in subsection (1)(b). 35

(4) A person who is questioned in terms of subsection 1(b)(iii) is entitled to be assisted by a legal representative at his or her own expense.

#### **Claims lapse in certain circumstances**

**46.** (1) Subject to the provisions of subsections (2) and (3), unless a claim is submitted in terms of this Act, any right to claim a benefit shall lapse three years after the claim arose. 40

(2) A claim shall be deemed not to arise until the qualifying person has knowledge of the facts from which the claim arose, provided that a qualifying person shall be deemed to have such knowledge if he or she could have acquired it by exercising reasonable care. 45

(3) If a qualifying person—

(a) is a minor or is suffering from mental illness or is a person under curatorship or is prevented by superior force including any law or any order of court from submitting a claim; or 50

(b) is deceased and an executor of the estate in question has not yet been appointed,

the period of prescription shall not be completed before one year has elapsed after the relevant impediment referred to in paragraph (a) or (b) has ceased to exist.

### **Time periods for determination of claims**

47. (1) The Administrator shall accept or reject a claim within 180 days after the submission of the claim, failing which the claimant may lodge an appeal in terms of section 55.

(2) A claim shall bear interest at the rate determined in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), from expiry of 180 days after submission of a claim in compliance with this Act. 5

(3) If the Administrator accepts a claim, payment of the benefit must commence within 30 days after the beneficiary is notified, in the manner set out in the rules, that the claim has been accepted, unless an appeal is lodged against the decision of the Administrator. 10

(4) If the Administrator rejects a claim, the claimant must be informed in writing within 14 days of the decision and of the claimant's right to appeal against the decision of the Administrator.

## **CHAPTER 8**

15

### **APPEALS COMMITTEE**

#### **Appointment and composition**

48. (1) The Minister may establish one or more Appeals Committees to hear appeals in terms of this Act.

(2) The Appeals Committee must be composed of the following members and alternates appointed in writing by the Minister: 20

(a) One person, and one alternate, each with a legal qualification and registered as a member of a law society, with not less than 10 years of practice experience in the field of law and with proven experience in the field of alternative dispute resolution; 25

(b) one person, and one alternate, each with a medical or nursing qualification and registered as a member with the Health Professions Council of South Africa, with not less than 10 years, work experience in the field of medicine and with proven experience in the field of disability management; and

(c) one person, and one alternate, each with a qualification in accountancy, and registered as a member of a professional controlling body, with not less than 10 years, work experience in the field of accountancy. 30

(3) Before making the appointments, the Minister must, through the national media, invite nominations from members of the public for the member and alternate positions on the Committee. 35

(4) The Minister must within 30 days of the appointment of the members and alternates publish a notice of the appointments in the *Gazette*.

#### **Term of office**

49. (1) Members and alternates are appointed on a full-time or part-time basis and hold office for a period of five years and may be re-appointed for one further period not exceeding five years. 40

(2) The Minister may extend the period of office of members and alternates by a period not exceeding one year, to allow for the appointment of a new Appeals Committee.

(3) A member or alternate may resign from the Appeals Committee by giving 30 days written notice of resignation to the Minister. 45

#### **Chairperson and Deputy Chairperson**

50. (1) The Minister must appoint, from the members of the Appeals Committee, a Chairperson and a Deputy Chairperson.

(2) When the Chairperson is unable to perform the functions of the Appeals Committee, they shall be performed by the Deputy Chairperson. 50



## Meetings

- 51.** (1) The Appeals Committee must meet as often as the business of the Administrator may require.
- (2) When a member is unable to attend a meeting of the Appeals Committee the member's alternate must attend the meeting to perform the functions of the member. 5
- (3) A quorum for any meeting of the Appeals Committee is three members.
- (4) The Appeals Committee may invite any person to attend a meeting for the purpose of advising or informing it on any matter.
- (5) Each member attending a meeting of the Appeals Committee has a deliberative vote and may not abstain from voting when a matter is put to the vote. 10
- (6) A decision of a majority of the members of the Appeals Committee constitutes a decision of the Appeals Committee.
- (7) The Appeals Committee must keep a record of the proceedings of every sitting held in terms of this section.
- (8) The Administrator must provide secretariat and administrative support to the Appeals Committee. 15
- (9) The Minister must prescribe the procedures for meetings of the Appeals Committee.

