

SUBMISSION BY LAW SOCIETY OF SOUTH AFRICA
ON THE ROAD ACCIDENT BENEFIT SCHEME BILL 2014

INTRODUCTORY COMMENTS

SATCHWELL COMMISSION

In promoting the draft Road Accident Benefit Scheme (RABS) Bill, 2014 the Department of Transport claims that it implements the recommendations of the Satchwell Commission. This is only partially correct. Whilst the Satchwell Commission did recommend a system of no fault compensation, it also recommended that the common law rights to look to the wrongdoer for compensation not covered by the scheme be retained and that road accident victims who are catastrophically injured be awarded life enhancement benefits (general damages) by the statutory scheme.

The current draft Bill does neither of these things. In Section 29 it abolishes the common law right entirely, leaving the injured person with no right to compensation other than in terms of RABS and it makes no provision for any payment for pain and suffering, loss of amenities of life, disability, disfigurement or psychological shock, regardless of how seriously the claimant is injured and impact this may have had on his or her life.

To compound the catastrophic impact of a serious injury, income support benefits are only claimable after a waiting period of 60 days. There is no "arrear" payment and this loss of income must be suffered by the injured party without compensation. The provisions regarding those who are unable to prove an income or who are economically inactive are confusing and on one reading they will receive no compensation for loss of income, regardless of the fact that they may have been about to embark on a career or occupation. This confusion appears from Schedule 1 as read with section 36 (5). If this is the case, then children and

students will never be compensated for lost earning capacity. Widows are paid loss of support for a maximum of 15 years, regardless of their age and circumstances. All payments in respect of income support and family support (in the case of the death of a breadwinner) are paid monthly. This, coupled with the denial of any lump sum for general damages, affords a seriously injured road accident victim or the family of a deceased breadwinner no prospect, whatsoever, of financial rehabilitation via RABS.

GOLDEN HOUR MEDICAL TREATMENT

A fundamental cornerstone of the scheme is the provision of healthcare benefits. In the earlier motivations for the previous draft Bill great emphasis was placed on the fact that available resources will now be directed to the provision of healthcare services in the emergency as well as acute and rehabilitative phases of treatment.

Of critical importance is appropriate treatment immediately post accident (the "Golden Hour").

Essential to providing such treatment is the promulgation of a healthcare tariff acceptable to the private sector, failing which road accident victims will merely queue up with the rest of the population in the hopes of accessing already over-stretched, under-resourced and poorly administered public healthcare facilities. Whilst there are pockets of excellence within the public healthcare system, they are few and far between. Recent media reports highlight the dilapidated circumstances of Nelspruit Hospital where patients have to be carried up stairs as the lifts in the five storey facility are non-functional. The excessive hours worked by professional staff is well documented. The standard of teaching at academic and other training institutions, together with the absence of key personnel in many posts, has recently been in the news. Poorly trained and unprofessional nursing and other support staff also contribute to the appalling state of the public healthcare system.

The tariffs have yet to be published in draft form for comment as provided for in section 55 and it is unknown whether any consultation has taken place with the public or private healthcare sectors on acceptable tariffs.

COMMON LAW CLAIMS

The Constitutional Court challenge brought by the Law Society of South Africa (LSSA) in response to the abolition of common law rights in the 2005 Amendment Act failed in the Constitutional Court. However, this was against the background of a scheme which continued to supply compensation based on delict. The current draft RABS Bill abolishes, entirely, the fault based system of road accident compensation which has been in place since 1946 and imposes a system of no fault "*benefits*" as part of a comprehensive social security system.

Where does this leave the innocent road accident victim?

The road accident victim, who also contributes to the Road Accident Fund levy as a driver, commuter, passenger and/or consumer, has had his or her civil law rights to be compensated for harm suffered as a result of another person's fault completely abolished. The victim's rights have been entirely subjugated to those of the motorists and vehicle owners who caused the harm (including transport operators, bus companies, public service providers and/or public carriers). Thus, those who utilize the roads for profit are protected at the expense of the commuter, passenger and pedestrian. The wrongdoer escapes from any financial responsibility for the consequences of his or her negligence. Even those guilty of a criminal offence are protected.

