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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRANSPORT

NO. 3868

8 September 2023

ROAD ACCIDENT FUND ACT, 1996 (ACT NO. 56 OF 1996)**PUBLICATION FOR COMMENTS OF THE DRAFT ROAD ACCIDENT FUND AMENDMENT BILL, 2023**

The Draft Road Accident Fund Amendment Bill, 2023 is hereby published for public comments.

Interested persons are invited to submit written comments on this draft Road Accident Fund Amendment Bill, 2023, within 30 days from the date of publication of this notice in the Government Gazette.

All comments should be emailed or hand delivered to the Director-General Department of Transport for attention of:

MS LINDIWE TWALA

MR TREVOR MPHAHLELE

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REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND AMENDMENT BILL, 2023

(As introduced in the National Assembly (proposed section 75))

(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

B – 2023]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Road Accident Fund Act ("the Act"), 1996 as amended, so as to delete definitions and insert new definitions; to clarify the nature of the Fund; to give effect to the findings and recommendations of the Road Accident Fund Commission; to reorganise the powers and functions of the Fund; to repeal the Fund's authority to appoint agents to administer claims; to amend the constitution of the Board by including the Chief Executive Officer as an executive member of the Board; to simplify the Act by moving procedural and administrative matters to the regulations and Board Notices; to limit the liability of the Fund to motor vehicle accidents occurring on public roads; to remove the obligation for the Fund to compensate a third party for non-pecuniary loss; to provide for the provision by the Fund of injury and death benefits subject to prescribed limits and periodical review; to clarify exclusions of liability of the Fund; to extend the period before interest accrues on an award; to remove the right of suppliers to claim from the Fund; to provide for the further exclusion of the Fund's liability in respect of specific third parties and specific situations; to harmonise the prescription regime for all claims; to enable the lodgement of claims by digital form; to authorise the Board to stipulate terms and conditions for administrative claim processes and claim forms; to provide for dispute resolution mechanisms and the establishment of the Office of Road Accident Fund Adjudicator to dispose of complaints by the third party in relation to the claims; to restructure the Minister's powers to make regulations; to empower the Fund to make annuity payments for claims and to monitor and re-assess active claims; to allow for lodgement of claims, on behalf of the claimants by other functionaries; to make provisions to ensure compliance with Protection of Personal Information Act, 2013; to amend the financial control provisions and align them to the Financial Sector Regulation Act, 2017; to align the financial reporting requirements to the provisions of the Public Finance Management Act, 1999; to enhance information submission provision requirements; to align the provisions of the Act to case law; and, to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

Amendment of section 1 of Act 56 of 1996, as amended by section 125 (1) of Act 31 of 2005

1. Section 1 of the Road Accident Fund Act, 1996 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of the definition of “agent”;

(b) by the insertion above the definition for “Board” of the following definition:

“ ‘**adjudicator**’ means the Road Accident Fund Adjudicator or Deputy Road Accident Fund Adjudicator and any Acting Road Accident Fund Adjudicator appointed under section 24B;”

(c) by the insertion after the definition of “Chief Executive Officer” of the following definition:

“ ‘**complaint**’ means a complaint by a third party, in relation to the third party’s claim, and alleging that—

(a) a decision of the Fund or any person purportedly taken in terms of the Act was in excess of the powers of the Fund or person, or an improper exercise of its powers;

(b) the third party has sustained or may sustain prejudice in consequence of maladministration by the Fund or any person, whether by act or omission; or

(c) a dispute of fact or law has arisen between the Fund or any person and the third party;”

(d) By the insertion after the definition of “Fund” the definition:’

(e) “ ‘**hit and run**’ which denotes or relates to a motor vehicle accident in which the vehicle involved does not stop or is unknown.

(f) by the deletion of the definition of “lift club”;

(g) by the deletion of the definition of “motor car”;

(h) by the substitution for the definition of “motor vehicle” of the following definition:

“ ‘**motor vehicle**’ refers to a motor vehicle driven on a public road and has the meaning ascribed to it in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);”

(h) by the insertion after the definition for “motor vehicle” of the following definitions:

“ ‘operator’ has the meaning ascribed to it in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

‘operate on a public road’ or any like expression, in relation to a motor vehicle, has the meaning ascribed to it in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996;

(i) by the substitution for the definition for “owner” of the following definition:

“ ‘owner’ has the meaning ascribed to it in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996;

(j) by the insertion after the definition of “prescribe” of the following definition:

“ ‘public road’ has the meaning ascribed to it in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);”; and

(k) by the insertion after the definition of “reward” of the following definitions:

“ ‘social benefits’ means the benefits provided for in section 17(2A);

‘stipulate’ or any like expression, means a stipulation by the Minister or the Board as contemplated in section 26A; and

‘tax’ means any tax levied in terms of any law;”.