## Remuneration and reimbursement

- 52.** The members and alternates of the Appeals Committee are entitled to such remuneration and allowances for the performance of their functions as the Minister may determine in consultation with the Minister of Finance. 20

## Conduct

- 53.** (1) A member or alternate of the Appeals Committee may not be employed or contracted to a position that will conflict with the proper performance of his or her functions. 25
- (2) A member or alternate of the Appeals Committee may not attend, participate in, vote or influence the proceedings during a meeting of the Appeals Committee if, in relation to the matter before the Appeals Committee, that member or alternate has an interest, including a financial interest, that precludes him or her from acting in a fair, unbiased and proper manner. 30

## Disqualification and removal from membership

- 54.** (1) A person may not be appointed as a member of the Appeals Committee if that person—
- (a) is not a South African citizen; 35
  - (b) has been sentenced to imprisonment without the option of a fine during the preceding four years;
  - (c) is an unrehabilitated insolvent;
  - (d) has been judicially declared of unsound mind;
  - (e) has been removed from an office of trust on account of misconduct involving theft, fraud or corruption; or 40
  - (f) is a political office-bearer.
- (2) The Minister must remove a member or an alternate of the Appeals Committee if that member or alternate—
- (a) is or become disqualified as contemplated in subsection (1); 45
  - (b) fails to satisfactorily perform the functions of office; or
  - (c) becomes unable to continue to perform the functions of office.
- (3) If a vacancy arises, the Minister must, in accordance with the procedure set out in section 48, appoint a new member or alternate for the unexpired term of the former member's or alternate's term of office. 50

## Appeals

- 55.** (1) A claimant or a beneficiary may, after being notified of a decision of the Administrator or after the expiry of the period specified in section 47(1), in accordance

with the prescribed form and procedure, lodge an appeal against the decision or lack of a decision contemplated in section 47(1).

(2) An appeal in terms of subsection (1) must be submitted to the Appeals Committee within 30 days after a claimant or beneficiary has been notified of a decision of the Administrator or after the expiry of the period specified in section 47(1). 5

(3) The Appeals Committee must hear and determine appeals in accordance with the prescribed procedure and the Act.

(4) Appeals Committee may, after hearing an appeal—

- (a) confirm the decision of the Administrator;
- (b) vary the decision of the Administrator; or 10
- (c) rescind the decision and replace the decision of the Administrator with such other decision as it considers just.

(5) The Appeals Committee must hear and determine the appeal within 180 days after the lodgement of the appeal, and in writing, inform the appellant of the outcome within 14 days. 15

(6) A decision by the Appeals Committee is final, subject to judicial review.

## CHAPTER 9

### GENERAL PROVISIONS

#### **Professional and other fees**

**56.** Unless otherwise provided in this Act, the Administrator shall not be liable to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs, to prepare and submit a claim or an appeal or to meet any requirement in this Act. 20

#### **Liability for administrative decision-making**

**57.** The Administrator or any official employed by the Administrator shall not be liable in respect of anything done or omitted to be done in the exercise of any power or performance of any duty conferred or imposed by or under this Act, unless intentional wrongdoing is proved. 25

#### **Restriction on transfer of benefits**

**58.** A claim to a benefit may not be subrogated, transferred, ceded, pledged or in any other way encumbered. 30

#### **Service of process commencing litigation**

**59.** A notice or other process commencing litigation against the Administrator in any court must be served in the prescribed manner on the Administrator.

#### **Regulations and certain notices by Minister** 35

**60.** (1) The Minister must prescribe—

- (a) after consultation with of the Minister of Health, the tariff and treatment protocols for the liability of the Administrator for the provision of health care services, medical reports and vocational ability assessments;
- (b) the form of the subpoena to be used to summon a person to appear before the Administrator and the manner in which the subpoena is to be served by the sheriff; 40
- (c) the form to be used to lodge an appeal;
- (d) the procedure to follow to lodge an appeal;
- (e) the procedure to be followed at meetings of the Appeals Committee; 45
- (f) the manner in which a notice or other process commencing litigation against the Administrator in any court must be served on the Administrator;
- (g) in consultation with the Minister of Finance, the average annual national income;
- (h) in consultation with the Minister of Finance, the pre-accident annual income cap; 50

