

BENEFITS COMPARISON BETWEEN RAF SCHEME AND THE PROPOSED RABS

Difference between RAF Scheme & RABS

For purposes of the comparison, the current Road Accident Fund Act, No. 56 of 1996 (as amended on 1 August 2008) is compared to the RABS Bill published for public comment on 9 May 2014.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
Nature of scheme	Based on common law (law of delict). Adversarial in nature. Claimant required to prove that someone else was negligent and that negligence was the cause of the accident which resulted in injuries or death.	Common law and law of delict have been removed. The claimable damages are replaced with prescribed benefits.
	Where there is contributory negligence on the part of the claimant the payment to the claimant is reduced in proportion to the claimant's contributory negligence. Even a passenger claim is open to an apportionment, e.g. failure to wear a seatbelt or failure to wear a helmet. Claims can be excluded in total on the basis of common law principles of voluntary acceptance of the risk by the claimant.	The "guilty driver" remains indemnified by scheme, but no "wrongdoer" /insured driver for purposes of scheme.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
	The RAF scheme indemnifies the “wrongdoer” by stepping into the shoes of the “wrongdoer”. The claim must be made against the RAF. The RAF has at its disposal all the defenses that would otherwise be available to the “wrongdoer” / insured driver.	
Merits/Qualifying Criteria	Before the RAF can accept a claim it must establish: (i) if someone else (insured driver) was responsible for the accident, if so (ii) (ii) if the claimant was contributory negligent (iii) (iii) agree to the apportionment of the claim.	Did the claimant sustain damage to an assistive device or an injury / lose a breadwinner in a motor vehicle accident?
	Failure to agree to the above may result in litigation where the court is called upon to determine (i) – (iii).	It is irrelevant how the accident occurred (except for the exclusion of claims arising from the use of a motor vehicle to perpetrate a terrorist activity). Questions of who was at fault or whether there has been contributory negligence on the part of the claimant do not arise.
Benefits	<ol style="list-style-type: none"> 1. Past medical expenses; 2. Future medical expenses; 3. Past loss of earnings; 4. Future loss of earnings; 5. Past loss of support; and 6. Future loss of support. 7. General damages (serious injury only). 	<ol style="list-style-type: none"> 1. Health care services; 2. Temporary income support benefits; 3. Long-term income support benefits; 4. Family support benefits; and 5. Funeral benefits.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
Object & Duties	Object is payment of compensation in accordance with the Act for loss or damage wrongfully caused by the driving of a motor vehicle.	<p>Object is to:</p> <ol style="list-style-type: none"> 1. 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; 2. exclude from civil liability certain persons responsible for bodily injuries or death caused by or arising from road accidents; 3. establish the Administrator; 4. establish procedures for the assessment and determination of claims and disputes; and 5. provide for transitional arrangements regarding the Board, staff, assets, rights and obligations of the RAF.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
	No duties specified.	Duties are to: <ol style="list-style-type: none"> 1. assist qualifying persons to submit claims; 2. receive claims and medical reports; 3. assess, accept or reject claims for benefits and establish and maintain a database of claimants and beneficiaries; 4. determine appeals regarding the entitlement to or the provision of benefits; 5. facilitate access to early and effective medical and vocational rehabilitation for injured persons; 6. enter into agreements with public and private health care service providers for the provision of health care services; 7. adopt measures to detect, investigate and prevent fraudulent and corrupt activities regarding claims and the provision of benefits; and 8. keep such accounting and related records as required by law.
Exclusions	Neither the driver nor the owner of the motor vehicle concerned would have been liable.	Claims excluded for injuries/death resulting from use of a motor vehicle to perpetrate a terrorist activity.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
	<p>If the claim concerned has not been instituted and prosecuted by the claimant, or on behalf of the third party by—</p> <ul style="list-style-type: none"> • any person entitled to practise as an attorney within the Republic; or • any person who is in the service, or who is a representative of the state or government or a provincial, territorial or local authority. 	<p>Dependents of deceased breadwinners who were illegal foreigners not entitled to any benefit.</p>
	<p>Where the third party has entered into an agreement with any person other than the one referred to in the above bullet in accordance with which the third party has undertaken to pay such person after settlement of the claim —</p> <ul style="list-style-type: none"> • a portion of the compensation in respect of the claim; or • any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in the above bullet. 	<p>Benefits are excluded where RABSA suspends or terminates the benefit because the beneficiary unreasonably refuses to undergo a medical assessment or necessary medical treatment, unreasonably fails to comply with any condition related to a benefit, unreasonably refuses to participate in an individual treatment and rehabilitation plan, or vocational training programme, or to accept employment, provides false or misleading information as part of the claim.</p>

