
GENERAL NOTICES

NOTICE 337 OF 2014 DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: DRAFT ROAD ACCIDENT FUND BENEFIT SCHEME BILL, 2014

The draft Road Accident Benefit Scheme Bill, 2014 is hereby published for public comments.

Any interested persons are requested to submit written comments in connection with the draft Road Accident Benefit Scheme Bill, 2014, within 60 days from the date of publication of this notice in the Government Gazette.

All comments should be posted to the Director-General Department of Transport for the attention of Ms Kgothatso Kgantsi at:

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Or by hand delivery to: RABS Bill, Ground Floor, Forum Building, 159 Struben Street, Pretoria, 0002 or comments can be e-mailed to: rabsbill@dot.gov.za

Comments received after the closing date may not be considered.

REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT BENEFIT SCHEME BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill published in Government Gazette No. of 2014) (The English text is the official
text of the Bill)*

MINISTER OF TRANSPORT

[B 2014]

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 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;

“assistive devices” means devices that increase a person’s ability to carry out activities of daily living, including prosthetic and orthotic devices, spectacles and hearing aids;

“average annual national income” means the amount determined by the Minister under section 55(4);

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

“beneficiary” means a claimant who is granted a benefit;

“Board” means the Board of the Administrator contemplated in section 7;

“bodily injury” means a physical or psychological injury as well as damage to the victim’s assistive devices, caused by or arising from a road accident;

“Chief Executive Officer” means the Chief Executive Officer of the Administrator appointed in terms of section 20;

“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;

“dependant” means—

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

“emergency health care service” 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;

“funeral” means to cremate or to inter the deceased in a grave or burial place;

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

“immediate family member” means a spouse, parent, grandparent or a sibling or child above the age of 18;

“injured person” means a person who suffered a bodily injury;

“long-term personal care” 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;

“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;

“occupational therapist” means a person registered as such under the Health Professions Act, 1956 (Act No. 56 of 1974);

“other suitable expert” means a person, other than a student or intern, registered with the Health Professions Council of South Africa in a profession registrable under the Health Professions Act, 1956 (Act No. 56 of 1974) or the Allied Health Professions Act, 1982 (Act No. 63 of 1982);

“pre-accident income cap” means the amount determined by the Minister under section 55(5);

“prescribe” means prescribe by regulation;

“regulations” means the regulations made by the Minister under section 55;

“road accident” means an incident caused by or arising from—

- (a) the driving of a vehicle;
- (b) entering or exiting a vehicle;
- (c) leaving a vehicle stationary;
- (d) the moving of a vehicle as a result of gravity;
- (e) a vehicle coming to a standstill; or
- (f) evasive action taken to avoid collision with a vehicle.

“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) or its equivalent in foreign law;
- (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) or its equivalent in foreign law;
- (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) or its equivalent in foreign law;
- (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 contractually undertaken reciprocal duties 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.

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 31 March of the following year.

Duties

5. The Administrator must—
- (a) assist qualifying persons to submit claims;
 - (b) receive claims and medical reports;
 - (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, 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 the following

14 members—

- (a) the Chief Executive Officer;
 - (b) 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, public transport, information technology systems, actuarial science or law, appointed by the Minister;
 - (c) the Director-General of the national Department of Transport, or his or her delegate;
 - (d) the Director-General of the National Treasury, or his or her delegate; and
 - (e) the Director-General of the national Department of Health, or his or her delegate.
- (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 shall publish by notice in the Gazette, the list of nominees, their qualifications and experience.
- (4) With the exception of academic staff members 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) must not be persons who are 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*.

- (6) 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)(b) 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, without following section 7.

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)(b).
- (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)(b), 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)(b) hold office for a

period of three years and may be re-appointed for one further period of 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)(b), the Minister may appoint interim Board members and an interim Chairperson and Deputy Chairperson, for a period not exceeding twelve months provided that the Minister must, within 30 days after their appointment, notify Parliament and publish the particulars of the appointees in 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) 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 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 her 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. 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.

Duties

15. The Board must—

- (1) fulfil the functions of an accounting authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (2) devise strategies and policies to—
 - (a) monitor and evaluate the work performance of the Administrator;
 - (b) ensure that the assessment of claims and the provision of benefits are conducted effectively and efficiently to beneficiaries by the Administrator;
 - (c) ensure that adequate information technology systems enable and support the operations, financial controls, risk and performance management of the Administrator;
 - (d) ensure that effective human resource development and succession planning for executive and senior management positions are put in place by the Administrator;
 - (e) ensure that the Administrator develops and maintains sound working relationships with relevant organs of state and stakeholders;
 - (f) regarding any other matter to achieve the objects of this Act;
- (3) make the rules contemplated in section 56; and
- (4) 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 be employed or contracted to a position 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 or 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 satisfactorily 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 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.

