

# DEPARTMENT OF TRANSPORT

No. R. ....

Date ...

ROAD ACCIDENT FUND ACT, 1996

## ROAD ACCIDENT FUND REGULATIONS, 2008

The Minister of Transport has, under section 26 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), made the Regulations in the Schedule hereto.

### SCHEDULE

#### 1 Definitions

In these Regulations, unless the context otherwise indicates—

- (i) “appeal tribunal” means the tribunal constituted in terms of regulation 3(8);

- (ii) “AMA Guides” means the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, Sixth Edition, or such edition thereof as the Fund may from time to time give notice of in the *Gazette*;
- (iii) “dispute resolution form” means a duly completed form RAF5, attached hereto as annexure E, or such amendment or substitution thereof as the Fund may from time to time give notice of in the *Gazette*.
- (iv) “day” means any day other than a Saturday, Sunday or public holiday;
- (v) “fiscal year” means the period commencing on the first day of March of a given year and ending on the last day of February of the subsequent year;
- (vi) “health care provider” means a health care provider, as defined in the National Health Act, 2003 (Act No. 61 of 2003).
- (vii) “health practitioner” means a practitioner of a profession registrable in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);
- (viii) “medical practitioner” means a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974);

- (ix) “Registrar” means the Registrar of the Health Professions Council of South Africa established in terms of section 2 of the Health Professions Act, 1974 (Act No. 56 of 1974).
- (x) “serious injury assessment report” means a duly completed form RAF4, attached hereto as annexure D, or such amendment or substitution thereof as the Fund may from time to time give notice of in the *Gazette*.

## **2 Further provision for liability of Fund in terms of section 17(1)(b)**

- (1) (a) A claim for compensation referred to in section 17(1)(b) of the Act shall be sent or delivered to the Fund in accordance with the provisions of section 24 of the Act, within two years from the date upon which the cause of action arose.
- (b) A right to claim compensation from the Fund under section 17(1)(b) of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a).

- (c) In the event of a claim having been lodged in terms of paragraph (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.
- (2) Notwithstanding anything to the contrary contained in any law a claim for compensation referred to in section 17(1)(b) of the Act shall be sent or delivered to the Fund within two years from the date upon which the cause of action arose irrespective of any legal disability to which the third party concerned may be subject.

### **3 Assessment of serious injury in terms of section 17(1A)**

- (1) (a) A third party who wishes to claim compensation for non-pecuniary loss shall submit himself or herself to an assessment by a medical practitioner in accordance with these Regulations.
- (b) The medical practitioner shall assess whether the third party's injury is serious in accordance with the following method:
- (i) The Minister may publish in the *Gazette*, after consultation with the Minister of Health, a list of injuries which are for purposes of section 17 of the Act not to be regarded as serious injuries and no injury shall be assessed as serious if that injury meets the description of an injury which appears on the list.

- (ii) If the injury resulted in 30 per cent or more Impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious.
  
- (iii) An injury which does not result in 30 per cent or more Impairment of the Whole Person may only be assessed as serious if that injury:
  - (aa) resulted in a serious long-term impairment or loss of a body function;
  - (bb) constitutes permanent serious disfigurement;
  - (cc) resulted in severe long-term mental or severe long-term behavioural disturbance or disorder; or
  - (dd) resulted in loss of a foetus.
  
- (iv) The AMA Guides must be applied by the medical practitioner in accordance with operational guidelines or amendments, if any, published by the Minister from time to time by notice in the Gazette.
  
- (v) Despite anything to the contrary in the AMA Guides, in assessing the degree of impairment, no number stipulated in

the AMA Guides is to be rounded up or down, regardless of whether the number represents an initial, an intermediate, a combined or a final value, unless the rounding is expressly required or permitted by the guidelines issued by the Minister.

(vi) The Minister may approve a training course in the application of the AMA Guides by notice in the *Gazette* and then the assessment must be done by a medical practitioner who has successfully completed such a course.

(2) (a) Unless otherwise provided in these Regulations, the costs of an assessment shall be borne by the Fund or an agent only if the third party's injury is found to be serious and the Fund or the agent attracts overall liability in terms of the Act.

(b) The Fund or an agent may at its cost, at the request of a third party, make available to the third party the services of, or, alternatively, refer the third party to—

(i) a medical practitioner for purposes of an assessment in accordance with these Regulations; and

(ii) a health care provider, for purposes of collecting and collating information to facilitate such an assessment

if the Fund decides that there is a reasonable prospect that a medical practitioner may assess the injury to be serious and the third party lacks sufficient funds to obtain an assessment.