In contrast to the complete financial indemnity enjoyed by the wrongdoer, a road accident victim has access only to the limited benefits provided in terms of the RABS Bill, which the Department of Transport,

itself, points out is not intended to be compensation for the harm suffered, but social welfare as part of the general welfare benefits provided by the State (such as disability grants, child care grants and old age pension). This leaves the injured party or a deceased breadwinner's family, through no fault of their own, without any right to fair and equitable compensation from the wrongdoer or the wherewithal to recover financially or to have some of the amenities of life lost in the accident restored to them. To add insult to injury, the wrongdoer, if injured in the same accident, receives exactly the same benefits.

This is an entirely different scenario for the Constitutional Court to consider and should RABS be enacted with the abolition of common law rights, the LSSA will consider challenging the current Section 29 as unconstitutional.

Inevitably the situation in public health referred to above has given rise to increasing claims for negligence and medical malpractice. The Minister of Health's response to this has been to postulate the capping or even abolition of common law claims against state hospitals, which he says are over-stretching their budget.

Innocent road accident victims, who are now denied any right of recourse against the guilty motorist or vehicle owner who caused their injuries, will now be exposed to the public health service and may, in time even be denied any recourse for any further harm they may suffer there.

FOREIGNERS

If the injured person or deceased breadwinner was not "legally" present in the Republic, the Administrator is only required to pay for "emergency" healthcare services. The definition of emergency services in the current 2005 Amendment Act excludes any treatment not necessary to save a person's life. This is repeated in the pre-authorisation provisions of the Bill and Forms. A seriously injured person can spend many weeks in hospital after "emergency" treatment. This is not covered. Should that person die, there is

no compensation for funeral benefits. The application of the new visa regulations is already the subject of constitutional challenge. It is anticipated that this provision in the RABS Bill will follow suit.

ACCESS TO BENEFITS PROVIDED

The current draft Bill excludes any liability on the part of the Administrator for any medical or legal costs to prepare and to submit a claim or an appeal or to meet any requirement of the Act (Section 51).

Comparisons with the Compensation for Occupational Injuries and Diseases Act (COIDA) are inevitable, where similar provisions are enacted. However, an injured workman can still in many instances rely on the assistance of his or her employer in order to lodge a claim. The road accident victim is on his or her own.

The obtaining of the required medical reports will be a costly exercise which many claimants will be unable to afford. The forms and procedures are complicated. The exclusion of liability to compensate for the costs involved is aimed at excluding attorneys or any other professional from assisting accident victims in lodging and processing claims against the Administrator.

A medical service provider who wishes to claim direct for services is obliged to submit a claim with full details of the accident, including the registration details of all vehicles involved, the names addresses and contact details of all drivers and witnesses and the part they played in the accident, the names and contact details of all witnesses and the details of the South African Police station investigating the accident. It is very unlikely that this information will be readily available, particularly when emergency and acute phase treatment and services are provided.

JUDGE, JURY AND EXECUTIONER

The Administrator has far reaching powers and discretion in regard to all benefits provided in terms of RABS. The impecunious claimant will have no recourse to independent professional advice in pursuing a claim. He or she will have to be advised by the very body against which they claim. In the event of a dispute on the benefits to be awarded, the dispute is referred to an internal appeal body consisting of employees of the Administrator. There is no appeal to the courts from any decision made by either the Administrator or the appeal body.

Even when a tariff is prescribed by the Minister of Transport for healthcare services, the Administrator is entitled to enter into an agreement with public and private sector healthcare service providers to provide for an agreed fees structure which may differ from the tariffs prescribed by the Minister in terms of the Act (Section 32 (1) (c)).

The Administrator can curtail benefits if the beneficiary does not agree to medical treatment or attend vocational training as directed by the Administrator. There is no recourse to an outside arbiter in this instance.

The far reaching powers without any sanction or recourse for failure to deliver afforded to the Administrator can hardly be said to be reasonable or equitable, particularly when compared to the stipulation that the right of a claimant to an internal appeal has to be exercised within 30 days of being notified of a decision by the Administrator or, in the event of the Administrator having failed to respond to a claim within 180 DAYS (six months) after submission, within 30 days after the lapse of the 180 days.

