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THE PRESIDENCY

No. 3

5 January 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 19 of 2005: Road Accident Fund Amendment Act, 2005



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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 1st 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 paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) the Director-General: Transport or any other senior officer in the Department of Transport, designated by him or her **[for a particular purpose]**; and

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

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

(e) 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]** 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].**”;

(f) by the deletion of subsection (8);

(g) by the substitution for subsection (9) of the following subsection:

“(9) Whenever it is necessary to appoint a member referred to in subsection (1)(b) to the Board, but subject to subsection (10){—

(a), the Minister shall—

[(i)] (a) by notice in the *Gazette* and the national news media, **[call for the nomination of]** invite persons or bodies who have an interest in the operations of the Fund to nominate persons who comply with the criteria mentioned in subsection (1)(b);

[(ii)](b) so publish a list of nominees received in response to such **[call; and**

- (iii) establish a selection committee, constituted as follows:
 - (aa) The Director-General: Transport;
 - (bb) one member of the Portfolio Committee on Transport (National Assembly), designated by that Committee;
 - (cc) one member of the select committee on transport (Senate), designated by that Committee; and
 - (dd) two persons who have extensive experience in third party compensation, appointed by the Minister; and
- (b) the selection committee shall hold interviews in public with such of the nominees who are available, and make recommendations to the Minister] invitation, which list shall include the names of the relevant nominators.”; and
- (h) by the insertion after subsection (9) of the following subsection:
 - “(9A) The Minister shall cause the name of a member appointed under subsection (1)(b), or reappointed under subsection (2)(c), together with such member’s area of expertise, to be published in the *Gazette*.”.

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, 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.”; and
- (b) by the substitution in subsection (1) for paragraph (6) of the following paragraph:
 - “(b) The Chief Executive Officer 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] is suitably qualified and experienced to manage the day to day affairs of the Fund.”.

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 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. 5

(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. 10

(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) 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.] 15

(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. 20

(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. 25

(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= 30

(i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or 35

(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 sunoort, **[the Fund or an 40**

Fund or the agent shall be paid by way of a lump sum or in instalments 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— 50

(i) R160 000 per year in the case of a claim for loss of income; and

(ii) R160 000 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

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 [the] 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 in terms of subsection (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: 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

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

(a) by the deletion of subsection (1); and

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

“(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[, or the amount of R25 000 (whichever is the lesser)] and any lesser amount to which that third party is entitled by way of compensation under the said Act; and”.

Amendment of section 19 of Act 56 of 1996

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

(a) by the deletion of paragraph (b); and

(b) by the addition at the end of paragraph (f)(ii) of the word “or” and 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: 5

“Abolition of certain common law claims

from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie—

(a) against the owner or driver of a motor vehicle; or 10

(b) against the employer of the driver.

(2) Subsection (1) does not apply —

(a) if the Fund or an agent is unable to pay any compensation; or 15

(b) to an action for compensation in respect of loss or damage resulting from emotional shock sustained by a person, other than a third party, 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

Amendment of section 23 of Act 56 of 1996

10. Section 23 of the principal Act is hereby amended by the substitution for 20 subsection (3) of the following subsection:

“(3) Notwithstanding subsection(1), no claim which has been lodged in terms of section 17(4)(a) or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.”.

Substitution of section 26 of Act 56 of 1996

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11. The following section is hereby substituted for section 26 of the principal Act:

Minister may make regulations regarding—

(a) the method of assessment to determine whether, for purposes of 35 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. 40

(1B) Any regulation made under subsection (1A)(a) or (b) must be made

Savings

12. 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**5**

13. This Act is called the Road Accident Fund Amendment Act, 2005, and takes effect on a date determined by the President by proclamation in the *Gazette*.