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
	<p>Suffered as a result of bodily injury to any person who—</p> <ul style="list-style-type: none"> • unreasonably refuses or fails to subject himself or herself, at the request and cost of the RAF or the RAF's agent, to any medical examination or examinations by medical practitioners designated by the RAF or the RAF's agent; • refuses or fails to furnish the RAF or the RAF's 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; or • Refuses or fails to allow the RAF or the RAF's 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. 	
Limitations	None – passenger claim limitations removed.	
	Compensation for Occupational Injuries and Diseases (COID) payments deducted - COID can claim from RAF.	Only health care services provided in RSA are covered.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
		Illegal foreigners entitled to health care services benefit for emergency medical treatment only.
		Temporary/long-term income benefits only paid to beneficiaries who are ordinarily resident in RSA.
		Family support benefit paid only to beneficiaries who are ordinarily resident in RSA.
		COVID payments deducted - COVID cannot claim from RABS.
Tariffs	No tariff for non-emergency medical treatment.	Reasonable necessary cost applies in lieu of tariff.
	Tariff applies to emergency medical treatment.	If tariff prescribed then same applies to non-contracted health care services costs.
	No contracted medical service providers to treat claimants.	All treatment provided by contracted health care service providers will be in accordance with the contracted tariff agreed upon.
	Medical schemes cannot claim.	Medical schemes can claim.
		RABS can pay a contracted health care service provider without a claim in terms of the Act having been lodged – such claims must be lodged in terms of the contract.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
Future Medical Treatment	RAF can issue an undertaking. No powers to enforce agreement of a treatment plan.	RABS has powers to enforce a treatment plan when the beneficiary unreasonably refuses consent. Once agreed, RABS will only be liable for treatment per agreed treatment plan. RABS can limit treatment in treatment plan to services provided by contracted health care service providers.
Vocational Rehabilitation	RAF not required to provide vocational rehabilitation, unless requirement proven and agreed or ordered by court.	In RABS, required to provide vocational rehabilitation. RABS has powers to agree to a vocational rehabilitation plan with the beneficiary. Once agreed, RABS can suspend income support benefits if beneficiary does not partake in the agreed vocational rehabilitation plan.
		The Minister may prescribe a cap in respect of the RABS liability to provide vocational rehabilitation.
Loss of Earning/ Income	Only actual loss compensated. No deemed income.	Where no income can be proven a deemed loss will be compensated – “national annual average income”.
	No legislated age limits as long as loss is proven. Not linked to residence.	Temporary income benefit: excluding first 60 days following accident; for period up to 24 months from date of accident – entitlement from age 18 to age 60.
	Upper cap does apply to loss.	Long-term income benefit: excluding first 24 months following accident; entitlement from age 18 to age 60.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
	Not formula based. Actuaries base loss calculations on assumptions. Courts make awards with reference to precedent, which may differ in the various jurisdictions.	Must be ordinarily resident in RSA.
		Formula based benefit – no one earns less than deemed income and no benefit calculated above income ceiling.
Loss of Support	Only actual loss compensated. No deemed income.	Where no income can be proven a deemed loss will be compensated – “average annual national income”.
	No age limits as long as loss is proven. Not linked to residence.	Family support benefit: no waiting period; entitlement to benefit below age 18 (minor dependent) or to age 60 or for 15 years (spouse), whichever period is shortest, or else for as long as dependency can be proven if dependent not a child or spouse.
	Upper cap does apply to loss.	Must be ordinarily resident in RSA.
	Not formula based. Actuaries base loss calculations on assumptions. Courts make awards with reference to precedent, which differ in the various jurisdictions.	Formula based benefit – no one earns less than deemed income and no benefit calculated above income ceiling.
Payment	RAF can make interim payment of past medical cost, past loss of income and past loss of support claims. Such payments usually made in a lump-sum. All other payments made in a once-off lump-sum.	Medical treatment claims paid as and when received. No up-front payments for future medical treatment. Payment of income and family support benefits are made monthly. Funeral benefit paid once-off.

	ROAD ACCIDENT FUND (RAF)	ROAD ACCIDENT BENEFIT SCHEME (RABS)
Benefit Review, Suspension, Termination	No.	Yes.
Power to Subpoena Witnesses	No.	Yes.
Power to Access Records	No.	Yes.
Internal Appeals	No.	Yes.
Liability for Claimant Costs & Disbursements	Yes, for serious assessment costs only, provided injury assessed as serious and provided RAF liable overall. Also liable for legal costs awarded by court.	Yes, for all reports required by the Act (included as a medical treatment cost). Also liable for legal costs awarded by court.
Funding	Fuel levy.	RABS – fuel levy. RAF liability – appropriations by Parliament.
Development of Legislation	Ministry of Transport (MoT) responsible for Act, Regulations, Forms & Emergency Medical Tariff.	MoT responsible for Act, Regulations & Tariff. RABS responsible for Rules and Forms.