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Transport, Department of

*General Notice*

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## GENERAL NOTICE

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### NOTICE 98 OF 2013

#### DEPARTMENT OF TRANSPORT

#### PUBLICATION FOR COMMENTS: ROAD ACCIDENT BENEFIT SCHEME BILL, 2013

The above-mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill by not later than 60 days after publication in the Government Gazette. Submissions should be posted or faxed to the Director- General Department of Transport for the attention of:

**E- MAIL: Mphahlet@dot.gov.za**

**Tel : ( 012) 309 3481**

**Fax : ( 012) 309 3044**

**The Department of Transport**

**Private Bag x193**

**PRETORIA**

**0001**

**E- MAIL: KgantsiK@dot.gov.za**

**Tel : ( 012) 309 3917**

**Fax : ( 012) 309 3563**

**The Department of Transport**

**Private Bag x193**

**PRETORIA**

**0001**

**REPUBLIC OF SOUTH AFRICA****ROAD ACCIDENT BENEFIT SCHEME BILL, 2013**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of the Bill published in Government Gazette No. of 2013) (The English text is the official text of the Bill)*  
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**MINISTER OF TRANSPORT**

[B 2012]

040512nb

**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; and to exclude liability of certain persons otherwise liable for such 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, and 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;

**THEREFORE**, Parliament of the Republic of South Africa enacts as follows:—

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## CHAPTER 1

### DEFINITIONS AND OBJECTIVES

#### Definitions

1. In this Act, unless the context indicates otherwise—

**“Administrator”** means the Road Accident Benefit Scheme Administrator established by section 3;

**“average national income”** means the amount determined by the Minister under section 55(3);

**“benefit”** means a benefit provided for in Chapter 6;

**“beneficiary”** means—

- (a) an injured person entitled to a health care benefit;
- (b) a health care service provider entitled to payment for the provision of a health care service to an injured person;
- (c) a medical scheme that made payment to a contracted health care service provider in respect of a health care service provided to an injured person;
- (d) any person who made payment in respect of a health care service provided to an injured person by a non-contracted health care service provider or by a contracted service provider outside the terms of that provider's agreement with the Administrator;
- (e) an injured person entitled to an income support benefit;
- (f) a dependant of a deceased breadwinner entitled to a family support

benefit;

- (g) an immediate family member entitled to a funeral benefit;
- (h) any person entitled to payment for reasonable expenses incurred in respect of the funeral of a person whose death was caused by or arose from a road accident;

**"Board"** means the Board of the Administrator contemplated in section 7;

**"bodily injury"** means a physical or psychological injury caused by or arising from a road accident;

**"Chief Executive Officer"** means the Chief Executive Officer of the Administrator appointed in terms of section 19;

**"child"**, in relation to a deceased breadwinner, means a biological or adopted child, including a posthumous child under the age of 18 years of the deceased breadwinner;

**"claim"** means a claim for a benefit;

**"claimant"** means a person who has submitted a claim;

**"deceased breadwinner"** means a person whose death was caused by or arose from a road accident and who is survived by one or more dependants;

**"dependant"** means—

- (a) any spouse;
- (b) any child; or
- (c) any other person, provided such person is legally entitled to support from the deceased breadwinner and would have received such support had the breadwinner not died;

**"funeral"** means to cremate or to inter the deceased in a grave or burial place;

**“health care service provider”** means a health care provider, as defined in the National Health Act, 2003 (Act No. 61 of 2003);

**“immediate family member”** means a spouse, child, sibling, parent or grandparent;

**“injured person”** means a person who suffered a bodily injury caused by or arising from a road accident;

**“long term personal care”** means both medical and non-medical services provided for an extended period of time to a beneficiary who is unable to fully execute activities of daily living;

**“medical practitioner”** means a person registered as such under the Health Professions Act, 1956, (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);

**“Minister”** means the Minister of Transport;

**“non-emergency health care service”** means any health care service which is not immediately required in an emergency situation in order to preserve the injured person’s life or bodily functions, or both;

**“pre-accident income cap”** means the amount determined by the Minister under section 55(4);

**“prescribe”** means prescribe by regulation;

**“regulation”** means a regulation made by the Minister under section 55;

**“road accident”** means a collision or impact caused by or arising from the use of a

vehicle at any place in the Republic;

**"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 56;

**"spouse"**, in relation to a deceased breadwinner, means—

- (a) a person who was a 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 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; and
- (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 contractual reciprocal duty of support;

**"this Act"** includes any regulation or rule made or notice published in terms of this Act;

**"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 independence, as the case may be.

### **Objectives of Act**

2. The objectives of this Act are to—

- (a) provide an effective benefit scheme in respect of injury or death caused by or arising from road accidents, which benefit scheme is reasonable, 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 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**

#### **Establishment**

3. (1) The Road Accident Benefit Scheme Administrator is hereby established.
- (2) The Administrator is a juristic person.

## **Financial year**

4. The financial year of the Administrator is the period of 12 months beginning 1 April each year, and ending on the following 31 March.