- (i) in consultation with the Minister of Finance, the lump sum funeral benefit; and
  - (j) in consultation with the Minister of Finance, limits on the provision of vocational training to beneficiaries including a cap on the amount which the Administrator may spend per beneficiary.
- (2) The Minister may prescribe any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act. 5
- (3) The Minister must publish regulations concerning the matters referred to in subsections (1) and (2) in draft form for public comment and allow 30 days for the submission of such comment.
- (4) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* adjust the tariff, the average annual national income, the pre-accident annual income cap and the funeral benefit referred to in subsection (1), to take into account the effects of inflation. 10
- (5) The Minister is not required to consult with any person, other than the Minister of Finance, regarding the adjustments referred to in subsection (4). 15

### Rules by Board

- 61.** (1) The Board must, by notice in the *Gazette*, make rules relating to—
- (a) the forms and procedures for the submission of claims;
  - (b) deductions from benefits any payments made in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), Defence Act, 2002 (Act No. 42 of 2002), Military Pension Act, 1976 (Act No. 84 of 1976), and Military Veteran Act, 2011 (Act No. 18 of 2011);
  - (c) pre-authorisation in respect of non-emergency health care services;
  - (d) providing proof that bodily injury or death was caused by or arose from a road accident; 25
  - (e) providing proof of an inability to earn income by a claimant for an income support benefit;
  - (f) providing proof that a claimant is a dependant of a deceased breadwinner in respect of a family support benefit; and
  - (g) any medical report to be submitted. 30
- (2) The Board may, by notice in the *Gazette*, make rules relating to—
- (a) training programmes for the assessors contemplated in section 36; and
  - (b) accreditation criteria for the assessors contemplated in section 36.
- (3) The Board must publish notices containing draft rules for public comment and allow 30 days for the submission of such comment, unless it is impractical to do so. 35

### Offences

- 62.** (1) A person who fails to comply with a subpoena issued in terms of section 45, or who refuses to take the oath or affirmation contemplated in that section, is guilty of an offence and liable on conviction to a fine not exceeding R50 000,00 or to imprisonment not exceeding three months. 40
- (2) Any person who provides to the Administrator false or misleading information, knowing it to be false or misleading, is guilty of an offence and liable on conviction to a fine not exceeding R1 000 000,00 or to imprisonment not exceeding three years.
- (3) (a) No person—
- (i) other than the Administrator may conduct affairs or business or an occupation or trade under the name of the Administrator or a translation of its name in any language; 45
  - (ii) other than the Administrator may be registered or licensed in terms of any legislation under the name of the Administrator or a translation of its name in any language; or 50
  - (iii) may falsely claim to be acting on behalf of the Administrator.
- (b) Any person who contravenes paragraph (a)(i), (ii) or (iii) is guilty of an offence and liable on conviction to a fine not exceeding R1 000 000,00 or to imprisonment not exceeding three years.
- (4) (a) No employee of the Administrator may disclose any information regarding a qualifying person, claimant or beneficiary acquired in the course of the application of this Act, except— 55
- (i) in so far as it is necessary for the purposes of giving effect to this Act;
  - (ii) when required in the course of legal proceedings;

- (iii) when required in terms of any other law; or
- (iv) when a court so orders.

(b) Any person who contravenes paragraph (a) is guilty of an offence and liable on conviction to a fine not exceeding R50 000,00 or to imprisonment not exceeding three months.

5

### Transitional provisions and savings

63. (1) In this section, unless the context indicates otherwise—

“**former Board**” means the Board of the Road Accident Fund established by section 10 of the Road Accident Fund Act, 1996;

“**Road Accident Fund Act, 1996**” means the Road Accident Fund Act, 1996 (Act No. 56 of 1996).

(2) As from the date of commencement of this Act—

(a) the Road Accident Fund Act, 1996, continues to apply to all claims where the cause of action arose prior to the commencement of this Act;

(b) the Road Accident Fund ceases to exist and all its assets, liabilities, rights and obligations, existing as well as accruing, devolve upon the Administrator, including all contractual rights, obligations and liabilities;

(c) all powers and duties of the former Board vest in the Administrator;

(d) anything done or any decision or step taken by the former Board or any authorised employee of the Road Accident Fund must be deemed to have been done or taken by the Administrator;

(e) any agent appointed under section 8 of the Road Accident Fund Act, 1996, must be deemed to have been appointed by the Administrator, subject to the same terms and conditions as those which applied immediately before the commencement of this Act;

(f) the members of the former Board must be deemed to have been appointed as members of the Board of the Administrator in terms of this Act for the unexpired term of their appointment, provided that further members of the Board envisaged by section 7(1) may be appointed or shall assume office as contemplated in that section;

(g) the Chief Executive Officer and any person who was a member of staff of the Road Accident Fund must be deemed to have been appointed by the Administrator, subject to the same terms and conditions as those which applied immediately prior to the commencement of this Act; and

(h) unless clearly inappropriate, any reference in any law or document to the Road Accident Fund must be construed as a reference to the Administrator.