(3) (a) A third party whose injury has been assessed in terms of these Regulations shall obtain from the medical practitioner concerned a serious injury assessment report.

(b) A claim for compensation for non-pecuniary loss in terms of section 17 of the Act shall be submitted in accordance with the Act and these Regulations, provided that:

(i) the serious injury assessment report may be submitted separately after the submission of the claim at any time before the expiry of the periods for the lodgement of the claim prescribed in the Act and these Regulations; and

(ii) where maximal medical improvement, as provided in the AMA Guides, in respect of the third party's injury has not yet been reached and where the periods for lodgement of the claim prescribed in terms of the Act and these Regulations will expire before such improvement is reached, the third party shall, notwithstanding anything to the contrary contained in the AMA Guides, submit himself or herself to an assessment and

lodge the claim and the serious injury assessment report prior to the expiry of the relevant period.

(c) The Fund or an agent shall only be obliged to compensate a third party for non-pecuniary loss as provided in the Act if a claim is supported by a serious injury assessment report submitted in terms of the Act and these Regulations and the Fund or an agent is satisfied that the injury has been correctly assessed as serious in terms of the method provided in these Regulations.

(d) If the Fund or an agent is not satisfied that the injury has been correctly assessed, the Fund or an agent must:

(i) reject the serious injury assessment report and furnish the third party with reasons for the rejection; or

(ii) direct that the third party submit himself or herself, at the cost of the Fund or an agent, to a further assessment to ascertain whether the injury is serious, in terms of the method set out in these Regulations, by a medical practitioner designated by the Fund or an agent.

(e) The Fund or an agent must either accept the further assessment or dispute the further assessment in the manner provided in these Regulations.

- (4) If a third party wishes to dispute the rejection of the serious injury assessment report, or in the event of either the third party or the Fund or the agent disputing the assessment performed by a medical practitioner in terms of these Regulations, the disputant shall:
- (a) within 90 days of being informed of the rejection or the assessment, notify the Registrar that the rejection or the assessment is disputed by lodging a dispute resolution form with the Registrar;
  - (b) in such notification set out the grounds upon which the rejection or the assessment is disputed and include such submissions, medical reports and opinions as the disputant wishes to rely upon; and
  - (c) if the disputant is the Fund or agent, provide all available contact details pertaining to the third party.
- (5) (a) If the Registrar is not notified that the rejection or the assessment is disputed in the manner and within the time period provided for in subregulation (4), the rejection or the assessment shall become final and binding unless an application for condonation is lodged with the Registrar as well as sent or delivered to the other party to the dispute.

- (b) A written response to the application for condonation may be submitted with the Registrar within 15 days after receipt of the application for condonation and a reply thereto may be lodged within 10 days.
- (c) Every application for condonation, response and reply shall—
- (i) be clear and succinct and to the point;
  - (ii) furnish fairly all such information as is necessary to enable the appeal tribunal to decide the application; and
  - (iii) deal with the merits of the dispute only insofar as is necessary for the purpose of explaining and supporting the grounds for or against condonation.
- (d) The Registrar shall refer the application for condonation together with any response and reply to the appeal tribunal.
- (e) The appeal tribunal when considering the application for condonation may call for the submission of—
- (i) further information; or
  - (ii) any additional documentation;

and the party concerned shall lodge with the Registrar the requested further information and documents within the period stipulated by the appeal tribunal.

- (f) If either party fails to comply with the direction given by the appeal tribunal, the appeal tribunal may dispose of the application in its incomplete form without having regard to the further information or documents called for.
- (g) The appeal tribunal shall decide whether or not to condone the late notification of a dispute and inform the parties accordingly.
- (h) If late notification is not condoned, the rejection or the assessment shall become final and binding.
- (6) The Registrar shall within 15 days of having been notified of a dispute in terms of subregulation (4), or notified that condonation is granted to a disputant in terms of subregulation (5), inform in writing the other party of the dispute and provide copies of all the submissions, medical reports and opinions submitted by the disputant to the other party.
- (7) After being informed in terms of subregulation (6), the other party may:
- (a) in writing and within 60 days notify the Registrar which submissions, medical reports and opinions are placed in dispute; and
- (b) attach to such notification the submissions, medical reports and opinions relied upon.