## **Duties**

5. The Administrator must—
- (a) assist qualifying persons to submit claims;
  - (b) receive notices, medical reports and claims;
  - (c) assess, accept or reject claims for benefits and establish and maintain a database of claimants and beneficiaries;
  - (d) determine appeals regarding the entitlement to or the provision of benefits;
  - (e) facilitate access to early and effective medical and vocational rehabilitation for injured persons;
  - (f) enter into agreements with public and private health care service providers as set out in section 32;
  - (g) adopt measures to detect, investigate and prevent fraudulent and corrupt activities regarding claims and the provision of benefits; and
  - (h) keep such accounting and related records as required by law.

## **Powers**

### **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;**
- (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;**
- (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;**
- (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;
  - (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;
- (j) investigate the causes of road accidents, the injuries sustained in road accidents and 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
- (o) take any other action or step which is incidental or conducive to the exercise of its powers or the performance of its duties.

### **CHAPTER 3**

#### **GOVERNANCE**

##### ***Part A***

##### ***Board***

#### **Composition and appointment**

7. (1) The Administrator is governed by a Board, consisting of the Chief Executive Officer and the following 13 members:



- (a) Ten with qualifications and at least ten years of experience in one or more of the fields of medicine, disability management, medical insurance, hospital management, public finance, actuarial science and law, appointed by the Minister;
  - (b) the Director-General of the Department of Transport, or his or her delegate;
  - (c) the Director-General of the National Treasury, or his or her delegate; and
  - (d) the Director-General of the Department of Health, or his or her delegate.
- (2) Before the members of the Board contemplated in subsection (1)(a) are appointed, the Minister must, through the national media, invite nominations from members of the public for these positions on the Board.
- (3) The members of the Board contemplated in subsection (1)(a) must not be persons who are employed by the State.
- (4) 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*.
- (5) The Chief Executive Officer and the Directors-General are *ex officio* members of the Board, but may not vote at its meetings.

## **Vacancies**

8. Whenever a position contemplated in section 7(1)(a) becomes vacant before the expiry of the member's term of office, the Minister may appoint any competent person to serve for the unexpired portion of the term of office.

## **Chairperson and Deputy Chairperson**

9. (1) The Minister must appoint a Chairperson and Deputy Chairperson from amongst the members of the Board contemplated in section 7(1)(a).
- (2) 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)(a), to act as Chairperson of the Board during such absence or incapacity.

## **Term of office**

10. (1) The members of the Board contemplated in section 7(1)(a) hold office for a period of three years and may be re-appointed for a further period not exceeding three years.
- (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)(a), the Minister may appoint interim Board members for a period not exceeding six months provided that he or she must, within 30 days after their appointment, notify Parliament and publish a notice in the *Gazette*.

### **Disqualifications**

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;
  - (e) within the previous 10 years has been, or is, convicted of theft, fraud, forgery or any offence involving dishonesty; or
  - (f) is otherwise disqualified from serving as director in terms of the Companies Act, 2008 (Act No. 71 of 2008).

### **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.
- (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;
  - (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 deliberate 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.

## Remuneration and reimbursement

14. Any member of the Board who is not employed by the State is entitled to such remuneration and allowances as the Minister may determine, in consultation with the Minister of Finance.

**Duties****15. 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—
  - (i) monitor and evaluate the work performance of the Administrator;
  - (ii) ensure that benefits are provided effectively and efficiently to beneficiaries by the Administrator;
  - (iii) ensure that adequate information and technology systems enable and support the operations, financial controls, risk and performance management of the Administrator;
  - (iv) ensure that effective human resource development and succession planning for executive and senior management positions are put into effect by the Administrator;
  - (v) ensure that the Administrator develops and maintains sound working relationships with relevant organs of state and stakeholders;
  - (vi) regarding any other matter to achieve the objects of this Act;
- (c) make the rules contemplated in section 56; and
- (d) advise the Minister in respect of any matter relevant to its functions, including any proposal for an amendment to this Act or any regulation to be made.

## **Conduct**

- 16.** (1) A member of the Board may not engage in any paid employment that will conflict with the proper performance of his or her functions.
- (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
  - (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 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, but does not include an indirect interest held in any fund or investment if the person who holds the interest has no control over the investment decisions of that fund or investment.

## **Resignation**

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

## Removal

**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 properly perform the functions of office; or
- (c) becomes unable to continue to perform the functions of office.

**19. Dissolution of Board by Minister**

- (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; and
  - (ii) after having afforded the Board a hearing on any representations received.
- (c) If the Minister dissolves the Board in terms of this subsection, 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 three months after the dissolution of the Board, replace the members of the Board in the same way as the members of the Board were appointed, and for this purpose section 7 applies with the changes required by the context.
- (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 when the Board members have been replaced in terms of subsection (1)(c)(ii).



**Part B****Chief Executive Officer****Appointment**

20. (1) The Minister shall, 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.
- (2) The Chief Executive Officer is appointed for a period not exceeding five years and may be reappointed for one further term.

**Acting Chief Executive Officer**

21. (1) During a vacancy in the office of the Chief Executive Officer or in the event of the Chief Executive Officer being unable, for any reason, to perform the functions of the office, the Minister shall, upon the recommendation of the Board, appoint an Acting Chief Executive Officer of the Administrator, who shall have such powers and duties as may be determined by the Board.
- (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.