- (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 members.

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 which period may be extended for one further period of five years.

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 legally incapacitated or unable for a period longer than one month, 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.

- (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 the accounting officer and is accountable to the Board.

Duties

23. The Chief Executive Officer must—
- (a) manage the employees 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 employees of the Administrator; and
 - (f) 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 which positions constitute executive management.

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 or suspend the Chief Executive Officer, on recommendation of the Board, 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 after adjustment at year end.

- (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. (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 a terrorist activity, as defined in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No.33 of 2004).
- (2) 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.

(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); or

(b) a member of the South African National Defence Force contemplated in the Defence Act, 2002 (Act No. 42 of 2002),

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 subparagraphs (a) and (b) in respect of bodily injury or death caused by or arising from the road accident.

(4) If an injured person or deceased breadwinner was not legally present in the Republic at the time of the road accident, the liability of the Administrator to—

(a) the injured person; and

(b) any other person, including the dependants of a deceased breadwinner

is limited to payment for the provision of emergency health care services.

Exclusion of liability of owner, driver and employer of driver

29. 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
- (b) the employer of the driver.

CHAPTER 6

BENEFITS

Categories of benefits

30. This Act makes provision for the following benefits—

- (a) the health care services provided for in part A of this Chapter;
- (b) the income support benefits provided for in part B of this Chapter;
- (c) the family support benefits provided for in part C of this Chapter; and
- (d) 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. (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 including but not limited to—

- (a) transport required to receive any health care service;

- (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;
 - (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.
- (2) In assessing whether a health care service is reasonably required for the treatment, care or rehabilitation of an injured person, the Administrator shall have to regard whether it is—
- (a) for the purpose of restoring the injured person's health to the extent practicable;
 - (b) appropriate and of the 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.

Contracted health care service providers

32. (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—
- (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 tariffs prescribed by the Minister in terms of this Act;
 - (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 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;
 - (g) terms of payment; and
 - (h) 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 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 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 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 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 health care services to a reasonable tariff which must be prescribed;
 - (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; and
 - (d) the Administrator shall only be liable for health care services provided 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 health care service provider or prospective health care service provider of 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 health care service provider, 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 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 for in the plan.

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

35. (1) Subject to this Act, 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, for the three years preceding the road accident or any consecutive three year period thereafter; or
 - (b) fails to submit, within a reasonable period after being requested to do so by the Administrator, an affidavit, affirmation or solemn or attested 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 assess whether it is 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—
- (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).
- (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 relevant year or years for the three years preceding the road accident;
 - (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 the relevant year or 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, affirmation or solemn or attested declaration in support of the income earned; and
- (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) In the absence of acceptable proof of income and in the case of economically inactive persons, the injured person must be deemed, for the purpose of this Act, to earn the average annual national income.
- (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;
- (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;

- (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
- (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.

- (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—
 - (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;
- (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;
 - (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 formula provided in Schedule 1.
- (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 37(10) applies with the changes required by the context.
- (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, subject to affordability, from time to time, adjust the temporary income support benefit to take into account the effects of inflation.

Long-term income support benefit

37. (1) The Administrator shall assess whether it is 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—
- (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—
 - (i) proof of the injured person's pre-accident income in the manner provided in section 36(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 36(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) 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; and
 - (d) 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).
- (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 assessors; and
 - (c) accreditation criteria for assessors.
- (4) In the event that the Board has made rules regarding the training programmes and accreditation criteria contemplated in subsection (3), the assessment contemplated in subsection (2) may only be performed by an accredited assessor.
- (5)
 - (a) The Administrator must determine, with reference to all relevant information, including the availability of employment or other income generating opportunities available to an injured person and the details of income earned subsequent to the road accident, an amount which approximately represents the injured person's annual 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.
- (6)
 - (a) In determining income earned in terms of subsection (5), 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 any proceeds or any 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.
- (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 36(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 national income;
 - (b) in the case of injured persons contemplated in section 36(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 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, 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

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 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 program.
- (3) The Minister may 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 benefits

Liability of Administrator in respect of family support benefits

39. (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 no family support benefit shall be paid to a dependant who is not ordinarily resident in the Republic.
- (2) For purposes of subsection (1), and unless the contrary is shown, a dependant 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, for the three years preceding 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, affirmation or solemn or attested 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 Administrator shall assess its liability 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 paragraphs (a), (b) or (c) of the definition of “*dependant*”;
 - (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 sections 36(2)(a) and (b), failing which the deceased breadwinner must be deemed to have earned the pre-accident income contemplated in section 36(3); and
 - (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 sections 36(2)(a) and (b), if those subsections are applicable.
- (4) 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—
- (a) may not exceed the pre-accident income cap; and
 - (b) may not be less than the average annual national income.