AFFORDABLE EQUITABLE AND SUSTAINABLE

Although on the face of it a system of no fault compensation may appear equitable, there is no equity in the current scheme and the R20 billion currently paid by motorists every year for the sole purposes of compensating road accident victims is unlikely to find its way into the hands of those requiring support.

This income will continue to flow into RABS in terms of the draft Bill but, unlike under the current scheme where injured persons received compensation in the form of lump sum payments for loss of income, loss of support and general damages, under RABS this income will be used to cross-subsidize public health and unemployment benefits.

This is not the purpose for which the fuel levy in respect of road accident claims was raised.

In the preamble to the Bill it is stated that there is a need for an effective benefit system which is reasonable, equitable, affordable and sustainable in the long term and which optimizes limited resources and facilitates timely and appropriate healthcare and rehabilitation to lessen the impact of injuries and which provides financial support to reduce the income vulnerability of persons affected by injury or death from road accidents. There is little in the current draft that achieves this purpose.

COMMENT ON THE CONTENT OF THE DRAFT BILL 2014

BENEFITS

The Act makes provision for the following benefits:-

- Healthcare services (Part A)
- Income support benefits (Part B)
- Family support benefits (Part C)
- Funeral benefits (Part D)

HEALTHCARE SERVICES

SYNOPSIS

Cumbersome system of claiming for payment and pre-authorisation prior to Administrator being liable likely to result in delays. Impractical provisions for direct claims by suppliers. Nature and extent of treatment solely within discretion of Administrator, tariffs not yet published for comment.

COMMENT

Section 31 lists what healthcare services the Administrator shall be liable to pay, including emergency and acute care, transport, hospitalization, rehabilitation, long term personal care, assistive devices, structural changes to homes, adaption of vehicles as well as the work place.

Although provision is made for the cost of medical reports "*required under this Act*", Section 51 specifically excludes liability on the part of the Administrator for medical and legal costs to prepare and submit a claim or an appeal or to meet any requirement of the Act. The medical reports referred to in Section 31 (1)(k) are, presumably, the medical reports required by the Administrator in order to assess an injured person's post accident earning capacity and a treatment plan and not to prove or submit a claim.

In Section 31(2) the Administrator is granted discretion, to "*assess*" whether a healthcare service is "*reasonably required for the treatment care or rehabilitation of an injured person*" and in doing so the Administrator shall have regard as to whether the healthcare service is for the purpose of restoring the injured person's health to the extent practicable. This appears to exclude palliative treatment aimed not at restoring an injured person's health, but to alleviate pain and discomfort and improve quality of life. This would include ongoing physiotherapy, occupational therapy, speech therapy, psychological counseling and analgesic medication.

The Administrator is also entitled to consider whether the treatment should be performed only on a number of occasions, necessary for that purpose. This restricts the right to ongoing chronic care such as that referred to above for palliative and life enhancement purposes.

In terms of Section 55 of the draft Bill the Minister of Transport is empowered to prescribe the tariffs for the liability of the Administrator for the provision of healthcare services, medical reports and vocation ability assessments. However, the Administrator appears to have the power to bypass or override those tariffs in Section 32 (1) (c) which empowers him to agree fees structures which may differ from tariffs prescribed by the Minister in terms of the Act.

The Administrator is also entitled to enter into agreements with public and private sector healthcare service providers. The Bill contemplates that payments will be made direct by the Administrator to the healthcare service provider and that a system of pre-authorization is required in respect of any treatment, other than emergency care.

In order to submit a claim a healthcare provider is required to complete the RABS 2 FORM which has to be accompanied by documentary proof of the injured party's identity, a certified copy of the service provider's certificate of registration and detailed invoice relative to the treatment, a certified copy of the identity document of the healthcare provider, a completed RABS FORM 10 (bank indemnity form) and the RAF's pre-authorization number. The RABS2 FORM requests details regarding the vehicles and drivers involved in the accident, witnesses, South African Police details and the like. It is unlikely that these details will be readily accessible to treating practitioners and hospitals, particularly at an early stage post accident. This also assumes that the tariff, when eventually published for comment is acceptable to the private health sector.