**Accountability**

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

**Duties**

23. The Chief Executive Officer must—
- (a) manage the staff and day-to-day business of the Administrator;
  - (b) implement the strategies, policies, directives and resolutions adopted by the Board;
  - (c) direct performance by the Administrator of its duties;
  - (d) formulate internal directions in respect of the management of the Administrator;
  - (e) issue, if appropriate, guidelines regarding the manner in which claims should be administered by the staff and service providers of the Administrator; and
  - (f) advise the Board regarding any matter referred to him or her by the Board.

**Staff at executive management level**

24. The Chief Executive Officer may not appoint or dismiss members of staff at the executive management level without the prior written approval of the Board.

**Delegation and assignment**

25. The Chief Executive Officer may delegate any of his or her powers or assign any of his or her duties to an employee of the Administrator subject to such conditions and restrictions as he or she may determine and, in such delegation or assignment, provide for the sub-delegation of powers delegated or for the reassignment of duties assigned.

**Dismissal**

26. The Minister may dismiss the Chief Executive Officer for good reason.

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

27. (1) 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.
- (2) The Administrator is funded from—

- (a) a Road Accident Benefit Scheme levy provided for in the Customs and Excise Act, 1964 (Act No 91 of 1964), to perform its functions as provided for in this Act but excluding its functions referred to in paragraph (b); and
- (b) moneys appropriated by Parliament to perform its functions in respect of all claims under the Road Accident Fund Act, 1996 (Act No. 56 of 1996).

## **CHAPTER 5**

### **LIABILITY OF ADMINISTRATOR AND OTHER PERSONS**

#### **Limitation of Administrator's liability**

- 28.** The Administrator shall be liable to provide the benefits specified in Chapter 6 to beneficiaries, provided that—
- (a) 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 a terrorist activity, as defined in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No.33 of 2004);
  - (b) the Director-General of the Department of Labour or an employer 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 nor is the Administrator a third party in terms of section 36 of that Act against whom the Director-General or an employer may institute action in a court of law for the recovery of compensation that they were obliged to pay in terms of that Act; and

(c) if the Administrator is liable to provide a benefit to a claimant or beneficiary who is—

- (i) an employee of an employer contemplated in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- (ii) a member of the South African National Defence Force contemplated in the Defence Act, 2002 (Act No. 42 of 2002); or
- (iii) a member of the South African Police Service contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995)

the Administrator shall be entitled to deduct, in the prescribed manner, from that benefit any payment claimed or made in terms of the legislation specified in subparagraphs (i), (ii) and (iii)..

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

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

- (a) against the owner or driver of a vehicle involved in the road accident; or

- (b) against the employer of the driver.

## **CHAPTER 6**

### **BENEFITS**

#### **Categories of benefits**

**30.** This Act makes provision for the following benefits:

- (a) payment for the health care services provided for in part A of this Chapter;
- (b) payment of the income support benefits provided for in part B of this Chapter;
- (c) payment of the family support benefits provided for in part C of this Chapter; and
- (d) payment of the funeral benefits provided for in part D of this Chapter.

#### ***Part A***

##### ***Health care services***

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

**31.** The Administrator shall be liable to pay for—

- (a) health care services reasonably required for the treatment and

rehabilitation of injured persons including—

- (i) pre-hospital care and inter-facility transfer;
  - (ii) emergency and acute care;
  - (iii) hospitalisation and outpatient services;
  - (iv) rehabilitative care;
  - (v) vocational training;
  - (vi) long-term personal care;
  - (vii) orthotic and prosthetic devices and mobility aids; and
  - (viii) structural changes to homes, vehicles and the workplace; and
- (b) the costs of repairing or replacing mobility aids, orthotic and prosthetic devices used by the injured person which was damaged or destroyed in a road accident.

#### **Contracted health care service providers**

32. (1) The Administrator may enter into agreements with public and private sector health care service providers to provide for—
- (a) the delivery of health care services to injured persons and medical reports to the Administrator;
  - (b) an agreed fee structure and terms of payment for health care services and medical reports and record keeping, which may differ, subject to affordability, value for money and an open, transparent, fair and competitive bidding process, from the tariffs prescribed by

the Minister in terms of this Act;

- (c) repairing or replacing mobility aids, orthotic and prosthetic devices used by the injured person damaged or destroyed in a road accident and an agreed structure for the payment thereof;
- (d) medical, health care and rehabilitation policies, protocols or standards to be complied with by the contracted health care service provider;
- (e) the keeping of additional records of injuries and treatment provided and the provision of such records to the Administrator;
- (f) pre-approval in respect of non-emergency health care services; and
- (g) any other matter related to the provision of health care services for bodily injuries arising from road accidents..

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

- (a) the health care service provided falls outside of the terms of agreement between the Administrator and the 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 making the payment, in the manner set out in section 33.