(3) The Administrator must consolidate the administration system of compensation provided for in the Road Accident Fund Act, 1996, to—

(a) create a separate functional unit by creating a trading account for the income and expenditure relating to past or future claims arising under the Road Accident Fund Act, 1996; and

(b) enable separate reporting on financial results for the distinct systems provided for in this Act and the Road Accident Fund Act, 1996.

### Insertion of section 1A in Act 56 of 1996

64. The following section is hereby inserted in the Road Accident Fund Act, 1996, after section 1:

#### “Application of Act

**1A.** Subject to the Road Accident Benefit Scheme Act, 2017, the liability to compensate any person for any loss or damage as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person caused by or arising from the driving of a motor vehicle, as contemplated in this Act, shall be limited to claims in respect of which the cause of action arose before the commencement of the Road Accident Benefit Scheme Act, 2017.”

50

**Substitution of section 5 of Act 56 of 1996, as amended by section 74 of Act 19 of 2001 and section 126 of Act 31 of 2005**

**65.** The following section is hereby substituted for section 5 of the Road Accident Fund Act, 1996:

**“Financing of Fund**

5

**5.** The Administrator established by the Road Accident Benefit Scheme Act, 2017, shall procure the funds it requires to perform its functions from any levy provided by or in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), and any moneys as may be appropriated by Parliament, as contemplated in section 26 of that Act.”

10

**Short title and commencement**

**66.** (1) This Act is called the Road Accident Benefit Scheme Act, 2017.

(2) This Act or any part or section thereof comes into operation on the date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 1****Temporary Income Support Benefit formula**

1.

$$\frac{(X/365) * Y}{75\%}$$

where

- X = the amount determined in accordance with subsection 35(5)(a) or (b) as the case may be; and
- Y = the period of entitlement expressed in number of days, which must be calendar days inclusive of weekends and public holidays.

**Long-term Income Support Benefit formula**

2.

$$(X * 75\%) - Z$$

where

- X = the amount determined in accordance with subsection 36(7)(a) or (b), as the case may be; and
- Z = the amount determined by the Administrator in terms of subsection 36(5) to be the injured person's annual post-accident earning capacity.

**Family Support Benefit formula**

3. (a) If the dependant is the sole surviving spouse and there are no other dependants:

$$\frac{A * (2/4) - C * (2/4)}{75\%}$$

where

- A = the amount determined in accordance with subsection 38(5) to be the deceased breadwinner's pre-accident income; and
- C = the amount determined in accordance with subsection 38(6) to be the surviving spouse's pre-accident income, if any;

(b) if the dependant is the sole surviving spouse and there are other dependants:

$$\frac{A * (2/(4 + B)) - C * (2/(4 + B))}{75\%}$$

where

- A = the amount determined in accordance with subsection 38(5) to be the deceased breadwinner's pre-accident income;
- B = the number of children and other dependants, excluding the surviving spouse; and
- C = the amount determined in accordance with subsection 38(6) to be the surviving spouse's pre-accident income, if any;

(c) if the dependant is a child or any other dependant and there is also a sole surviving spouse:

$$\frac{A * (1/(4 + B))}{75\%}$$

where

- A = the amount determined in accordance with subsection 38(5) to be the deceased breadwinner's pre-accident income; and
- B = the number of children and other dependants, excluding the surviving spouse;

(d) if the dependant is a child or any other dependant and there is no surviving spouse:

$$(A*(1/(2 + B)))$$

where

- A = the amount determined in accordance with subsection 38(5) to be the deceased breadwinner's pre-accident income;
- B = the number of children and other dependants;

(e) if the dependant is a spouse, child or any other dependant and the deceased breadwinner is survived by more than one spouse:

$$(A*(1/(2 + B)))$$

where

- A = the amount determined in accordance with subsection 38(5) to be the deceased breadwinner's pre-accident income;
- B = the number of spouses, children and other dependants:

Provided that, in the case of a surviving spouse who earns an income, the following formula shall apply to that spouse's benefit only:

$$(A*(1/(2 + B)))-(C*(1/(2 + B)))$$

where

- C = the amount determined in accordance with subsection 38(6) to be the surviving spouse's pre-accident income, if any.

