

**NOTICE 2758 OF 2004****DEPARTMENT OF TRANSPORT****PUBLICATION OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2005**

The Minister of Transport intends to table the Road Accident Fund Amendment Bill, 2005 in Parliament during the first parliamentary term in 2005. The Bill is published in accordance with Rule 241C of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 21 January 2005.

Submission must be addressed to:

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REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND AMENDMENT BILL

—————  
*(As presented by the Portfolio Committee on Transport (National Assembly) (The English  
text is the official text of the Bill)*  
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(MINISTER OF TRANSPORT)

[B - 2004]

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## 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.

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## B I L L

**To amend the Road Accident Fund Act, 1996, so as to extend the powers of the Fund regarding the conclusion of agreements; to alter the financial year of the Fund; to make new provision regarding the Board of the Fund; to further regulate the Fund's obligation to compensate a third party for general damages, for certain hospital or medical expenses, for future loss of income or support and for funeral expenses; to require the Fund to compensate a provider of emergency medical treatment directly, in accordance with a certain tariff; to repeal certain provisions limiting the liability of the Fund to R25 000 in respect of claims; to make further provision regarding the instances where the liability of the Fund shall be excluded; to extend the application of the provision in terms of which a claim for compensation lies against the Fund or an agent only; to authorise the Minister to adjust certain amounts in order to counter the effect of inflation; and to provide for matters connected therewith.**

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

**Amendment of section 4 of Act 56 of 1996, as amended by section 1 of Act 15 of 2001**

1. Section 4 of the Road Accident Fund Act, 1996 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the addition to subsection (2) of the following paragraph:

“(j) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services contemplated in this Act.”; and

(b) by the addition of the following subsection:

“(4) (a) The Fund may conclude an agreement with any other organ of State regarding any matter provided for in this Act in order to improve or ensure—

(i) the effective management of the Fund;

(ii) the efficiency of the Fund;

(iii) co-ordination of functions;

(iv) co-operative governance contemplated in Chapter 3 of the Constitution.

(b) The Minister shall, by notice in the Gazette, publish a summary of the terms of any agreement concluded under paragraph (a).”

**Amendment of section 6 of Act 56 of 1996**

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

"(1) The financial year of the Fund shall run from 1 **[May] April** of any year to **[30 April] 31 March** of the following year[: **Provided that the first financial year of the Fund shall be deemed to have commenced on the 1<sup>st</sup> of May immediately preceding the commencement of this Act].**".

**Amendment of section 10 of Act 56 of 1996, as amended by section 1 of Act 43 of 2002**

3. Section 10 of the principal Act is hereby amended—

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

**"Board of Fund[, and executive committee]";**

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

"(b) at least 8, but not more than 12, members appointed by the Minister, **[taking into account the recommendations referred to in subsection (9), if applicable,]** 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.";

- (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- "(c) hold office for a period of three years as from the date of appointment of such member, which period may be extended for a further period not exceeding three years.";
- (d) by the substitution for subsections (6) and (7) of the following subsections, respectively:
- "(6) The **[Board shall as soon as possible] Minister shall**—
- (a) appoint two of **[its] the members of the Board** as Chairperson and Vice-Chairperson, respectively[;
- (b) **establish an executive committee of the Board, which shall consist of three members of the Board, the Chairperson and Vice-Chairperson of the Board and the Chief Executive Officer].**
- (7) The Chairperson, or in his or her absence, the Vice-Chairperson, shall at all times preside at meetings of the Board **[and the executive committee].**"; and
- (e) by the deletion of subsections (8) and (9).