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

- 33. (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, the costs of health care services provided to an injured person, provided that—
- (a)** a claim 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 health care services, repairing or replacing mobility aids, medical and prosthetic devices and compiling medical reports to a prescribed tariff;
  - (c)** if no tariff has been prescribed, the liability of the Administrator shall be limited to the reasonable and necessary costs of the health care service, aid or device or the medical report, provided that, in the case of a health care service, the service shall be considered necessary if it is—
    - (i)** for the purpose of restoring the injured person's health to the extent practicable;
    - (ii)** appropriate and of the quality required for that purpose;
    - (iii)** performed only on a number of occasions necessary for that purpose;

- (iv) given at a time or place appropriate for that purpose;
  - (v) of a type normally provided by a health care service provider; and
  - (vi) provided by a health care service provider of a type who is qualified to provide that service and who normally provides the health care service; and
- (d) the Administrator shall only be liable for health care services available and received in the Republic and medical reports compiled in the Republic.
- (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 shall not be liable in respect of such health care services if prior approval had been required but not obtained.

#### **Individual treatment or rehabilitation plan**

34. (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 or 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 following persons 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—

- (i) the beneficiary;
  - (ii) any medical practitioner providing treatment to the beneficiary; and
  - (iii) any employer or prospective employer of the beneficiary;
- (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.
- (2) For the purpose of preparing an individual treatment or rehabilitation plan, the Administrator may require a beneficiary to be assessed by a service provider, including a medical practitioner, at the cost of the Administrator;
- (3) Once the Administrator determines an individual treatment or 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 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 for in the plan.

**Part B****Income benefit****Liability of Administration in respect of income benefit**

- 35. (1)** The Administrator shall be liable to provide—
- (a) a temporary income support benefit to injured persons; and
  - (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) and unless the contrary is shown, a person shall be deemed not to be ordinarily resident in the Republic if he or she—
- (a) is absent from the Republic for a period of longer than six months per year, calculated over any consecutive three year period; 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.

**Temporary income support benefit**

- 36. (1)** The Administrator shall be liable to pay a temporary income support benefit provided that—
- (a)** a claim must be submitted in the manner set out in the rules;
  - (b)** the claim must be accompanied by proof of the claimant's pre-accident income in the manner provided in subsection (2), failing which the claimant must be deemed, for purposes of determining the benefit, to have earned the pre-accident income contemplated in subsection (3); and
  - (c)** the claim must be accompanied by proof of the claimant's inability to earn an income and that the inability is caused by a road accident, in the manner provided in subsection (4).
- (2)** A claim for a temporary income support benefit must be supported by proof of the claimant's pre-accident income in the following manner—
- (a)** in the event that the claimant earned an annual income equal to, or in excess of, the income tax threshold below which an individual of the claimant's age is not liable for personal income tax in terms of the Income Tax Act, 1962 (Act No. 58 of 1962)—
    - (i)** the claim must be supported by income tax assessments for every year for which the claimant was liable to pay income tax during the three years preceding the road accident, provided that, if no income tax assessment is available due

to no fault of the claimant, the claim may be supported in the manner contemplated in paragraph (b); and

- (ii) the highest taxable annual income, less taxation, during the three tax years preceding the road accident, or such shorter period for which the claimant was liable to submit income tax returns, must be used in the calculation of the temporary income support benefit.

(b) in the event that the claimant earned more than the average national income but less than the income tax threshold contemplated in paragraph (a)—

- (i) the claim must be supported by payslips issued by the claimant's employer, or a contract of employment or letter of appointment, provided that if such documentation is not available, the claim may be supported by any other verifiable documentary evidence or sworn statements in support of the income earned; and
- (ii) the highest annual income during the three years preceding the road accident, or such shorter period during which the claimant earned an income, must be used in the calculation of the temporary income support benefit.

(3) In the absence of proof of income as provided for in subsection (2) and in the case of economically inactive persons, the claimant must be deemed, for the purpose of this Act, to earn the average national income.

- (4) A claim for a temporary income support benefit must, in the manner set out in the rules, be accompanied by proof of the claimant's inability to earn an income, including—
- (a) in the case of a claimant contemplated in subsection (2)(a) and (b), confirmation by a medical practitioner, after conducting a physical examination of the claimant, that the claimant is unfit to perform his or her pre-accident occupation or work due to a bodily injury caused by or arising from a road accident and the period that the incapacity is likely to endure;
  - (b) in the case of a claimant contemplated in subsection (3), confirmation by a medical practitioner, after conducting a physical examination of the claimant, that a bodily injury caused by or arising from the road accident materially and detrimentally affects the ability of the claimant to earn an income and the period that such detrimental effects are likely to endure; and
  - (c) confirmation by the claimant that the claimant's inability to earn an income is due to a bodily injury caused by or arising from a road accident, provided that, if the claimant is unable to provide such confirmation, it may be provided by any other person with knowledge of the reasons for the claimant's inability to earn an income.
- (5) The Administrator shall be liable for the costs of the medical reports issued pursuant to the physical examination contemplated in subsection (4)(a)

and (b).