‘victim’ means a person harmed, injured or killed as a result of a road accident excluding those through their negligence/ fault of their own caused the road accident;”.

Amendment of section 2 of Act 56 of 1996

2. Section 2 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) In accordance with this Act, the Fund shall provide social benefits to the victims of motor vehicle accidents which occurred on a public road.”.

Substitution of section 3 of Act 56 of 1996

3. The following section is hereby substituted for section 3 of the principal Act:

“3. Object of Fund

The object of the Fund shall be **[the payment of compensation]** to, in accordance with this Act, **[for loss or damage wrongfully caused by the driving of motor vehicles]** provide social benefits to the victims of motor vehicle accidents which occurred on a public road.”.

Amendment of section 4 of Act 56 of 1996, as amended by section 1 of Act No. 15 of 2001 and section 1 of Act 19 of 2005

4. Section 4 of the principal Act is hereby amended by the –

- (a) deletion of paragraph (a) in subsection (1);
- (b) substitution for the expression “; and” at the end of paragraph (c) in subsection (1) of a full stop;
- (c) deletion of paragraph (d) in subsection (1);
- (d) substitution for the full stop at the end of paragraph (i) in subsection (2) of the expression “; and”; and
- (e) addition after paragraph (i) in subsection (2) of the following paragraph:

“(j) procure risk mitigation instruments for any risk undertaken by the Fund under this Act.”.

Repeal of section 8 of Act 56 of 1996

5. Section 8 of the principal Act is hereby repealed.

Amendment of section 9 of Act 56 of 1996

6. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, upon the recommendation of the Board, co-operate and enter into agreements with other MVA Funds or similar in SADC, AU and globally. **[in respect of the reciprocal recognition of compulsory motor vehicle insurance or compulsory motor vehicle accidents compensation]**.”.

Amendment of section 10 of Act 56 of 1996, as amended by section 3 of Act No. 19 of 2005 and section 1 of Act 43 of 2002

7. Section 10 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:

“(1) There shall be a Board of the Fund, constituted as follows:

- (a) The Director-General: Transport or any other senior officer in the Department of Transport, designated by him or her; **[and]**
- (b) 12, non-executive members appointed by the Minister, who may not be in the full-time employment of any government, and who shall each command extensive experience in one or more of the fields of insurance, finance, medical service provision, law, accounting and actuarial science, or in matters relating to disabled persons, road users, commuters’ or consumers’ interests; and
- (c) the Chief Executive Officer and the Chief Financial Officer, as executive members of the Board.”;

- (b) the substitution for paragraphs (a) in subsection (2) of the following paragraph:

“(a) declare any interest relating to the functions, duties and obligations of the Fund **[or its agents]** in terms of this Act, and such a member shall not vote in respect of any decision of the Board in so far as he or she has such an interest therein;”;

- (c) the substitution for paragraphs (c) in subsection (2) of the following paragraph:

“(c) in respect of a member referred to in subsection 1(b), hold office for a period of three years as from the date of appointment of such member and may, subject to nomination contemplated in subsection (9), be reappointed for further terms of office not exceeding three years at a time, provided that such a member may not serve for more than three consecutive terms of office.”;

(d) the substitution for subsection (4) of the following subsection:

“(4) Only a member of the Board referred to in section (1) (b) and (c) shall, subject to subsection (2) (a), have a vote on any matter before the Board.”;

(e) the deletion of subsection (5).

Amendment of section 11 of Act 56 of 1996, as amended by section 4 of Act No. 19 of 2005

8. Section 11 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).

Amendment of section 12 of Act 56 of 1996, as amended by section 5 of Act No. 19 of 2005

9. Section 12 of the principal Act is hereby amended by –

(a) the substitution for paragraph (b) in subsection (2) of the following paragraph:

“(b) appoint, determine the conditions of employment of and dismiss the staff of the Fund, excluding members of staff on executive management level;” and

(b) the deletion of paragraph (e) of subsection (2).

Amendment of section 13 of Act 56 of 1996

10. Section 13 of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection:

“(1) The Board shall publish an annual report **[containing—**

- (a) the audited balance sheet of the Fund together with a report by the auditor, contemplated in section 14, in respect of such audit; and**
- (b) a report on the activities of the Fund during the year to which the audit relates] in accordance with Chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”;**

- (b) the deletion of subsection (2).