## MEMORANDUM OF OBJECTS ON THE ROAD ACCIDENT BENEFIT SCHEME BILL

### 1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

- 1.1. The existing compensation system for loss or damage resulting from bodily injury or death caused by the wrongful driving of motor vehicles is the result of a long historical development spanning more than 70 years, commencing with the introduction of compulsory motor vehicle accident insurance in 1942 and culminating in the present compensation system established by the Road Accident Fund Act, 1996 (Act No. 56 of 1996), and managed by the Road Accident Fund (RAF).
- 1.2. Over the years the compensation system has been subjected to numerous commissions of inquiry, but despite the many amendments to the respective governing Acts to implement the recommendations of the various commissions, the flaws inherent in a fault-based system of compensation persisted and the financial state of the compensation system progressively deteriorated.
- 1.3. In 1999 the Road Accident Fund Commission (RAFC) was appointed to inquire into and make recommendations regarding a reasonable, equitable, affordable and suitable system, for the payment by the RAF of compensation or benefits, or a combination of compensation and benefits, in the event of an injury or death of persons in road accidents in the Republic. The RAFC published its report in 2002 recommending a move to the provision of defined and structured benefits, on a “no-fault” basis.
- 1.4. Cabinet subsequently adopted a Policy for the Road Accident Benefit Scheme (Policy) which was published for general information in 2011. The Policy is aimed at providing a scheme of structured and defined benefits to those seriously affected by road accidents in accordance with social insurance principles, and not liability insurance principles as embodied in the existing compensation system.
- 1.5. The Road Accident Benefits Scheme Bill (RABS) (Bill) gives effect to the Policy.

### 2. OBJECTIVE OF BILL

The main objectives of the Bill, amongst others include, to provide an effective benefit scheme in respect of bodily injury or death caused by or arising from road accidents, which benefit scheme is reasonable, equitable, affordable and sustainable, exclude from civil liability certain persons responsible for bodily injuries or death caused by or arising from road accidents and the establishment of the Administrator.

### 3. DISCUSSION OF BILL

- 3.1. **Chapter 1** contains definitions and sets out the objectives of the Bill.
- 3.2. **Chapter 2** provides for the establishment of the Administrator, its financial year, duties and powers.
- 3.3. **Chapter 3** provides for governance.
  - 3.3.1 The Administrator will be governed by a board. **Part A** of this chapter provides for the composition and appointment of the board, appointment by the Minister of the Chairperson and Deputy Chairperson, term of office of board members, vacancies on the board, disqualification of board members, establishment of board committees, meetings of the board, remuneration and reimbursement of board members for attending board meetings, duties of board members, conduct of board members, resignation of board members, removal of



board members by the Minister, and dissolution of the board by the Minister.

- 3.3.2 The day-to-day operations of the Administrator will be managed by a chief executive officer. **Part B** of this chapter provides for the appointment of the chief executive officer accountable to the board, appointment of an acting chief executive officer during a vacancy in the office of the chief executive officer, duties of the chief executive officer, dismissal of the chief executive officer and appointment and dismissal of executive managers.
- 3.4 **Chapter 4** provides for the financing of the Administrator.
- 3.5 **Chapter 5** provides for the limitation of liability of the Administrator and the exclusion of liability of the owners, drivers and employer of drivers involved in road accidents.
- 3.6 **Chapter 6** provides for the lists of benefits provided to beneficiaries in the case of bodily injury or death caused by or arising from a road accident that occurred at any place in the Republic, irrespective of the negligence or other wrongful conduct of the owner of a vehicle involved in the road accident.
- 3.6.1 **Part A** of this chapter provides for the administrator's liability in respect of the provision of health care services to beneficiaries, contracting with health care service providers, non-contracted health care service providers, and individual treatment and rehabilitation plan for beneficiaries.
- 3.6.2 **Part B** of this chapter provides for the administrator's liability to provide for a temporary income support benefit, a long-term income support benefit, and for participation by beneficiaries in vocational training programmes.
- 3.6.3 **Part C** of this chapter provides for the administrator's liability to provide for family support benefits.
- 3.6.4 **Part D** of this chapter provides for the administrator's liability to provide for funeral benefits.
- 3.6.5 **Part E** of this chapter provides for the termination of benefits, suspension of benefits, revision of benefits, and substitution of the recipient of benefits.
- 3.7 **Chapter 7** provides for the procedure to lodge a claim, obligations of claimants and beneficiaries with regard to certain matters, information to be furnished to the administrator by third parties, powers of the administrator to investigate, prescription of claims, and time periods for the determination of claims.
- 3.8 **Chapter 8** provides for appeals by claimants and beneficiaries.
- 3.9 **Chapter 9** provides for general provisions with regards to the administrator's liability for professional and other fees, the administrator's liability for administrative decision-making, the restriction on transfer of benefits, service of process commencing litigation, regulations and certain notices by the Minister, rules by the board of the administrator, offences, transitional provisions and savings, amendment of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), and the short title and commencement.
- 3.10 **Schedule 1** provides for formulae in accordance with which temporary income support benefits, long-term income support benefits, and family support benefits are calculated.