- (6) The amount and duration of the temporary income support is to be determined as follows:

(a) In the case of beneficiaries contemplated in subsection (2)(a) and (b), the beneficiary'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; and
- (ii) may not be less than the average national income;

(b) in the case of beneficiaries contemplated in subsection (3), the beneficiary's deemed income must be used in the calculation of the benefit;

(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 period ending 60 days after the date of the road accident;
- (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, calculated for any year, must be calculated in accordance with the following formula:

$$((X/365)*Y)*75\%$$

where

X = the amount determined in accordance with paragraph (a) or (b);

and

Y = the period of entitlement expressed in number of days, which must be calendar days inclusive of weekends and public holidays;

- (e) the Administrator must pay a temporary income support benefit by way of monthly instalments, but the Administrator may offer to the beneficiary a commutation of the temporary income support benefit and to pay the beneficiary a lump sum, and for that purpose section 37(12) apply with the changes required by the context.
- (7) 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.
- (8) 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, subject to affordability, from time to time, adjust the temporary income support benefit to take into account the effects of

inflation.

- (9) A temporary income support benefit paid to an income support beneficiary is not subject to income tax in the hands of the beneficiary.

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

37. (1) The Administrator shall be liable to pay a long-term income support benefit provided that—

- (a) a claim must be submitted in the manner set out in the rules, and must include—

- (i) details of income earned subsequent to the road accident;
- (ii) any representations or additional information which the claimant wishes to submit regarding his or her post-accident vocational ability;

- (b) in the case of a claimant who did not receive a temporary income support benefit—

- (i) the claimant provides proof of the claimant's pre-accident income in the manner provided in section 36(2)(a) or (b), as the case may be, failing which the claimant must be deemed, for purposes of determining the benefit, to have earned the pre-accident income contemplated in section 36(3);
- (ii) confirmation that the claimant's inability to earn an income is due to a bodily injury suffered in a road accident, provided

that, if the claimant is unable to provide such confirmation, it may be provided by any other person with knowledge of the reasons for the claimant's inability to earn an income;

- (c) an assessment of the claimant conducted by an occupational therapist or other suitable expert relating to the claimant's post-accident vocational ability, subject to subsections (2), (3) and (4).
- (2) A claimant for 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 claimant's post-accident vocational ability, including an assessment of—
- (a) the nature of the bodily injury and the vocational disability suffered by the claimant as a result of 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 claimant and his or her qualifications, training, skills and experience, the range of occupations or paid work which the claimant can perform.
- (3) The Administrator shall be liable for the costs of the assessment contemplated in subsection (2) at the prescribed tariff.
- (4) The Board may make rules regarding—
- (a) guidelines for the assessment of the claimant's post-accident vocational ability;
  - (b) training programmes for assessors; and

- (c) accreditation criteria for assessors.
- (5) In the event that the Board has made rules regarding the training programmes and accreditation criteria contemplated subsection (4), the assessment contemplated in subsection (2) may only be performed by an accredited assessor.
- (6) (a) The Administrator must determine, with reference to all relevant information, including the availability of employment or other income generating opportunities available to a claimant and the details of income earned subsequent to the road accident, an amount which approximately represents the claimant's post-accident earning capacity.
- (b) The Administrator may at any time adjust such amount with reference to the actual income earned by a beneficiary of a long-term income support benefit or any other relevant consideration.
- (7) (a) In determining income earned in terms of subsection (6), no insurance money or pension which has been or will 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 a refund of premiums and any payment of interest on such premiums;
  - (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.

(8) The amount and duration of the long-term income support benefit is as follows:

(a) In the case of claimants contemplated in section 36(2)(a) and (b), the claimant'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 national income;

(b) in the case of claimants contemplated in section 36(3), the claimant'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 following formula:

$(X \times 75\%)$  minus Z

where

X = the amount determined in accordance with paragraph(a) or (b), as the case may be; and

Z = the amount determined by the Administrator in terms of subsection (6) to be the beneficiary's post-accident earning capacity;

- (e) subject to subsection (12), the Administrator must pay a long-term income support benefit by way of monthly instalments.
- (9) 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 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.
- (10) A long-term income support benefit paid to an income support beneficiary is not subject to income tax in the hands of the beneficiary.
- (11) A long-term income support beneficiary is not entitled to inflationary adjustments of the income support benefit paid by the Administrator but the Minister may, subject to affordability, from time to time, adjust the income support benefit to take into account the effects of inflation.

- (12) 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 beneficiary of an income support benefit a commutation of the long-term income support benefit for any period and pay to the beneficiary a lump sum in full and final settlement of the Administrator's liability for that period.

### **Vocational training programmes**

38. (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 following persons 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:
    - (i) the beneficiary; and
    - (ii) any employer or potential employer of the beneficiary;
  - (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 such

consent 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 program.