Amendment of section 14 of Act 56 of 1996

11. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Fund shall **[keep proper records of all its financial transactions and its assets and liabilities]** adhere to all provisions as provided for Public Entities in the Public Finance Management Act, 1999 (Act No. 1 of 1999).”;

Amendment of section 15 of Act 56 of 1996

12. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to first exhausting the complaint process administered by the Adjudicator, [A]an action to enforce a claim against the Fund **[or an agent]** may be brought in any competent court within whose area of jurisdiction the occurrence which caused the injury or death took place.”.

Substitution of section 17 of Act 56 of 1996, as substituted by section 6 of Act 19 of 2005

13. section 17 of the principal Act is hereby substituted as follows:

“17. Liability of Fund [and agents]

(1) The Fund **[or an agent]** shall [—

(a)] subject to this Act and any regulation made under section 26, in the case of a claim for **[compensation]** a benefit under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established, excluding hit and run [;

be obliged to **[compensate]** provide the benefits specified under this section to a third party for **[any]** loss or damage which the third party has suffered 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 by any person **[at any place]** on a public road within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the **[obligation of the]** Fund shall not be obliged to [compensate] provide a benefit to a third party for non-pecuniary loss **[shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.** **(1A) (a) Assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.**

(b) The assessment shall be carried out by a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974)].

(2)

(2A) The Fund shall—

- (a) Provide the following injury benefits to a qualifying third party:
- (i) subject to the prescribed medical tariff, a medical expense benefit where it is not part of the Prescribed Minimum Benefits or Emergency Medical Condition as per the Medical Schemes Act and its Regulations;
 - (ii) subject to the prescribed medical tariff, an undertaking by the Fund to compensate the third party directly or the service provider directly for the cost of future medical treatment and related goods and services, after the costs have been pre-authorised in the manner prescribed;
 - (iii) subject to prescribed limits, a past loss of income benefit;
 - (iv) subject to prescribed limits and the periodical re-assessment of the Fund's liability, a future loss of income benefit, paid in annuity; and

(b) Provide the following death benefits:

- (i) subject to prescribed limits, a funeral benefit;
- (ii) subject to prescribed limits, a past loss of support benefit; and
- (iii) subject to prescribed limits and the periodical re-assessment of the Fund's liability, a future loss of support benefit, paid in annuity.

(3) (a) No interest calculated on the amount of any **[compensation]** benefit which a court or the Adjudicator awards to any third party by virtue of the provisions of subsection (1) shall be payable unless **[14]** 120 days have elapsed from the date of the court's relevant order or the Adjudicator's determination, as the case may be.

(b) In issuing any order as to costs on making such award, the court or Adjudicator, as the case may be, may take into consideration any written offer, including a written offer without prejudice in the course of settlement negotiations, in settlement of the claim concerned, made by the Fund **[or an agent]** before the complaint was lodged or relevant summons was served.

[(4) Where a claim for compensation under subsection (1)—

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate—

- (i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or**
- (ii) the provider of such service or treatment directly, notwithstanding section 19 (c) or (d), in accordance with the tariff contemplated in subsection (4B);**

(b) includes a claim for future loss of income or support, the amount payable by the Fund or the agent shall be paid by way of a lump sum or in annuity as agreed upon;

(c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding—

- (i) R319 810.00 per year in the case of a claim for loss of income; and**

- (ii) R319 810.00 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

(4A) (a) The Fund shall, by notice in the Gazette, adjust the amounts referred to in subsection (4) (c) quarterly, in order to counter the effect of inflation.

(b) In respect of any claim for loss of income or support the amounts adjusted in terms of paragraph (a) shall be the amounts set out in the last notice issued prior to the date on which the cause of action arose.

(4B) (a) The liability of the Fund or an agent regarding any tariff contemplated in subsections (4) (a), (5) and (6) shall be based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be prescribed after consultation with the Minister of Health.

(b) The tariff for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003—

- (i) shall be negotiated between the Fund and such health care providers; and
(ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay.

(c) In the absence of a tariff for emergency medical treatment the tariffs contemplated in paragraph (a) shall apply.

(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19 (c) or (d), claim an amount in accordance with the tariff contemplated in subsection (4B) direct from the Fund or an agent on a prescribed form, and such claim shall be subject, mutatis mutandis, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.]