The reality is that the injured party will be billed and if he or she is not able to pay, then private institutions and practitioners will not be prepared to render anything but emergency treatment.

In the case of treatment falling outside of the scope of any agreement entered into between the Administrator and the specific healthcare service provider, the injured party will be liable.

Provision is also made in Section 33 for the Administrator to pay non-contracted healthcare service providers in accordance with a tariff to be promulgated by the Minister of Transport after consultation with the Minister of Health and, failing such tariff, limited to the "*reasonable costs*" of the healthcare service provided. Liability is limited to healthcare services provided in the Republic. Failing prior approval in respect of any non-emergency healthcare services, the Administrator is not liable.

The Administrator is given far-reaching powers to dictate the nature and extent of future treatment via the creation of an individual treatment or rehabilitation plan for the injured party concerned. For the purposes of preparing such a plan the Administrator may require the beneficiary to be assessed by a healthcare service provider at his cost.

Once an individual treatment or rehabilitation plan is determined, the Administrator directs the healthcare services required in terms of the plan to be provided by contracted healthcare service providers or other healthcare service providers approved by him and the liability of the Administrator for payment for treatment or services is limited to the treatment plan.

The injured party is thus denied the freedom to choose the nature and extent of treatment and services treatment from a medical practitioner of their own choice and at an institution of his or her own choosing.

If, as with the 2005 Amendment Bill, the tariff eventually promulgated will be so low as to render it impossible for the private sector to participate, then such tariff will also be vulnerable to constitutional attack for the same reasons advanced in the original case brought by the LSSA. That challenge was upheld.

INCOME SUPPORT BENEFITS

SYNOPSIS

No lump sums. Maximum payment R13 738.75 per month which can be reduced, in Administrator's discretion, by deemed residual earning capacity regardless of actual employment. No compensation for first 60 days and only payable from age 18 to age 60. Confusing provisions as to whether compensation is payable to those economically inactive at the date of injury or unable to prove an income. Must submit claim and medical report at own cost. Can be suspended or terminated in Administrator's discretion. The benefit terminates on death.

COMMENT

Income support benefits are divided into temporary income support benefits (covering the first two years post accident) and long term income support benefits (commencing in year three from the date of accident).

Excluded from any income support benefit are persons who are deemed not to be ordinarily resident in the Republic who, by definition are those who are absent from the Republic for a period of longer than six months per year for the three years preceding the road accident or any consecutive three year period thereafter.

In order to claim temporary income support benefits an injured person is obliged a claim as provided for in the Rules by lodging a RABS 3 (temporary) or 4 FORM (long term) together with proof of pre-accident income (such as tax returns or salary slips) and proof of inability to perform his or her pre-accident occupation or work or earn an income and that that inability is caused by a road accident.

In terms of Section 36 (4) the claim must be accompanied by a medical report by a medical practitioner compiled after conducting a physical examination confirming that the inability to work relates to injuries sustained in the accident and stipulating the period that the incapacity is likely to endure. The claimant must also confirm that his inability to work relates to injuries sustained in the accident and, should he be unable to do so, such confirmation may be provided by any other person with knowledge of the reasons of the inability to earn an income.

According to the Rules, in order to claim income support benefits, a RABS 3 (temporary) or RABS 4 (permanent) claim form must be submitted, accompanied by a RABS 7 form (incapacity certificate completed by a medical practitioner), proof of the injured persons pre-accident income (if applicable) a RABS 10 form (completed bank indemnity form) and documentary proof of identity of the injured person.

If the claimant is impecunious and received treatment at a public health facility, the RABS 7 will have to be completed by employees of the public health service. Currently there are not enough doctors to treat injured people, let alone fill in forms. Under the current Act, hospitals charge a fee for the completion of a RAF 1 FORM. If records are also required, this costs in the region of R550.00 from a provincial hospital and more from private hospitals and practitioners. These costs are usually paid for by the attorney representing the claimant.

On this basis alone, the loss of income benefit is likely to prove inaccessible to a vast number of injured road accident victims.