### ***Part C***

#### ***Family support benefits***

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

39. (1) The Administrator shall be liable to pay a family support benefit, provided —
- (a) that a claim must be submitted in the manner set out in the rules;
  - (b) the claim must be accompanied by proof that the claimant is a dependant contemplated in paragraphs (a), (b) or (c) of the definition of "*dependant*";
  - (c) the claim must be accompanied by proof that the death of the deceased breadwinner was caused by or arose from a road accident;



- (d) the claim must be accompanied by proof of the deceased breadwinner's pre-accident income in the manner provided for in sections 36(2)(a) and (b), failing which the breadwinner must be deemed to have the pre-accident income contemplated in section 36(3);
  - (e) in the case of a claim by a spouse or spouses, the claim must be accompanied by proof of the pre-accident income of the spouse or spouses in the manner provided for in sections 36(2)(a) and (b), if those subsections are applicable; and
  - (f) no family support benefit shall be paid to a person who is not ordinarily resident in the Republic.
- (2) For the purpose of subsection (1)(f) and unless the contrary is shown, a person shall be deemed not to be ordinarily resident in the Republic if he or she—
- (a) is absent from the Republic for a period of longer than six months per year, calculated over any consecutive three year period; 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.
- (3) 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 amount used in the calculation—

- (a) may not exceed the pre-accident income cap; and
  - (b) may not be less than the average national income;
- (4) 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.
- (5)
  - (a) In determining income earned in terms of subsection (4), no insurance money or pension which has been or will or may be paid as a result of the death of the deceased breadwinner, shall be taken into account.
  - (b) For the purposes of paragraph (a):
    - (i) "*insurance money*" includes a refund of premiums and any payment of interest on such premiums;
    - (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.
- (6) A dependant's family support benefit must be determined as follows:
  - (a) If the dependant is the sole surviving spouse and there are no other dependants:  
$$(A*(2/4)) - (C*(2/4))$$

where

A = the amount determined in accordance with subsection (3) to be the deceased breadwinner's pre-accident income; and

C = the amount determined in accordance with subsection (4) 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:

$$(A*(2/(4 + B))) - (C*(2/(4 + B)))$$

where

A = the amount determined in accordance with subsection (3) 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 (4) 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:

$$(A*(1/(4 + B)))$$

where

A = the amount determined in accordance with subsection (3) 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 (3) 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 (3) 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 (4) to be the earning surviving spouse's pre-accident income, if any;

- (f) 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;

- (g) a dependant who is a child is entitled to a family support benefit until he or she reaches the age of 18;
  - (h) 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; and
  - (i) subject to subsection (10), the Administrator must pay the family support benefit by way of monthly instalments.
- (7) 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.
- (8) 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, subject to affordability, from time to time, adjust the family support benefit to take into account the effects of inflation.
- (9) A family support benefit paid to a family support beneficiary is not subject to income tax in the hands of the beneficiary.

- (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 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.

### ***Part D***

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

#### **Liability of Administrator in respect of funeral benefits**

40. (1) The Administrator shall be liable, in respect of the costs of a funeral of a person whose death was caused by or arose from a road accident to pay—
- (a) an immediate family member of the deceased, a lump sum of R10 000,00 upon submission of a copy of a death certificate in the manner set out in the rules; or
  - (b) any other person, if no immediate family member has made a claim in terms of paragraph (a), upon submission of a copy of a death certificate in the manner set out in the rules, for all reasonable expenses incurred in respect of the funeral of the deceased up to a maximum of R10 000.00.

- (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 pay an immediate family member or, in consultation with the immediate family member, any other person, including a funeral undertaker, a lump sum of R10 000,00 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): Provided that the Administrator may make the payment to such other person without consulting the immediate family member if the Administrator was unable to locate an immediate family member within a period of five days from the date of the accident.
- (3) The Minister may, subject to affordability, from time to time, adjust the amount referred to in subsections (1) and (2) to take into account the effects of inflation.

### ***Part E***

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

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

41. (1) Any benefit granted terminates upon the death of the beneficiary.
- (2) The Administrator may at any time terminate, suspend or revise the

continued entitlement to any benefit if a beneficiary is no longer entitled to the benefit or the full amount of the benefit.

- (3) Without limiting the generality of subsection (2), the Administrator may terminate, suspend or revise any benefit if the beneficiary—
- (a) fails to comply with a condition imposed in respect of that benefit;
  - (b) fails to comply within a reasonable period with a request made in terms of section 44;
  - (c) furnishes false or misleading information as part of the claim submitted or information or documentation requested by the Administrator;
  - (d) unreasonably refuses to submit to further medical assessments or vocational ability assessments;
  - (e) unreasonably refuses to undergo necessary medical or other treatment prescribed by a medical practitioner;
  - (f) unreasonably refuses or fails to participate in an individual treatment or rehabilitation plan or a vocational training programme determined by the Administrator; and
  - (g) 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.



**Substitution of recipient of certain benefits**

42. The Administrator may, on good cause shown, substitute the recipient of an income or family support benefit 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****Procedure for claiming benefits**

43. (1) The forms and procedures applicable to the following claims must be set out in the rules:
- (a) A claim for a health care benefit provided for in part A of Chapter 6;
  - (b) a claim for an 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 40(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) The Administrator may assist, if necessary, any eligible person to submit a claim in accordance with this Act, including to making an application for the appointment of a *curator bonis* if the eligible person is unable to claim a benefit.