(6) The Fund[, or an agent with the approval of the Fund,] may make an interim payment to the third party out of the [amount to be awarded] benefits to be

provided in terms of subsections **[(1) to the third party in respect of medical costs[, in accordance with the tariff contemplated in subsection (4B), loss of income and loss of support] (2A)(a)(i), (2A)(a)(iii), and (2A)(b)(ii)**: Provided that the Fund **[or such agent]** shall, notwithstanding anything to the contrary in any law contained, only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered.”.

Amendment of section 18 of Act 56 of 1996, as amended by section 7 of Act 19 of 2005

14. Section 18 of the principal Act is hereby amended by-

(a) the substitution for subsection (2) of the following subsection:

“(2) Without derogating from any liability of the Fund **[or an agent]** to pay costs awarded against it **[or such agent]** in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death—

(a) the liability of the Fund **[or such agent]**, in respect of the bodily injury to or death of any one such employee, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund **[or such agent]** and any lesser amount to which that third party is entitled by way of compensation under the said Act; and

(b) the Fund **[or such agent]** shall not be liable under the said Act for the amount of the compensation to which any such third party is entitled thereunder.”;

(b) the substitution for subsection (3) of the following subsection:

“(3) Without derogating from any liability of the Fund **[or an agent]** to pay costs awarded against it **[or such agent]** in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or

death of a member of the South African National Defence Force, other than a person referred to in subsection (2), and the third party is entitled to compensation under the Defence Act, 1957, or another Act of Parliament governing the said Force in respect of such injury or death—

(a) the liability of the Fund **[or such agent]** in respect of the bodily injury to or death of any such member or the said Force, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund **[or such agent]** and any lesser amount to which that third party is entitled by way of compensation under the said Defence Act or the said other Act; and

(b) the Fund **[or such agent]** shall not be liable under the said Defence Act or the said other Act for the amount of the compensation to which any such third party is entitled thereunder.”; and

(c) the deletion of subsection (4).

Amendment of section 19 of Act 56 of 1996, as amended by section 8 of Act 19 of 2005

15. Section 19 of the principal Act is hereby amended by:

(a) the substitution for the words preceding paragraph (a) of the following words:

“The Fund shall not be obliged to provide a benefit to any person in terms of section 17 for any loss or damage—”;

(b) by substitution for paragraph (c) with the following paragraph:

“ (c) if the claim concerned has not been instituted by the third party, or on behalf of the third party by any person, persons, functionary or institutions as prescribed in the Regulations

(c) by the substitution for subparagraph (i) in paragraph (d) of the following subparagraph:

“(i) a portion of **[the compensation]** any benefit payment in respect of the claim;”;

(d) by the substitution for paragraph (e) of the following paragraph:

“(e) suffered as a result of bodily injury to any person who—

(i) unreasonably refuses or fails to subject himself or herself, at the request and cost of the Fund **[or such agent]**, to any medical examination or examinations by medical practitioners designated by the Fund **[or agent]**;

(ii) refuses or fails to furnish the Fund **[or such agent]**, at its **[or the agent’s]** request and cost, with copies of all medical reports in his or her possession that relate to the relevant claim for **[compensation]** a benefit; or

(iii) refuses or fails to allow the Fund **[or such agent]** at its **[or the agent’s]** request to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner;”;

(e) by the substitution for paragraph (f) of the following paragraph:

“(f) if the third party refuses or fails—

(i) to submit to the Fund **[or such agent]**, together with his or her claim form as **[prescribed]** stipulated **[or within a reasonable period thereafter and if he or she is in a position to do so]**, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(ii) to furnish the Fund **[or such agent]**, at the time of lodging the claim for **[compensation]** a benefit, with **[copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof]** the prescribed documents that relate to the claim concerned; [or]”;

(f) by the addition of the following paragraphs:

“(h) to the extent that the operator’s passenger liability insurance cover provides cover in relation to the passengers injured or killed in the motor vehicle accident;

(i) to the extent that the third party’s medical aid cover or medical insurance cover provides cover in relation to the treatment of the third party’s injuries sustained

in the motor vehicle accident and to the extent that cover is provided for assistive devices and related works, goods and services;

- (j) if the third party was a driver of a motor vehicle, or a pedestrian, or a cyclist, and at the time of the accident was over the legally prescribed alcohol limit or under the influence of a drug, or was a pedestrian crossing a highway;
- (k) if the third party is a dependent of a person contemplated in paragraph (j);
- (l) if the motor vehicle accident involved a train or an aircraft;
- (m) if the motor vehicle accident occurred in circumstances where a producer, importer, distributor, or retailer is liable for the harm caused by or arising from the driving of a motor vehicle involved in the accident, as is contemplated in section 61 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (n) if the motor vehicle accident occurred in circumstances where the motor vehicle was driven while filming a movie or an advertisement, or during drag racing, or during the performance of a stunt, or a similar event; or
- (o) if the claimant is a not a South citizen or direct permanent resident as defined in the Immigration Act, 13 of 2002 (as amended)...