The RABS 3 FORM calls for information regarding the accident and the injured person would have to obtain a South African Police report (or obtain the details from the South African Police) so as to provide the information required to establish that the injuries arose as a result of a specific motor vehicle accident. An accident report form costs approximately R150.00. Accessing information from the South African Police is often a time consuming and drawn out exercise which may require repeated visits and calls to the police station involved. Sometimes just identifying which police station is supposed to investigate the accident is difficult. Once the station has investigated, the report may be sent to the Accident Data Centre in another city. Providing a police report or obtaining information from the police may prove an insurmountable obstacle, particularly for unsophisticated claimants, who may be injured far from their home and would have to try and obtain the necessary documents or information from the particular police station responsible for investigating the accident months later. This would be relevant particularly where a claimant has been hospitalized or incapacitated for a lengthy period as a result of the injuries suffered. The same information is required when lodging a claim for medical or hospital expenses or any other treatment arising from the accident.

The benefit payable for temporary income support is subject to a sixty day threshold and is capped at 75% of the pre-accident income cap (currently prescribed in terms of the regulations at R219 820.00 per annum) for those employed and/or able to prove an income as referred to in Section 36(2)(a) and (b) of the Act. Thus, the maximum compensation for loss of income is R13 738.75 per month.

Section 36(3) provides that, for the purposes of this Act, injured persons who are unemployed or unable to prove an income are deemed to earn the average annual national income (currently prescribed in terms of the regulations at R43 965.00 per annum or R3 663.75 per month). However, although Section 36(5)(b) says that the injured person's deemed income must be used for the calculation of the benefit for persons referred to in Section 36(3) (those not economically active or unable to prove an income), Section 36(5)(d) also says that the amount of the temporary income support benefit (for all claimants) must be calculated in accordance with the formula provided in Schedule 1.

There is no provision in Schedule 1 to calculate the benefit for persons referred to in Section 36(3). The formula only applies to injured persons referred to in Section 36(2)(a) and (b) of the Act.

In Schedule 1 the formula applies a 75% factor to the proven income (capped at the pre-accident income cap) in order to calculate the amount of the benefit, times the period of payment in the case of temporary income support benefit and also provides for a deduction in respect of residual earning capacity in the case of permanent income benefits.

Section 36(5)(c) refers to the period of the entitlement for a temporary income benefit and can stand on its own (without reference to Schedule 1) but in relation to the amount Section 36(5)(b) is not as clear and Section 36(5)(d) appears to apply Schedule 1 to determine the amount of the benefit for all claimants, including those referred to in Section 36(3). This is repeated in Section 37(7)(d).

If the Schedule is definitive of the amount of compensation to be paid to all claimants (which appears to be the case) then, as it is currently drafted, those unable to prove an income will not qualify. If Section 36(3) claimants do qualify for income benefits without reference to Schedule 1, then there appears to be no provision applicable to deducting residual earning capacity from their deemed income in Section 37.

It is assumed that the intention of the Bill is not to deny compensation for loss of income to persons economically inactive at the time of their injury, regardless of their circumstances and the nature of the injuries suffered. If this were not so, then the Bill would have further far-reaching and devastating consequences, which are immediately obvious in the case of children, students and young adults who might be about to embark on a career but are injured before they become economically active, and who are rendered permanently unemployable by the injuries sustained. The denial of any compensation to them for lost earning capacity is manifestly unjust, particularly when coupled with the denial of common law rights and bearing in mind that for those able to afford insurance, such loss is uninsurable in terms of disability cover.

For those entitled to claim income support benefits, there are yet further restrictions. Once the maximum entitlement is established, the Administrator is entitled to determine whether, in its opinion, the injured party has a residual earning capacity and the amount thereof, which the Administrator deducts from the maximum monthly entitlement, regardless of whether the injured claimant is employed or not. For this purpose, the claimant can be referred to an occupational therapist chosen and paid for by the Administrator. Because the residual income capacity is deducted from the maximum amount due in terms of the formula (as opposed to the actual prior income), then, should the residual income capacity be more than R13 738.75 per month, no claim will be allowed, even if an actual loss has been suffered.

For example, if an accountant earning R30 000.00 per month is injured and can no longer practice as an accountant and the Administrator, acting on the opinion of an occupational therapist appointed by him, determines that the injured accountant can (after vocational training) nevertheless earn an income as an accounts clerk of R14 000.00 per month, then there will be no claim for income support payable by the Administrator. This is regardless of the fact that the accountant may remain unemployed and even if employed will suffer an actual loss of income of R16 000.00 per month.