#### **Obligations of the claimant or beneficiary**

44. (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—
- (a) require a claimant or a beneficiary to attend an interview by the Administrator or its agents and to furnish a written statement or affidavit to the Administrator regarding any aspect of a claim or benefit;
  - (b) require a claimant or beneficiary to furnish the Administrator with further particulars of the road accident or any other relevant information regarding any aspect of a claim or a benefit;
  - (c) require a claimant or beneficiary to furnish a document in his or her possession or under his or her control, relevant to a claim or a benefit to the Administrator.
- (2) The Administrator shall not be liable to provide any benefit 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**

**45.** Notwithstanding anything to the contrary in any law, and to assist the Administrator to make a determination in terms 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 the road accident relating to a claimant or beneficiary and with any additional information requested, if such information is necessary for the determination of a claim or a benefit;
- (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 the road accident relating to a claimant or beneficiary and with any additional information requested, if such information is necessary for the determination of a claim or a benefit;

- (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 beneficiary and with any additional information requested, if such information is necessary for the determination of a claim or a benefit;
- (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 beneficiary and with any additional information requested, if such information is necessary for the determination of a claim or a benefit;
- (e) the Commissioner for the South African Revenue Service must grant the Administrator access to, and furnish copies of, all records as maintained in terms of the Income Tax Act, 1962 (Act No. 58 of 1962); relating to a claimant for or a beneficiary of an income benefit or family support benefit or of the deceased breadwinner in respect of whom the claim was submitted, if such information is necessary for the determination of a claim or a benefit;
- (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 assets and investments of a claimant for or a beneficiary of an income

benefit or family support benefit or of the deceased breadwinner in respect of whom the claim was submitted and with any additional information requested, if such information is necessary for a determination of a claim or a benefit;

- (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 benefit or family support benefit and with any additional information requested, if such information is necessary for the determination of a claim or a 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 claimant for or a beneficiary of an income benefit and with any additional information requested, if such information is necessary for the determination of a claim or a benefit;
- (i) the Director-General of the Department of Labour and 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 or beneficiary of an income benefit

and with any additional information requested, if such information is necessary for the determination of a claim or a 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 or under its control relating to a claim or a benefit, including death and birth certificates, identity documentation, residence status and with any additional information requested, if such information is necessary for the determination of a claim or a benefit.

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

46. (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—
- (a) through its appointed officials or representatives 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;
  - (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 appointed officials or representatives and to furnish such information or to produce such book, document or thing, as the case may be;
- (ii) through its appointed officials or representatives administer an oath to the subpoenaed person or cause the subpoenaed person to make an affirmation; and
- (iii) through its representative, interrogate the subpoenaed person.
- (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).

#### **Time periods for submission of claims**

47. (1) Subject to subsection 2, a claim for a benefit provided for in this Act shall lapse, unless submitted within the following periods:
- (a) Claims in terms of Part A of Chapter 6 –

- (i) by a health care service provider must be submitted within 120 days following the end of the month during which the health care service was provided;
    - (ii) by a medical scheme must be submitted within 120 days following the end of the month during which payment was made by the medical scheme for the health care service;
    - (iii) by any other person must be submitted within one year following the end of the month during which payment was made by the person for the health care service;
  - (b) claims in terms of Part B of Chapter 6 –
    - (i) for a temporary income support benefit must be submitted within 60 days after the date of the road accident;
    - (ii) for a long-term income support benefit must be submitted within 18 months after the date of the road accident;
  - (c) claims in terms of Part C of Chapter 6 for a family support benefit must be submitted within one year after the date of the road accident;
  - (d) claims in terms of Part D of Chapter 6 for a funeral benefit must be submitted within 30 days after the date of the road accident.
- (2) The periods referred to in subsection (1) shall not run against–
- (a) a minor;
  - (b) a person incapable of submitting a claim due to bodily injuries suffered in a road accident;



- (c) any person detained as a patient in terms of any mental health legislation; and
- (d) a person under curatorship.

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

- 48. (1)** The Administrator shall accept or reject a claim within the following time periods—
- (a) claims submitted in terms of Part A of Chapter 6, within 120 days after submission of the claim;
  - (b) claims in terms of of Part B of Chapter 6—
    - (i) for a temporary income support benefit, within 30 days after submission of the claim;
    - (ii) for a long-term income support benefit within 180 days after submission of the claim;
  - (c) claims in terms of Part C of Chapter 6 for a family support benefit, within 180 days after submission of the claim; and
  - (d) claims in terms of Part D of Chapter 6 for a funeral benefit, within 30 days after submission of the claim;
- (2) If the Administrator does not accept or reject a claim within the above time periods, it shall be deemed to be rejected and the claimant may lodge an appeal against the rejection of the claim in terms of section 49.
- (3) If the Administrator accepts a claim, payment of the benefit must

commence within 30 days after the beneficiary is notified that the claim has been accepted, unless an appeal is lodged against the decision of the Administrator.

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

## **CHAPTER 8**

### **DISPUTE RESOLUTION**

#### **Appeals**

49. (1) A claimant or beneficiary may within 30 days after being informed of the decision of the Administrator or the expiry of the periods specified in section 48, in the manner set out in the rules lodge an appeal in writing against the decision.
- (2) The Administrator must establish one or more internal appeal bodies, each comprising of at least three officers employed by the Administrator and authorised by the Chief Executive Officer, to decide any appeals lodged.
- (3) The appeal body may—
- (a) affirm or reverse any decision in respect of a claim or the provision of a benefit and may substitute it with its own decision.