Amendment of section 20 of Act 56 of 1996

- 16.** Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of this Act a motor vehicle which is being propelled by any mechanical [, **animal or human**] power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.”.

Amendment of section 21 of Act 56 of 1996

- 17.** Section 21 of the principal Act is hereby amended by

- (a) the substitution for paragraph (a) in subsection (2) of the following paragraph:
“(a) if the Fund **[or an agent]** is unable to pay any compensation; or

Amendment of section 22 of Act 56 of 1996

18. Section 22 of the principal Act is hereby amended by-

- (a) the substitution for the heading of the following heading:

“Submission of information to Fund [, agent] and third party.”;

- (b) the substitution for paragraph (a) in subsection (1) of the following paragraph:

“(a) When, as a result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if the driver is not the owner, of the motor vehicle shall, if reasonably possible within 14 days after the occurrence, furnish the Fund on the **[prescribed] stipulated** form with particulars of the occurrence together with the **[prescribed] stipulated** statements[, **and the Fund shall furnish such information to the who in terms of section 8 is responsible for any claim arising from the occurrence**].”;

- (c) the substitution for subsection (2) of the following subsection:

“(2) The **[agent or the]** Fund shall within a reasonable period after the third party has complied with the requirements contemplated in section 19 (f) (i), furnish the third party or his or her agent with a copy of the information and statements which the owner or driver furnished in terms of subsection (1), together with all statements which were or are obtained from witnesses to the accident.”; and

- (d) the addition of the following subsection:

“(3) Traffic law enforcement agencies, the South African Police Service, emergency medical service providers, hospitals and any other relevant organisation shall within a reasonable period, not exceeding 21 days after the occurrence, furnish the Fund, on the stipulated form, with particulars of the occurrence, and with the stipulated information required for the investigation and settlement of claims.”.

Amendment of section 23 of Act 56 of 1996

19. Section 23 of the principal Act is hereby amended by -

(a) The substitution for subsection (1) of the following subsection:

“23. Prescription of claim.

(1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) **[and (3)]**, the right to claim **[compensation] a benefit** under section 17 from the Fund **[or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established,]** shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.”;

(b) the substitution for subsection (2) of the following subsection:

“(2) Prescription of a claim for **[compensation] a benefit** referred to in subsection (1) shall not run against—

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

(c) the deletion of subsections (3), (4), and (5).

Amendment of section 24 of Act 56 of 1996

20. Section 24 of the principal Act is hereby amended by –

(a) the substitution for subsection (1) of the following subsection:

“(1) A claim for **[compensation and accompanying medical report] a benefit** under section 17 (1) shall [—

- (a)]be dealt with in accordance with the prescribed procedure **[set out in the prescribed form or forms, which shall be completed in all its particulars;**
- (b) **be sent by registered post or] delivered by hand to the Fund at its principal, branch or regional office, to the agent who in terms of section 8**

must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing]."; and

(b) The deletion of subsections (2), (3),(4),(5) and (6).

Insertion of sections 24A and 24B in Act 56 of 1996

21. The following sections are hereby inserted in the principal Act after section 24:

"24A. Alternative dispute resolution.

(1) The Fund must stipulate alternative dispute resolution procedures for the resolution of complaints.

(2) Only if the alternative dispute resolution process fails to resolve a dispute may the complaint be referred to the Adjudicator.

"24B. Establishment of the Office of the Road Accident Fund Adjudicator.

(1) The Minister may establish an independent Office which shall be known as the Office of the Road Accident Fund Adjudicator, in consultation with the Board

(2) The functions of the Office shall be performed by the Adjudicator and its administration as provided for in the Regulations.

(3) Subject to section 24A(2), the Adjudicator must determine complaints.

(4) The date of commencement of operations by the Office will be announced by the Minister by notice in the Gazette.

(5) The Minister may appoint—

a person to the office of Adjudicator in consultation with the Board;

Substitution of section 25 of Act 56 of 1996

22. The following section is hereby substituted for section 25 of the principal Act:

"25. Right of recourse of Fund [or agent].