#### **Amendment of section 11 of Act 56 of 1996**

4. Section 11 of the principal Act is hereby amended by the deletion in subsection (1)(a) of subparagraph (iv).

**Amendment of section 12 of Act 56 of 1996**

5. Section 12 of the principal Act is hereby amended—

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

**"(a) The Minister shall [upon the recommendation of the Board], with the concurrence of the Board, appoint the Chief Executive Officer of the Fund on such terms and conditions of employment [as he or she may determine: Provided that the Chief Executive Officer of the Multilateral Motor Vehicle Accident Fund holding that office immediately prior to the commencement of this Act, shall be deemed to have been appointed as such in respect of the fund in terms of this subsection] as the Board may determine.";**

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

**"The Chief Executive Office shall[—**

**(i)] be a person who commands a knowledge of the management of motor vehicle accidents insurance or motor vehicle accidents compensation matters[; and**

**(ii) hold office at the Minister's pleasure]."; and**

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

**"(a) exercise the powers and shall perform the functions of the Fund mentioned in section [(4)(1)(b), (c) and (d), (2) and (3)] 4."**

**Substitution of section 17 of Act 56 of 1996**

6. The following section is hereby substituted for section 17 of the principal Act:

**“Liability of Fund and agents**

17. (1) The Fund or an agent shall—

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the 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 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 to compensate a third party for general damages, for pain and suffering, loss of amenities of life and disability, shall be limited to the amount of R100 000 in



respect of each claimant and shall be paid by way of a lump sum: Provided further that the Fund's obligation to pay such compensation shall only extend to a third party who suffers a serious injury as contemplated in subsection (1A)

(1A) (a) For the purposes of the proviso to subsection (1)

"serious injury" means a permanent injury which leads to total disablement or paralysis or dysfunction of a vital organ, and includes brain injuries, loss of sight, or loss of a limb or the use thereof or such other serious injuries as the Minister may prescribe.

(b) Assessment of serious injuries shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring injuries are considered in relation to the circumstances of the third party.

(c) The method of assessment shall entail assessment by provincial medical panels consisting of a representative from the Fund and external experts representing key medical fields relevant to road accident injuries.

(d) The Fund shall set up a peer review panel to oversee the assessments made by panels contemplated in paragraph (c).

**[(2) Upon acceptance of the amount offered as compensation in terms of subsection (1) the third party shall be entitled to the agreed party and party costs or taxed party and party costs in respect of the claim concerned.]**

(3) (a) No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order.

(b) In issuing any order as to costs on making such award, the court 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 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 the **[third party in respect of the said costs after the costs have been incurred and on proof thereof] provider of such service or treatment directly, in accordance with the prescribed tariff contemplated in subsection (4A):**
- (b) includes a claim for future loss of income or support, **[the Fund or an agent shall be entitled, after furnishing the third party in question with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to pay the amount payable by it or the agent in respect of the said loss, by instalments in arrear as agreed upon] the liability of the Fund or an agent shall be limited to the amount specified in subsection (4B).**

**(4A) (a) The liability of the Fund or an agent regarding the tariff contemplated in subsection (4)(a) and section 17(7) shall, in the case of compensation for—**

- (i) public health care, be based on tariffs determined for providers of such services, and shall be prescribed by the Minister after consultation with the Minister of Health; and
- (ii) private health care, be based on the National Health Reference Price List published by the Council for Medical Schemes, and shall be prescribed by the Minister after consultation with that Council.

(b) The tariff contemplated in paragraphs (i) and (ii) shall be prescribed after consultation with medical service providers and shall be reasonable compensation, taking into account factors such as the cost of such treatment and the ability of the Fund to provide the compensation.

(4B) (a) The liability of the Fund to compensate the third party for future loss of income or support as contemplated in section 17(4)(b) shall not exceed R160 000 per year.

(b) The liability of the Fund shall, in the case of future loss of income, cease upon the death of the third party or the attainment of the age of 65 years, whichever occurs first.

(c) Any compensation paid in respect of loss of support shall be divided equally amongst dependents.

(d) The liability of the Fund in respect of a claim for loss of support shall cease upon the date the deceased would have reached the age of 65 years or, if earlier—

- (i) in the case of such a claim by a spouse, upon remarriage; and
- (ii) in the case of such a claim by a dependent child, upon attainment of the age of 21 years.

(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 claim the amount 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 in terms of subsection (1) to the third party in respect of medical costs, loss of income and loss of support: 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.