- (5) 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.
- (6) (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.
- (7) The amount of a family support benefit is to be determined in terms of the method and formula provided in Schedule 1.
- (8) 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.
- (9) 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 by notice in the Gazette, adjust the family support benefit 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 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) Subject to this Act, 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, in the manner set out in the rules--
- (i) of a copy of a notification or register of death form in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992); and

- (ii) proof that the death was caused by or arose from a road accident.
- (b) 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 of R10 000.00 upon submission, in the manner set out in the rules.
- (i) of a copy of a notification or register of death form 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.
- (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, 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).
- (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 such immediate family member.

- (4) The Minister may, subject to affordability, from time to time, adjust the amount referred to in subsections (1) and (2) by notice in the Gazette 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 —
- (a) terminate the continued entitlement to any benefit if the beneficiary is no longer entitled to the benefit, including but not limited to—
- (i) failure to comply with a condition imposed in respect of that benefit;
- (ii) failure to comply within a reasonable period with a request made in terms of section 44; or
- (iii) the furnishing of 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 a beneficiary—
 - (i) unreasonably refuses to provide further medical reports or to submit to further medical assessments or vocational ability assessments;
 - (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.
 - (c) revise the benefit if the beneficiary is no longer entitled to the full amount 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

42. 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

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 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 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 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 the claimant and 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 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

45. Notwithstanding anything to the contrary in any law or any agreement, 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 the review of 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 the review of a benefit;
- (c) a health care provider and health establishment 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 the review of a benefit;
- (d) a health care provider and health establishment 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 the review of a benefit;

- (e) 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 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 the review of a benefit;
- (f) 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 the review of a benefit;
- (g) 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 the review of a benefit;
- (h) 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 the review of 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 claimant or a beneficiary, including death and birth certificates, identity documentation, marriage of residence status and with any additional information requested, if such information is necessary for the determination of a claim or the review of 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 employees who are commissioners of oaths 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;

(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 and to furnish such information or to produce such book, document or thing, as the case may be;
- (ii) through its employees who are commissioners of oaths under the Justice of Peace and Commissioners of Oaths Act 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.

- (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).

- (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

47. (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.
- (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.
- (3) If the qualifying person—
- (a) is a minor or is insane 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
- (b) is deceased and an executor of the estate in question has not yet been appointed,
- the three year period is deemed not to be completed before one year after the relevant impediment referred to in paragraph (a) or (b) has ceased to exist.

Time periods for determination of claims

48. (1) The Administrator shall accept or reject a claim within 180 days after the submission of the claim, failing which, the claim shall be deemed to be rejected and the claimant may lodge an appeal against the rejection of the claim in terms of section 49.
- (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 the manner and in accordance with the procedure provided for in this Act.
- (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.
- (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 notified of the decision of the Administrator, or after the expiry of the periods specified in section 48, in the manner and in accordance with the procedure 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(1), must be determined within 30 days of the lodgement of the appeal.

- (5) Subject to this Act and the review jurisdiction of the courts conferred by the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the decision of the appeal body regarding the liability of the Administrator is final.

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 30 days from the date of the road accident, alternatively within 30 days of being a position to so comply, 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 intentional wrongdoing 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 the Minister consents thereto in writing on good grounds shown.

Service of process commencing litigation

54. 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

55. (1) The Minister must prescribe—

- (a) the tariffs for the liability of the Administrator for the provision of health care services, medical reports and vocation ability assessments;
 - (b) the form of the subpoena to be used to summons a person to appear before the Administrator and the manner in which the subpoena is to be served by the sheriff; and
 - (c) the manner on which a notice or other process commencing litigation against the Administrator in any court must be served on the Administrator.
- (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, including –
 - (a) the adjustment of temporary and long-term income benefits, family support benefits and funeral benefits, to take account the effects of inflation; and
 - (b) setting limits on the provision of vocational training to beneficiaries including a cap on the amount which the Administrator may spend per beneficiary.
- (3) The Minister must publish regulations concerning the matters in subsections (1) and (2) in draft form for public comment and allow 30 days for the submission of such comments.
- (4) The Minister, in consultation with the Minister of Finance, must by notice in the *Gazette* determine the average annual national income and may thereafter in like manner adjust the amount as circumstances may require.