(1) When the Fund **[or an agent]** has **[paid any compensation]** provided a benefit in terms of section 17 the Fund **[or agent]** may, subject to subsections (2) and (3), without having obtained a formal cession of the right of action, recover from the owner of the motor vehicle concerned or from any person whose negligence or other wrongful act caused the loss or damage concerned, so much of the amount paid by way of **[compensation]** a benefit as the third party concerned could, but for the provisions of section 21, have recovered from the owner or from such person if the Fund **[or agent]** had not paid any such **[compensation]** benefit.

(2) The Fund's **[or agent's]** right of recourse against the owner of a motor vehicle under subsection (1) shall only be applicable in any case where the motor vehicle at the time of the accident which gave rise to the payment of the **[compensation]** benefit was being driven—

- (a) by a person other than the owner and the driver was over the legally prescribed alcohol limit or under the influence of **[intoxicating liquor]** or of a drug to such a degree that his or her condition was the sole cause of such accident, and the owner allowed the driver to drive the motor vehicle knowing that the driver was over the legally prescribed alcohol limit or under the influence of **[intoxicating liquor]** of a drug; or
- (b) by a person other than the owner without the driver holding a licence issued under any law governing the licensing of drivers of motor vehicles which the driver was required to hold, or the driver, being the holder of a learner's or other restricted licence issued under such law, failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence and the owner allowed the driver to drive the motor vehicle knowing that the driver did not hold such a licence
or that the driver failed to comply with the requirements or conditions of a learner's or restricted licence, as the case may be; or
- (c) by the owner and he or she was over the legally prescribed alcohol limit or under the influence of **[intoxicating liquor]** or of a drug to such a degree that his or her condition was the sole cause of such accident; or
- (d) by the owner without holding a licence issued under any law governing the licensing of drivers of motor vehicles, which he or she was required to hold, or the owner, being the holder of a learner's or other restricted licence issued under such law,

failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence; or

(e) by the owner and he or she failed to comply with any requirement contemplated in section 22 (1) with reference to the said accident, or knowingly furnished the Fund **[or the agent]** with false information relating to such accident and the Fund **[or agent]** was materially prejudiced by such failure or by the furnishing of such false information, as the case may be.

(3) The provisions of subsection (2) (c), (d) and (e) shall apply *mutatis mutandis* in respect of any right of recourse by the Fund **[or the agent]** against any person who, at the time of the accident which gave rise to the payment of the **[compensation] benefit**, was driving the motor vehicle concerned with or without the consent of its owner.”.

Amendment of section 26 of Act 56 of 1996, as substituted by section 11 of Act 19 of 2005

23. Section 26 of principal Act is hereby amended –

(a) by the substitution for subsection (1A) of the following subsection:

“(1A) Without derogating from the generality of subsection (1), the Minister may make regulations regarding— [

- (a) **the method of assessment to determine whether, for purposes of section 17, a serious injury has been incurred;**
- (b) **injuries which are, for the purposes of section 17, not regarded as serious injuries;]**
- (c) **the resolution of disputes arising from any matter provided for in this Act .];**
- (d) the procedure to lodge a claim for a benefit under section 17, including electronic lodgement;
- (e) the additional documents that must accompany the claim form or forms when lodging a claim for a benefit under section 17;
- (f) the procedure to pre-authorise benefits provided under an undertaking;
- (g) the procedure and form to lodge a complaint with the Adjudicator;
- (h) a tariff of fees between party and party applicable to litigious work performed by a legal practitioner acting for a third party to recover a benefit under section 17; and
- (i) other persons or functionaries who may lodge claims on behalf of a third party”;
and

(b) by the deletion of subsection (1B).

Insertion of sections 26A and 26B in Act 56 of 1996

24. The following sections are hereby inserted in the principal Act after section 26:

“26A. Terms and Conditions.

(1) The Board may stipulate –

(a) terms and conditions upon which claims for a benefit under section 17 shall be administered;

(b) the form or forms to be used to lodge a claim for a benefit under section 17;

(c) the information and form or forms to be used for purposes of section 22 to furnish the Fund with relevant accident information required for the investigation and settlement of claims; and

(d) provisions to ensure compliance with Protection of Personal Information Act, 2013.

(2) A stipulation made by the Board in terms of subsection (1) must be published as a Board Notice in the Gazette.”

26B. Rules for the investigation of complaints. – (1) The Minister may, on recommendation of the Adjudicator, make rules in respect of the investigation of complaints by the Adjudicator.

(2) The Rules contemplated in subsection (1) shall be published in the Gazette.”