As another example, should an general worker earning R6 000.00 per month suffer orthopedic injuries precluding him for heavy manual labour, the Administrator could find that he is nevertheless capable of light manual work earning the same as before, regardless of the fact that the likelihood of obtaining employment in that capacity is remote.

The maximum period for which temporary income support benefit is paid is two years. Thereafter an injured party has to apply for long term income support benefits. In either case no person under the age of 18 will receive any income support benefit, nor will any person over the age of 60 be paid, regardless of the facts.

Section 37(9) provides that long term income support benefits are not subject to inflationary adjustments but that the Minister may, subject to affordability from time to time, adjust the long term income support benefits by notice in the gazette to take into account the effects of inflation.

All benefits are paid in monthly installments and will terminate on the death of the beneficiary. This means that, if the beneficiary was a sole breadwinner, his or her dependents will be left destitute.

The Administrator has the power to require either a temporary or long term income support beneficiary to participate in vocational training. Failure to co-operate or participate can result in the income support benefit terminating. The Administrator selects the vocational training service provider and the program to be provided.

Any decision made by the Administrator regarding income support benefits can only be challenged by referral to an internal appeal tribunal comprised of employees of the Administrator. The jurisdiction of the courts to adjudicate a disputed decision of the Administrator has been ousted.

It is submitted that the wide discretion which vests in the Administrator in many aspects of the claims procedure, the fact that none of the decisions made by the Administrator are subject to appeal to the courts, the fact that the Administrator is accountable to itself (and the Minister) only, the fact that the claimant will have no independent professional advisor will leave him or her vulnerable to being denied compensation and/or caught up in a bureaucratic labyrinth for years on end without any sanction or recourse.

COIDA operates on a very similar system to that proposed in RABS with little, if any, accountability for failure to perform. Currently, very few medical, hospital and other healthcare providers are prepared to assist injured workmen and claim from the Compensation Commissioner as they have to wait far too long

for payment, if their claims are ever processed, at all. Widows and orphans can wait for as long as two years without even an acknowledgement of a claim. Workmen and their dependents can sometimes look to their employers for assistance in processing claims. There will be no one for the injured road accident claimant.

FAMILY SUPPORT BENEFITS

SYNOPSIS

No lump sum payments. Support limited to 15 years maximum regardless of age of dependents. Children supported to age 18 only. No support paid to dependents resident abroad. Surviving spouse's income deducted from maximum amount due not amount actually lost.

COMMENT

Claims for family support benefits are subject to similar procedures as those prescribed for healthcare services and income support.

No family support benefit is paid to a dependant who is not ordinarily resident in the Republic. This is an extraordinary and inexplicable provision in that the exclusion does not apply to the residency of the breadwinner but that of the dependant. If a breadwinner supports a child who is for some reason or another resident in another country (for perhaps study purposes or a child in the care of a South African parent in terms of a divorce order who may be resident overseas but who is still entitled to child support) then that child is denied any benefit, regardless of the fact that the deceased may have had a legal obligation to pay, and did so, in South African rand. This appears to be an irrational exclusion and may be

vulnerable to constitutional attack, especially as it affects the rights of a child to support and discriminates against a child on an arbitrary ground.

Claims are subject to the same limits and caps as income support claims and are further limited to 15 years, maximum, pay out. However, as the caps apply to the deemed salary of the deceased breadwinner and surviving spouse (unlike the current Act where the caps apply to the annual loss) if both the deceased and the surviving spouse earn more than the pre-accident income cap, or are “deemed” to have earned the average annual national income, there will be no claim for loss of support, despite the fact that a loss might have arisen.

In determining the amounts of family support, the pre-accident income of the deceased breadwinner, less taxation, may not exceed the prescribed pre-accident income cap and may not be less than the prescribed average annual national income. In addition, the pre-accident income of the surviving spouse less taxation is taken into account, also limited to the pre-accident income cap.

A complicated family support benefit formula is provided for in the Schedule, which merely articulates the current practice of pooling joint family income and dividing the total so as to allocate two parts per adult and one part per child in calculating the loss arising from the death of a breadwinner.