- (b) refer any issue raised in an appeal to a medical or any other expert for an opinion; and
  - (c) refer any issue raised in an appeal to a medical or any other expert for final determination, in which event, the medical or other expert may affirm or reverse any decision in respect of a claim or the provision of a benefit and may substitute it with his or her own decision.
- (4) The appeal body must determine the appeal within 180 days after the lodgement of the appeal and inform the appellant of the outcome in writing, provided that appeals against claims which were deemed to be rejected in terms of section 48, must be determined within 30 days of the lodgement of the appeal.

## **CHAPTER 9**

### **GENERAL PROVISIONS**

#### **Accident report by drivers and owners**

50. The driver of a vehicle involved in a road accident and, if the driver is not the owner of the vehicle, the owner of the vehicle also, must provide the Administrator with the details of the road accident within 14 days thereof in the manner set out in the rules.

**Professional and other fees**

51. 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.

**Limitation of certain liability**

52. The Administrator or any official employed by the Administrator shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of any power or performance of any duty conferred or imposed by or under this Act, unless gross negligence is proved.

**Restriction on transfer of rights to benefits**

53. A benefit may not be transferred, ceded, pledged or any other way encumbered or disposed of unless on good grounds shown in writing the Minister consents thereto.

**Service of process commencing litigation**

54. A notice or other process commencing litigation in any court must be served at

the head office of the Administrator.

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

55. (1) The Minister may prescribe regulations relating to—
- (a) anything that is required or permitted by this Act to be prescribed;
  - (b) the tariffs for the liability of the Administrator for the provision of health care services, medical reports, vocation ability assessments;
  - (c) the subpoena to appear before the Administrator;
  - (d) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister must publish regulations in draft form for public comment and allow 30 days for the submission of such comments.
- (3) The Minister, in consultation with the Minister of Finance, may by notice in the *Gazette* determine the average annual national income and thereafter in like manner adjust the amount as circumstances may require.
- (4) The Minister must by notice in the *Gazette* determine the “*pre-accident income cap*” and may thereafter in like manner adjust the amount to take into account the effects of inflation.

### **Rules by Board**

56. (1) The Board may by notice in the *Gazette* make rules relating to—

- (a) the submission of claims;
  - (b) providing proof of an inability to earn income by a claimant for an income support benefit;
  - (c) conducting a post-accident vocational ability assessment;
  - (d) training programmes for vocational assessors;
  - (e) accreditation criteria for ability assessors;
  - (f) providing proof that a claimant is a dependant of a deceased breadwinner in respect of a family support benefit;
  - (g) the accident report to be submitted by the driver and owner of a vehicle involved in a road accident;
  - (h) any medical report to be submitted; and
  - (i) the submission of appeals.
- (2) The Board must publish notices containing draft rules for public comment and allow 30 days for the submission of such comments, unless it is impractical to do so.

## **Offences**

57. (1) A driver or owner of a motor vehicle involved in a motor accident who fails to comply with section 50 within 30 days from the date of the road accident, alternatively, within 30 days of being in a position to so comply, is guilty of an offence and liable on conviction to a fine not exceeding

R5 000,00 or to imprisonment not exceeding three months.

- (2) A person who fails to comply with a subpoena issued terms of section 46, 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 R5 000,00 or to imprisonment not exceeding three months.
- (3) 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.
- (4) (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;
  - (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
  - (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. .
- (5) (a) No person may disclose any information regarding a claimant or beneficiary acquired in the course of the application of this Act, except—

- (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 under this Act;
  - (iii) when required in terms of any other law;
  - (iv) when a court so orders.
- (b) Any person who contravenes paragraph (a) is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding one year or to both a fine and such imprisonment.

#### **Transitional provisions and savings**

**58. (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)** Subject to this section, as from the date of commencement of this Act—

- (a) the Road Accident Fund Act, 1996, applies only to a road accident which occurred before the date in respect of which liability arose to compensate any person as provided for in 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 but not limited to 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 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 Board of the Road Accident Fund shall 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 the 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 former Board must be construed as a reference to the Administrator.

- (3) The Administrator must ring-fence the administration of the system of compensation provided for in the Road Accident Fund Act, 1996, to—
- (a) create a separate functional unit and separate sources of income and expenditure 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 and profitability for the two distinct systems provided for in this Act and in the Road Accident Fund Act, 1996.

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

59. The following section is hereby inserted in the Road Accident Fund Act, 1996 (Act No. 56 of 1996), after section 1:

#### **"Application of Act**

**1A. Subject to the Road Accident Benefit Scheme Act, 2013, 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 any accident which occurred before the commencement of the Road Accident Benefit Scheme Act, 2013."**

**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**

60. The following section is hereby substituted for section 5 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996):

**“Financing of Fund**

The Administrator established by the Road Accident Benefit Scheme Act, 2013, shall procure the funds it requires to perform its functions from moneys appropriated by Parliament as contemplated in section 27(2)(b) of that Act.”.

**Short title and commencement**

61. (1) This Act is called the Road Accident Benefit Scheme Act, 2013.
- (2) This Act or any part or section thereof comes into operation on the date fixed by the President by proclamation in the *Gazette*.
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