Savings

25. Any claim for a benefit under section 17 of the principal Act in respect of which the cause of action arose prior to the date on which this Act takes effect must be dealt with as if this Act had not taken effect.

26. Substitution of certain words or expressions

The principal Act is hereby amended by the substitution for the expression “[**Intoxication**]” wherever it occurs, of the following expression “over the legally prescribed alcohol limit” .

Short title and commencement

27. This Act is called the Road Accident Fund Amendment Act, 2023 and it is hereby published for public comment.

MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2023

1. BACKGROUND

- 1.1 The Road Accident Fund Act, 1996 (Act No. 56 of 1996) (the Act), provides for the payment of compensation for loss or damage wrongfully caused by the driving of motor vehicles. The Act was amended by the Road Accident Fund Amendment Act, 2005 (Act No. 19 of 2005) (the Amendment Act), which came into operation on 1 August 2008.
- 1.2 In 1999 the Road Accident Fund Commission (RAFC) was appointed to “inquire into and make recommendations regarding a reasonable, equitable, affordable and suitable system, for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of an injury or death of persons in road accidents in the Republic.” The RAFC published its report in 2002 recommending a move to the provision of defined and structured benefits, on a “no-fault” basis. Cabinet subsequently adopted a Policy for the Road Accident Benefit Scheme and pursuant thereto, on 8 June 2017, the Minister of Transport submitted the Road Accident Benefit Scheme Bill, 2017 (RABS Bill) to Parliament.
- 1.3 The RABS Bill was referred to the Portfolio Committee on Transport and the Select Committee on Economic and Business Development. Following public consultation and deliberation by the 5th and the 6th Parliament, the Portfolio Committee on Transport reported to Parliament, in the “Report of the Portfolio Committee on Transport on the Road Accident Benefit Scheme Bill [B 17B – 2017], that it does not agree to the Bill and is of the view that amendments to the Act may be more prudent at this time.
- 1.4 The Department of Transport (DoT) and Road Accident Fund (RAF) started the process, of amending the Act , and Regulations in 2021, through the soliciting of legal opinion from various Senior Counsels on potential amendments to the Act that could be made to assist the RAF in achieving its objectives. This resulted in a draft RAF Bill that was recommended, by the RAF Board, for further processing by the

Department of DoT in April 2021. Various iterations ensued between the RAF and the DoT on the Draft Bill, and it was concluded that the RAF should not only include short to medium term strategic interventions but also include long term strategic interventions.

2. OBJECTS OF THE BILL

The object of the Bill is to further limit the liability of the Fund to improve the solvency and sustainability of the scheme, and to ensure a more equitable distribution of the risk assumed by the Fund, the private insurance industry, and other stakeholders.

3. CLAUSE BY CLAUSE DISCUSSION

3.1 As concluded by the RAFC the current scheme is not sustainable. The object of the Bill is to enhance the sustainability of the fund and better and equitable distribution of the Funds benefits to all South Africans.

3.2 The following is a clause-by-clause discussion on the amendments:

3.2.1 **Clause 1** amends section 1 of the Act providing for the deletion, amendment and insertion of certain definitions.

3.2.2 **Clause 2** amends section 2 of the Act by seeking to distinguish the nature of the Fund from insurance business in that the Fund provides a social security service to victims of motor vehicle accidents, and is consequently not subject to the Insurance Act, 2017 (Act No. 18 of 2017). There has been challenges arising from the incorrect classification of the Fund as an insurance company or “insurance – like” company. This classification is so, despite the Fund not being established in terms of the Insurance Act. This aligns the Act with the Road Fund Classification Guide as issued by the Public Sector Classification Committee.

3.2.3 **Clause 3** amends section 3 of Act by rationalizing the mandate of the Fund to provide benefits to qualifying claimants in respect of motor vehicle accidents that occur on a public road, only.

3.2.4 **Clause 4** amends section 4 of the Act by restructuring the powers and functions of the Fund to authorise the procurement of risk mitigation instruments, not just re-insurance, for any risk undertaken by the Fund. Furthermore, the power to stipulate terms and conditions is excised under the general powers and inserted as a new, enhanced, section 26A.

3.2.5 **Clause 5** and clauses **1, 7, 10,11, 12, 13, 14, 15, 16, 17, 19** and **21** do away with the need for agents to handle road accident matters on behalf of the Fund and everywhere in the Act where the word “agent”, “or the agent” or “such agent” applies the Fund was established to execute a legislative mandate of the Act. The Fund should and must be in a position to execute such a mandate with no need to appoint agents.