- (8) (a) After receiving the notification from the other party or the expiry of the 60 day period, referred to in subregulation (6), the Registrar shall refer the dispute for consideration by an appeal tribunal paid for by the Fund.
- (b) The appeal tribunal consists of three independent medical practitioners with expertise in the appropriate areas of medicine, appointed by the Registrar, who shall designate one of them as the presiding officer of the appeal tribunal.
- (c) The Registrar may appoint an additional independent health practitioner with expertise in any appropriate health profession to assist the appeal tribunal in an advisory capacity.
- (9) (a) The Registrar shall in writing inform the parties who the persons are that he or she has appointed in terms of subregulation (8).
- (b) (i) If a party is aggrieved by any one or more of the appointments made by the Registrar in terms of subregulation (8), such party shall within 10 days deliver a written motivation to the Registrar and the other party, setting forth grounds upon which the party objects to the appointment made.

- (ii) The other party may respond in writing within 10 days by delivering a response to the Registrar and the aggrieved party.
  - (iii) The Registrar may, upon receipt of a written motivation, and a response thereto, if any, either confirm the appointment made in terms of subregulation (8) or substitute any one or more of the initial appointments made, and such decision by the Registrar shall be final.
- (10) (a) If it appears to the majority of the members of the appeal tribunal that a hearing for the purpose of considering legal arguments may be warranted, the presiding officer of the appeal tribunal shall notify the Registrar to this effect in writing, stating reasons.
- (b) When the Registrar receives the notification he or she shall request the chairperson of the bar council, alternatively the chairperson of the law society, of the jurisdictional area concerned, to appoint an advocate of the High Court of South Africa, or an attorney of the High Court of South Africa, with at least five years of experience in practice.
- (c) The advocate or attorney, once appointed, shall consider the reasons submitted to the Registrar by the presiding officer of the appeal tribunal and shall within 10 days of his or her appointment

make a recommendation in writing on whether a hearing is warranted.

(d) The appeal tribunal shall consider the recommendation made by the advocate or attorney and determine, in writing, whether the nature of the dispute warrants a hearing for the purpose of considering legal arguments.

(e) If the appeal tribunal determines that a hearing is warranted, the appointed advocate or attorney shall preside at the hearing and the Registrar shall—

(i) inform the parties to the dispute that a hearing will be held at a place and time determined by the appointed advocate or attorney;

(ii) inform the parties that they are entitled to legal representation, at their own cost, at the hearing and to present legal arguments at the hearing; and

(iii) inform the parties of any additional procedures adopted by the advocate or attorney appointed to preside at the hearing.

(f) The appointed advocate or attorney shall within 10 days of concluding the hearing make written recommendations to the

appeal tribunal in relation to the legal issues arising from the hearing.

(g) The appeal tribunal shall consider the recommendations made by the said advocate or attorney and determine, in writing, the legal issues.

(h) If the appeal tribunal determines in terms of paragraph (d) that the nature of the dispute does not warrant a hearing or, if it determines that such a hearing is warranted and the legal issues arising from the hearing have been determined in terms of paragraph (g), the functions of the appointed advocate or attorney shall cease and the appeal tribunal shall thereafter exercise any of the powers provided for in subregulation (11).

(11) The appeal tribunal shall have the following powers:

(a) Direct that the third party submit himself or herself, at the cost of the Fund or an agent, to a further assessment to ascertain whether the injury is serious, in terms of the method set out in these Regulations, by a medical practitioner designated by the appeal tribunal.

(b) Direct, on no less than five days written notice, that the third party present himself or herself in person to the appeal tribunal at a place

and time indicated in the said notice and examine the third party's injury and assess whether the injury is serious in terms of the method set out in these Regulations.

- (c) Direct that further medical reports be obtained and placed before the appeal tribunal by one or more of the parties.
- (d) Direct that relevant pre- and post-accident medical, health and treatment records pertaining to the third party be obtained and made available to the appeal tribunal.
- (e) Direct that further submissions be made by one or more of the parties and stipulate the time frame within which such further submissions must be placed before the appeal tribunal.
- (f) Refuse to decide a dispute until a party has complied with any direction in paragraphs (a) to (e) above.
- (g) Determine whether in its majority view the injury concerned is serious in terms of the method set out in these Regulations.
- (h) Confirm the assessment of the medical practitioner or substitute its own assessment for the disputed assessment performed by the medical practitioner, if the majority of the members of the appeal tribunal consider it appropriate to substitute.