(7) (a) When a person has provided a third party with emergency medical treatment as defined in paragraph (b), the Fund shall compensate such person directly, according to the prescribed tariff contemplated in subsection (4A), irrespective of any negligence or wrongfulness on the part of any person.

(b) For the purposes of paragraph (a) "emergency medical treatment" means the provision of reasonable and appropriate emergency treatment by a prescribed provider of such service in order to stabilize the emergency medical condition, and includes triaging, resuscitation, stabilization or monitoring of the patient.

**(c) For the purposes of paragraph (b) "emergency medical condition" means an acute injury or illness which requires immediate preventative or remedial medical intervention, where failure so to intervene would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or death of the person concerned.**

#### **Amendment of section 18 of Act 56 of 1996**

**7. Section 18 of the principal Act is hereby amended—**

- (a) by the deletion of subsection (1); and**
- (b) by the substitution for subsection (4) of the following subsection:**

**"(4) The liability of the Fund or an agent to compensate a third party for any loss or damage contemplated in section 17 which is the result of the death of any person shall in respect of funeral expenses be **[limited to the necessary actual costs to cremate the deceased or to inter him or her in a grave] fixed at R5 000.**"**

#### **Amendment of section 19 of Act 56 of 1996**

**8. Section 19 of the principal Act is hereby amended—**

- (a) by the addition at the end of paragraph (f)(ii) of the word "or" and by the addition of the following subparagraph:**

**"(iii) to attend a meeting arranged at the request of the Fund in order to elucidate matters relating to the claim, or at such meeting fails to**

respond truthfully and to the best of his or her knowledge to questions put."; and

(b) by the addition of the following paragraph:

"(g) suffered as a result of an emotional shock sustained by that person when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle."

### **Substitution of section 21 of Act 56 of 1996**

9. The following section is hereby substituted for section 21 of the principal Act:

#### **"Claim for compensation lies against Fund or agent [only] and others**

21. When a third party is entitled under section 17 to claim from the Fund or an agent any compensation in respect of any loss or damage resulting from any bodily injury to or death of any person caused by or arising from the driving of a motor vehicle by the owner thereof or by any other person with the consent of the owner, that third party may not claim compensation in respect of that loss or damage from the owner or from the person who so drove the vehicle, or if that person drove the vehicle as an employee in the performance of his or her duties, from his or her employer—

(a) to the extent that the Fund or such agent has already paid or has agreed to pay or is obliged to pay the compensation; or

(b) unless the Fund or such agent is unable to pay the compensation."

**Insertion of sections in Act 56 of 1996**

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

**“Regulations in respect of serious injury**

26A. The Minister may, in relation to section 17(1) and (1A), make regulations regarding—

- (a) the method of assessment to determine whether a serious injury has been incurred;
- (b) injuries which are, for the purposes of those sections, not regarded as serious injuries;
- (c) the establishment of provincial assessment panels who shall have the power to determine the nature of injuries sustained as a result of a road accident;
- (d) the establishment of provincial peer review panels to oversee the assessment process and outcomes;
- (e) the resolution of disputes about the assessment of the nature of an injury.

**Regulations in respect of medical tariffs**

26B. The Minister may, in relation to section 17(4)(a), (4A) and (7), make regulations regarding—

- (a) the procedure and format for the submission of claims by providers of medical services to the Fund;
- (b) reports on the recovery of patients to be submitted to the Fund by medical service providers;
- (c) periodical assessment of injured persons;
- (d) the resolution of disputes between the Fund and health care providers.

**Regulations in respect of emergency medical treatment**

26C. The Minister may, in relation to section 17(7), make regulations regarding—

- (a) persons who shall be recognized as providers of emergency medical treatment;
- (b) the procedure and format in which providers of emergency medical services must submit their claims to the Fund;

- (c) reports to be submitted to the Fund by medical service providers;
- (d) the resolution of disputes between the Fund and providers of emergency medical treatment.

### **Amendment of certain amounts**

**26D.** (1) The Minister may, after consultation with the Board, by notice in the Gazette amend any amount referred to in section 17 or 18(4) in order to counter the effect of inflation.