3.2.6. **Clause 6** amends section 9 of the Act by seeking to align the authorizing provision to enter into agreements in respect of the reciprocal recognition of compulsory motor vehicle insurance or compulsory motor vehicle accidents compensation, to include the Fund’s revised mandate of social benefit provision.

3.2.7 **Clause 7** amends section 10 of the Act by making it a requirement that the Board members must be 12 non-executive members to ensure independence and also includes the Chief Executive Officer and the Chief Financial Officer as executive members of the board, in line with sound corporate governance principles.

3.2.8 **Clauses 8** amends section 11 of the Act by providing for consequential amendments due to doing away with the need for agents to handle road accident matters on behalf of the Fund.

3.2.9 **Clause 9** amends section 12 of the Act by empowering the Board and the Chief Executive Officer to the appoint and determine the conditions of employment of staff and their dismissal to the exclusion of executive management.

3.2.10 **Clause 10** amends section 13 of the Act by providing for the submission of the annual report in line with the PFMA.

3.2.11 **Clause 11** amends section 14 of the Act by making it compulsory that the Fund must adhere to the provisions of the PFMA

3.2.12 **Clause 12** amends section 15 of the Act by providing for disputes under the Act to first be referred to the Road Accident Fund Adjudicator, before litigation can be pursued.

3.2.13 **Clause 13** amends section 17 of the Act by providing for consequential amendment due to doing away with the need for agents and also provide for the injuries benefit to qualifying third parties and death benefits

3.2.14 **Clause 14** amends section 18 of the Act by providing for consequential amendments due to doing away with the need for agents to handle road accident matters on behalf of the Fund.

3.2.15 **Clause 15** amends section 19 of the Act by providing for instances where the Fund will not be obliged to provide a benefit to any person in terms of section 17

3.2.16 **Clause 16** amends section 20 of the Act by providing by the deletion of the word's animal or human in subsection (1) because Road Accident Fund only covers vehicular claims which happened on a public road.

3.2.17 **Clause 17** amends section 17 of the Act by providing for consequential amendment due to the doing away with the need agents to handle road accident matters on behalf of the Fund.

3.2.18 **Clause 18** amends section 22 of the Act by providing for consequential amendment to doing away with agents as per the repeal of section 8 as provided for in clause 5 and further take away the power to prescribe but the Forms to be stipulated by the Board and also to empower other Agencies of the State to be in a position to furnish the fund with stipulated forms for settlement claims.

3.2.19 **Clause 19** amends section 23 of the Act by providing for the harmonization of the prescription regime as between claims where the insured driver is identified and claims where the insured driver is not identified

3.2.20 **Clause 20** amends section 24 of the Act by providing for the harmonization of the prescription regime as between claims where the insured driver is identified and claims where the insured driver is not identified.

3.2.21 **Clause 21** amends section 24 of the Act by providing for the insertion of the Alternative dispute resolution and also the establishment of the office of the Road Accident Fund Adjudicator.

3.2.22 **Clause 22** amends section 25 of the Act by providing for consequential changes relating to the Right of recourse to the Fund. It provides for a percentage deduction, over and above any merit apportionment, in respect of claims by claimants who were required to, but did not, wear a seatbelt or helmet, to penalize deviant behavior, and, to reduce the Fund's liability to make the scheme more affordable and sustainable.

3.2.23 **Clause 23** amends section 26 of the Act by making provision for the following:

3.2.23.1 consequential change relating to the Minister's powers to make regulations.

3.2.23.2 the Board to stipulate terms and conditions upon which claims for a benefit under section 17 shall be administered; and

3.2.23.3 the Minister to, on recommendation of the Adjudicator, make rules in respect of the investigation of complaints by the Adjudicator.

3.2.24 **Clause 24** amends section 26 by providing for the insertion of the provision dealing with Terms and conditions that may be stipulated by the Board and rules for the investigation of complaints by the Minister on recommendation of the Adjudicator.

3.2.25 **Clause 25** provides that the Act will apply prospectively.

3.2.26 **Clause 26** provides for the substitution of certain words or expressions.

3.2.27 **Clause 27** provides for the short title and commencement of the Act .

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Office of Road Accident Fund Adjudicator, a new organ of state, will need to be funded.

5. IMPLICATIONS FOR PROVINCES

None.

6. PARLIAMENTARY PROCEDURE

6.1 This Bill will be dealt with in accordance with the procedure established by section 75 of the Constitution unless the State Law Adviser decides that the Bill must be dealt with under section 76 of the Constitution.

6.2 It is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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