

The table below explains in a **question and answer** format, the **implications** of some of the changes of the **Amendment Act** as amplified by the Regulations:

<p>1. What are the important changes introduced by the amendments regarding the liability of the RAF?</p>	<p>1. Under the old Act, the claims of certain categories of passengers were limited to a maximum of R25,000. The amendments have done away with this limitation and these passengers will in future be treated on an equal footing with all other types of claimants.</p> <p>a. The lifting of this cap has the effect that certain categories of passengers will enjoy better cover than what was previously the case.</p> <p>b. This amendment will place additional pressure on the RAF's financial position, but was necessary to ensure equal access by the public to the benefits provided by the RAF.</p> <p>2. Under the old Act, claims by claimants conveyed for reward on a motorcycle are excluded. The Amendment Act deleted this exclusion with the result that the RAF will in future entertain such claims.</p> <p>3. The old Act excludes claims by passengers where the claimant is in law responsible for the maintenance of the driver, or where the claimant is a member of the same household as the driver and the driver is the sole cause of the accident. The amendments deleted this exclusion with the result that the RAF will in future entertain such claims.</p> <p>4. The old Act does not exclude claims for secondary emotional shock. The amendments however introduced a new exclusion in respect of claims for secondary emotional shock. Secondary emotional shock refers to instances where the claimant was not involved in the accident but either witnessed or heard of the accident. While the RAF's liability is excluded in respect of this type of claim, the claimant retains his/her common law claim for secondary emotional shock against the wrongdoer.</p> <p>5. The amendments retain the claimants common law right to claim against the wrongdoer only in instances where the RAF is unable to pay any compensation and in instances of secondary emotional shock.</p> <p>6. The amendments limit the RAF's liability for compensation in respect of claims for non-pecuniary loss (general damages) to instances only where a serious injury has been sustained.</p> <p>7. The old Act provides that a claimant is entitled to party and party costs when the claimant accepts an offer by the RAF. The amendments deleted this entitlement.</p> <p>8. The RAF may issue a claimant with an undertaking in terms of which the RAF will compensate the claimant for future medical and related expenses. The amendments now entitle the RAF to pay the compensation to the claimant or directly to the medical service provider. The amendments also provide that claims lodged under the undertaking shall not prescribe before the expiry of a period of five years from the date on which the medical service was rendered.</p> <p>9. The amendments limit the RAF's liability in respect of medical expenses to one of two medical tariffs.</p> <p>The first (higher) tariff will apply in all cases where emergency medical treatment</p>
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	<p>was provided. Emergency medical treatment is defined as all medical treatment necessary for “...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...”</p> <p>All medical treatment that cannot be defined as emergency medical treatment will be compensated on the lower tariff. This lower tariff is 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.</p> <p>10. The amendments limit the RAF’s liability in respect of claims for loss of income to R160,000 per year, irrespective of the actual loss.</p> <p>11. The amendments limit the RAF’s liability in respect of claims for loss of support to R160,000 per year, irrespective of the actual loss, in respect of each deceased breadwinner.</p> <p>12. In terms of the amendments, the RAF is required to adjust the R160,000 limit on a quarterly basis, to counter the effects of inflation, by giving notice of the adjusted statutory limit in the <i>Government Gazette</i>.</p>
<p>2. What claims are affected by the amendments?</p>	<p>1. All claims arising from accidents that occur on, or after 1 August 2008 will fall to be assessed in terms of the Amendment Act.</p> <p>2. Claims that arise from accidents that occur prior to 1 August 2008 will be assessed in terms of the old Act, i.e. the amendments will have no impact on these claims.</p>
<p>3. What and who determines whether an injury is considered serious or not?</p>	<p>1. A medical practitioner determines whether the claimant has suffered a serious injury by undertaking an assessment through which the following process of elimination, prescribed in the Regulations, is followed:</p> <p>a. Firstly, the medical practitioner must have regard to a list of non-serious injuries. This is a list that will be published by the Minister of Transport, after consultation with the Minister of Health. If an injury appears on this list, such injury may not be assessed to be serious by the assessing medical practitioner. Where no list has been published, the assessing medical practitioner may omit this step and immediately move on to the next step;</p> <p>b. The next step involves the assessment of the injury by the medical practitioner in terms of the American Medical Association’s Guides to the Evaluation of Permanent Impairment, Sixth Edition (“the AMA Guides”). If the injury resulted in 30% or more impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious;</p> <p>c. The final step in the assessment process will only be followed where the injury is not listed on the list of non-serious injuries and where the injury did not result in 30% or more impairment of the Whole Person. In terms of this step, the medical practitioner may assess an injury as serious if the injury resulted in:</p> <p>(i) A serious long-term impairment or loss of a body function;</p> <p>(ii) Permanent serious disfigurement;</p> <p>(iii) Severe long-term mental or severe long-term behavioural disturbance or disorder; or</p> <p>(iv) Loss of a foetus.</p> <p>2. The medical practitioner who performed the assessment must complete a Serious</p>

	<p>Injury Assessment Report (“RAF 4”);</p> <p>3. The claimant may lodge the RAF 4 form with the main claim form (“RAF 1”), or separately after the submission of the main claim, at any time before the expiry of the periods for the lodgement of the claim prescribed in the Act and these Regulations;</p>
4. Who pays for the Serious Injury Assessment Report?	<p>1. The RAF shall only bear the cost of the assessment if the claimant’s injury is found to be serious and the RAF attracts overall liability in terms of the Act as amended; or</p> <p>2. If the RAF decides that there is a reasonable prospect that a medical practitioner may assess the injury to be serious and the claimant lacks sufficient funds to obtain an assessment, the RAF may, at the RAF’s cost and at the request of the claimant, make available to the claimant the services of a medical practitioner, or alternatively, refer the claimant to a medical practitioner for purposes of an assessment.</p>
5. What recourse exists if a dispute arises regarding the assessment of the seriousness of an injury?	<p>1. The Regulations provide for a dispute resolution mechanism in circumstances where the medical practitioner has assessed an injury as “not serious”, or where the RAF has rejected a Serious Injury Assessment Report by a medical practitioner in terms of which the injury has been assessed as “serious”.</p> <p>2. A claimant wishing to lodge a dispute must do so within 90 days of being notified of the outcome of the assessment, or being notified of the rejection of the Serious Injury Assessment Report by the RAF.</p> <p>3. The dispute must be lodged, on the prescribed form (“RAF 5”), with the Registrar of the Health Professions Council of South Africa (“the HPCSA”).</p> <p>4. The dispute will be determined by an appeal tribunal appointed by the Registrar of the HPCSA and will publish its findings within 90 days from the date that the dispute was referred to the Registrar.</p> <p>5. Where the dispute relates to a question of law, the Registrar may request the Chairperson of the Bar Council or alternately the Chairperson of the Law Society of the jurisdictional area concerned, to appoint an advocate of the High Court of South Africa, or alternately an attorney with at least five years experience in practice, to participate as a member of the appeal tribunal and preside over the matters of law.</p>
6. Who pays for the costs of the dispute resolution?	<p>1. The RAF shall bear the reasonable costs of the HPCSA.</p> <p>2. The RAF shall bear the reasonable fees and expenses of the persons appointed to the appeal tribunal.</p> <p>3. If the claimant is legally represented, the claimant will bear such costs.</p>