- (5) The Minister must by notice in the *Gazette* determine the pre-accident annual income cap and may thereafter in like manner adjust the amount to take into account the effects of inflation.
- (6) The Minister is not required to publish notices concerning the matters in subsections (4), (5) and (6) in draft form for public comment or to consult with any person regarding the contents of these notices, save for the consultation with the Minister of Finance, provided for in subsection (4).

Rules by Board

56. (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) and the Defence Act, 2002 (Act No. 42 of 2002);
 - (c) pre-authorisation in respect of non-emergency health care services;
 - (d) providing proof of an inability to earn income by a claimant for an income support benefit;
 - (e) providing proof that a claimant is a dependant of a deceased breadwinner in respect of a family support benefit;
 - (f) the accident report to be submitted by the driver and owner of a vehicle involved in a road accident;
 - (g) any medical report to be submitted; and

- (a) the submission of appeals.
- (2) The Board may by notice in the Gazette make rules relating to—
 - (a) training programmes for vocational assessors; and
 - (b) accreditation criteria for ability assessors
- (3) 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 R50 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 R50 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 employee of the Administrator 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; or
 - (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 not exceeding R50 000.00 or to imprisonment not exceeding three months 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) 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 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 former Board 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 Road Accident Fund 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 for the distinct systems provided for in this Act and in the Road Accident Fund Act, 1996.
- (4) Section 55 applies retrospectively to validate any steps taken by the Minister to consult with the public regarding proposed regulations before this Act comes into operation provided that such steps materially comply with this Act.

- (5) Section 56 applies retrospectively to validate any steps taken by the Board, or, if the Board is not yet brought into existence, the former Board, to consult with the public regarding proposed rules before this Act comes into operation.

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, 2014, 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 continue to apply to all claims where the cause of action arose prior to the commencement of the Road Accident Benefit Scheme Act, 2014.”

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, 2014, 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, 2014.
- (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**1. Temporary Income Support Benefit formula**

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

where

X = the amount determined in accordance with section 36(2)(a) or (b) of the Act; and

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

2. Long-term Income Support Benefit formula

$$(X*75\%) \text{ minus } Z$$

where

X = the amount determined in accordance with section 36(2)(a) or (b), as the case may be; and

Z = the amount determined by the Administrator in terms of section 37(5) to be the injured person's annual post-accident earning capacity

3. Family Support Benefit formula

(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 section 39(3) to be the deceased breadwinner's pre-accident income; and

C = the amount determined in accordance with section 39(5) 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 section 39(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 section 39(5) 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 section 39(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 section 39(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:

$$(A \cdot (1/(2 + B)))$$

where

A = the amount determined in accordance with section 39(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

$$(A \cdot (1/(2 + B))) - (C \cdot (1/(2 + B)))$$

where

C = the amount determined in accordance with section 39(5) 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 section 39(10), the Administrator must pay the family support benefit by way of monthly instalments.

NOTICE 338 OF 2014**DEPARTMENT OF TRANSPORT****PUBLICATION FOR COMMENTS: DRAFT ROAD ACCIDENT BENEFIT SCHEME REGULATIONS**

The Minister of Transport, Ms Dipuo Peters, MP, hereby in terms of section 55 of the draft Road Accident Benefit Scheme Bill, 2014, publishes for public comment, the draft Road Accident Benefit Scheme Regulations, 2014 in the Schedules.

Any interested persons are requested to submit written comments in connection with the draft Road Accident Benefit Scheme Regulations within 60 days from the date of publication of this notice in the Government Gazette.

All comments should be posted to the Director-General Department of Transport for the attention of Ms Kgothatso Kgantsi at:

Department of Transport
Private Bag X193
PRETORIA
0001

E-mail: KgantsiK@dot.gov.za

Tel: 012 309 3917 or 012 309 3476

Fax: 012 309 3502

By hand delivery to: RABS Bill, Ground Floor, Forum Building, 159 Struben Street, Pretoria, 0002, or comments can be e-mailed to: rabsbill@dot.gov.za

Comments received after the closing date may not be considered.