#### **4. PARTIES CONSULTED**

- 4.1 The Bill was published for public comment on 8 February 2013. A national RABS workshop was held on 19 March 2013. Following requests by the public, the initial 60-day comment period was extended by a further 60 days. Certain of the commentators commented that the Bill lacked detail. A decision was consequently taken to republish a revised Bill with draft regulations, rules and forms, to enable the public to get a better understanding of what RABS will entail.
- 4.2 The revised Bill and draft set of regulations, rules and forms were published on 9 May 2014. A national RABS workshop was held on 19 June 2014. Focussed stakeholder consultations were held with industry groupings from commuter groups; insurance industry; funeral industry; disability groups; medical industry and legal fraternity. Following requests by the public, the initial 60-day comment period was extended by a further 90 days. National RABS workshops were held in Zwelitsha Township (Eastern Cape); Empangeni; Pietermaritzburg; Durban; Mahikeng; Rustenburg; Potchefstroom; Giyani; Polokwane; Upington; Kimberley; Nelspruit; Emalaheni; Cape Town; Vredenburg (Western Cape); George; King William's Town; Port Elizabeth; Kroonstad; Manguang; Springs; and Soweto.
- 4.3 The Bill was tabled for consideration by the National Economic Development and Labour Council, who issued its final report on 28 January 2016.
- 4.4 The Department of Transport also consulted the Department of Home Affairs; Department of Health; Department of Social Development; Department of Labour; and the National Treasury.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 The annual RABS costs are actuarially calculated at 136.7 cents per litre, compared to the 169 cents per litre required for the RAF, noting that the current RAF cost already exceeds the 154 cents per litre income received via the Road Accident Fund Fuel Levy. A margin of 15% is added to all RABS cost to ensure a fully funded dispensation.
- 5.2 The winding down of the RAF will cost R213 billion over approximately eight years.

#### **6. IMPLICATIONS FOR PROVINCES**

None.

#### **7. PARLIAMENTARY PROCEDURE**

- 7.1 The Constitution regulates the manner in which legislation may be enacted by the legislature. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.
- 7.2 The test for tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. The test for tagging is distinct from legislative competence in that it focuses on all the provisions in the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 to the Constitution and not whether any of its provisions are incidental to its substance.

- 7.3 In the case of *Tongoane and Others v Minister for Agriculture and Land Affairs and Others, 2010 (8) BCLR 741(CC)*, the Constitutional Court pronounced on the test to be used when tagging legislation.
- 7.4 In *Tongoane* the Constitutional Court held that ‘the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence’. The tagging test ‘focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance’. In applying the tagging test to the Bill, the question that should be asked is whether the provisions in the Bill substantially affect a Schedule 4 functional area. The Road Accident Benefit Scheme is not an item listed in Schedule 4 or 5 of the Constitution.
- 7.5 The Bill addresses crucial issues, namely, to replace the current compensation system administered by the RAF with a new social security scheme, to establish the Road Accident Benefit Scheme Administrator to administer and implement the Road Accident Benefit Scheme and to provide a set of defined benefits on a no-fault basis to persons for bodily injury or death caused by or arising from road accidents.
- 7.6 As the Bill does not deal with a functional area listed in Schedule 4 or Schedule 5 of the Constitution, we submit that section 44(a)(ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on “any matter”. We have scrutinised the contents of the Bill and we are of the opinion that the provisions of this Bill relate to the Road Accident Benefit Scheme.
- 7.7 We are of the view that the Bill must be dealt with in accordance with the legislative procedure outlined in section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.8 We are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in accordance with section 18(1)(a) of the Traditional Leaders and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0378-6