(2) The Minister shall, at least 120 days before any amendment contemplated in paragraph (a), publish a notice in the Gazette—

- (a) stating the intention to amend the amount;
- (b) setting out the proposed content of the amendment; and
- (c) inviting comment or objections for submission to the Director-General: Transport within the period specified in that notice.”.

### **Savings**

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

### **Short title**

12. This Act is called the Road Accident Fund Amendment Bill, 2004, and takes effect on a date determined by the President by proclamation in the *Gazette*.



## MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2004

### OBJECTS OF BILL

1. The Road Accident Fund Amendment Bill, 2004 ("the Bill"), seeks to amend the Road Accident Fund Act, 1996 (Act No. 56 of 1996) ("the Act"), in various respects. These amendments are aimed at improving the governance of the Fund and addressing some issues, which would affect the liquidity of the Fund. The Bill is a redraft of the Road Accident Fund Amendment Bill, 2003 ("B64-03"), currently before Parliament.

2. The Bill seeks to authorise the Minister of Transport to appoint the Chairperson and Vice-Chairperson of the Board of the Fund. It also seeks to abolish the executive committee of the Board. In terms of the proposed amendments, the Minister will be appointed the Chief Executive Officer of the Fund, with the concurrence of the Board.

3. It is also proposed in the Bill to put a monetary limit on claims for general damages, for pain and suffering, loss of amenities of life and disability, for future loss of income or support and for funeral expenses. A method for determining tariffs for payment of medical expenses is provided for. Those tariffs will be based on the tariffs used for public and private service providers. It is also proposed to repeal the provision in terms of which the Fund is liable for the legal costs of claimants. These limitations will result in savings for the Fund.

4. A provision is proposed in terms of which the Fund will be required to compensate a provider of emergency medical treatment directly, irrespective of any wrongfulness or negligence on the part of any person. It is believed that this provision will persuade providers of emergency medical treatment to provide such treatment to any person involved in a motor vehicle accident.

5. The Bill furthermore seeks to repeal section 18(1) of the Act in terms of which the liability of the Fund for certain claims (e.g. claims in respect of persons who were conveyed for reward) is limited to the amount of R25 000. It is believed to be unfair to have a specific limitation on such claims and that such claims should be treated the same as any other claim.

6. In terms of a further provision in the Bill, it is proposed that the Fund's liability be excluded—

- (a) if a person fails to attend a meeting in order to be questioned in respect of a claim or to answer truthfully to questions put. (This

provision will assist the Fund in establishing the validity of claims);  
and

- (b) where a person sustained emotional shock when he or she was informed of an accident. (This provision will also effect a saving for the Fund).

7. Since it is proposed in the Bill to limit the Fund's liability, it should be made clear that the part of a claim not covered by the Fund may be claimed elsewhere. It is therefore proposed in the Bill to substitute section 21 of the Act. The effect of the substitution will be that the third party may claim that part of the compensation not covered from by the Fund, from the owner or driver of the vehicle concerned

8. If the penultimate clause of the Bill is approved, the envisaged Road Accident Amendment Act, 2004, will not apply to claims in respect of which the cause of action arose prior to the commencement of that Act. It would be unfair, and arguably unconstitutional, to accord retrospectivity to the Act. Thus, the Act will only apply to claims that arose after the commencement of the Act.

#### **CONSULTATIONS**

The Department took the oral and written comments and inputs given during the consultation process in the Portfolio Committee Hearings in 2003, regarding B64-03, into account; the Department presented the Draft Bill to the Road Accident Fund Board and their comments were incorporated; National Treasury was consulted on both the Bill and the financial implications of the Bill.

#### **FINANCIAL IMPLICATIONS FOR STATE**

9. The Bill will improve the financial sustainability the Fund.

#### **PARLIAMENTARY PROCEDURE**

10. The State Law Advisers and the Department of Transport are of the view that this Bill must be dealt with in the same manner as in the case of B64 - 03, i.e. in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.