- (i) Confirm the rejection of the serious injury assessment report by the Fund or an agent or accept the report, if the majority of the members of the appeal tribunal consider it is appropriate to accept the serious injury assessment report.
- (12) Unless there has not been compliance with directions issued in terms of subregulation (11)(a) to (e) above, the appeal tribunal shall notify the Registrar of its findings within 90 days after the referral of the dispute in terms of subregulation (8), or such additional period as the Registrar may on application from the appeal tribunal authorise in writing.
- (13) The Registrar shall inform the parties of the findings of the appeal tribunal, which findings shall be final and binding.
- (14) (a) The Fund shall bear the reasonable costs of the Health Professions Council of South Africa arising from subregulations (4) to (13), as agreed between the Fund and the said Council, or, failing such agreement, as determined by the Minister after consultation with the Minister of Health.
- (b) The Fund shall bear the reasonable fees and expenses, as determined or approved by the Fund, of the persons appointed in terms of subregulations (8) and (10)(b).

**4 Further provision in respect of claim for loss of income or support in terms of section 17(4)(c)**

In proportionately calculating the annual loss of income or support referred to in section 17(4)(c) of the Act, such loss shall be calculated per fiscal year.

**5 Medical tariffs in terms of section 17(4B)**

- (1) The liability of the Fund or an agent contemplated in section 17(4B)(a) of the Act, shall be determined in accordance with the Uniform Patient Fee Schedule for fees payable to public health establishments by full-paying patients, prescribed under section 90(1)(b) of the National Health Act, 2003 (Act No. 61 of 2003), as revised from time to time.
- (2) The liability of the Fund or an agent contemplated in section 17(4B)(b) of the Act shall be determined in accordance with the tariff published by the Fund from time to time in the Gazette and such tariff shall apply only in the case of the immediate, appropriate and justifiable medical evaluation, treatment and care required in an emergency situation in order to preserve the person's life or bodily functions, or both.
- (3) The liability of the Fund or an agent, in circumstances other than contemplated in subregulations (1) and (2), including but not limited to the costs of alterations to a building or premises, or modification of a

motor vehicle, shall be based on any reasonable quotation either submitted to or obtained by the Fund or an agent.

## **6 Further provision for procedural matters contemplated in section 24**

- (1) Any reference in section 24(1)(b) of the Act to the Fund's principal, branch or regional office, or to an agent's registered office or local branch office, shall for the purposes of compliance with that section, refer to such principal, branch or regional office of the Fund, or registered office or local branch office of an agent, as the case may be—
  - (a) which is situated nearest to the location where the occurrence from which the claim arose took place; or
  - (b) which is situated nearest to the location where the third party resides.
- (2) (a) The Fund or an agent shall at any time after having received a claim for compensation referred to in s 17(1) of the Act, be entitled to require the third party concerned to submit to questioning by the Fund or an agent at a place indicated by the Fund or an agent or to make a further sworn statement regarding the circumstances of the occurrence concerned or any aspect of it.

(b) In the event of the Fund or an agent requiring the third party to submit to questioning or to make a sworn statement, or both, in terms of paragraph (a), no claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent before the third party has submitted himself or herself to questioning or has made the sworn statement, or both.

## **7 Forms**

- (1) A claim for compensation and accompanying medical report referred to in section 24(1)(a) of the Act, shall be in the form RAF 1 attached as Annexure A to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the *Gazette*.
- (2) A claim by a supplier referred to in section 24(3) of the Act shall be in the form RAF 2 attached as Annexure B to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the *Gazette*.
- (3) The particulars and statements referred to in section 22(1)(a) of the Act shall be furnished to the Fund in the form RAF 3, attached as Annexure C to these Regulations, or such amendment or substitution thereof as the Fund may from time to time give notice of in the *Gazette*.

## **8 Transitional arrangement, and repeal of regulations**

(1) These Regulations shall not apply to any claim for compensation under section 17 of the Act in respect of which the cause of action arose prior to the date on which these Regulations came into operation, and any such claim shall be dealt with as if these Regulations had not come into operation.

(2) Subject to subregulation (1) the Regulations promulgated by Government Notice No. R. 609 of 25 April 1997 are hereby repealed.

## **9 Commencement**

These Regulations shall come into operation on 1 August 2008.