The Schedule limits the period of support for a surviving spouse to fifteen years or until age 60, whichever period is the shortest, and a dependent child is only entitled to family support until age 18, regardless of whether the deceased would have supported that child longer.

FUNERAL BENEFITS

SYNOPSIS

A flat rate payment of R10 000.00 made to either family or funeral director.

COMMENT

A flat rate allowance of R10 000.00 is payable in respect of funeral benefits claimable by an immediate family member.

Should a person other than an immediate family member claim, that person is required to prove the costs incurred and will be reimbursed up to a maximum of R10 000.00.

If it is *"impractical"* to await a claim for a funeral benefit the Administrator may, independently, pay either to an immediate family member, or, after consultation with a family member, or, if unable to locate a family member, without consultation, to a funeral director a lump sum of R10 000.00 in respect of funeral expenses.

The amount awarded may be inadequate to cover the costs of transporting the body of a deceased migrant worker back to family for burial. The family of an "illegal" foreigner killed in an accident is denied any compensation for the costs of repatriating the body or the funeral.

BENEFIT REVIEW

Any benefit terminates upon the death of the beneficiary. This means that, should a breadwinner die, his family will be left destitute. Under the current legislation an incapacitated breadwinner is paid a lump sum, which money can be invested to provide for his family's well being after his or her death. This facility is denied under the current Bill.

The Administrator also has wide powers to review, suspend or terminate benefits if of the opinion that the beneficiary is no longer entitled to receive the benefit.

The Administrator may thus, at any time, terminate the continued entitlement to any benefit should a beneficiary fail to comply with a condition imposed or should a beneficiary fail to comply with a request to attend an interview or furnish a statement or document or written consent to access records or should a beneficiary furnish "false" or "misleading" information.

The reasonableness or otherwise of the conditions or period within which to comply with a request or the determination of the nature of false or misleading information rests entirely with the Administrator.

The Administrator is also entitled to suspend benefits if a beneficiary unreasonably refuses to provide further medical reports or to undergo further medical treatment prescribed by a medical practitioner or fails to participate in an individual treatment or rehabilitation plan or vocational training as determined by the Administrator or unreasonably refuses to accept employment which is within his or her capabilities and from he or she can generate income. The reasonableness or otherwise of the refusal of the beneficiary, again, rests entirely with the Administrator.

CLAIMS PROCEDURE

Section 43 makes it clear that the responsibility for submitting a claim rests with the claimant and that, other than a payment to a contracted healthcare service provider or for a funeral benefit, the Administrator is not liable for any benefit until such time as a claim has been made.

Section 43 also provides that the Administrator "may assist" if necessary any injured person to submit a claim, including applying for the appointment of a curator if the qualifying person is unable to submit a claim in terms of the Act.

The Administrator is afforded wide powers of investigation and interrogation as well as the power to obtain records and other information from various bodies including the Road Traffic Management Corporation, the South African Police Services, Healthcare Providers and Health Establishments, Financial Institutions, SASSA, the Department of Labour and the Department of Home Affairs. The Administrator has the power to interview, demand written statements and/or documents and conduct enquiries on oath and to that end issue subpoenas and interrogate witnesses on oath. Any person subpoenaed to an investigation is entitled to legal representation at his or her own expense.

The vast majority of claimants will have to submit and process a claim unaided and will also have to deal with all enquiries and requests from the Administrator without professional help. There is no mechanism in the Bill to enforce prosecution of a claim and the jurisdiction of the courts on disputing any decision has been ousted.

CLAIMS LAPSE AND TIME PERIODS

A claimant has three years to claim a benefit from the time when that person has knowledge of the facts giving rise to the claim. Persons under a disability have until one year after the impediment has ceased to exist. This follows the Prescription Act.

In terms of Section 48 the Administrator has 180 days (six months) to accept or reject a claim during which period interest does not run. No sanction is available to a claimant should the Administrator fail to process any claim, nor is there any recourse to any outside body or court.

This lengthy period to respond to claims will actively discourage health service providers from rendering treatment with a view to claiming direct. It will also leave the claimant without any income support benefits for an extended period.

It is submitted that there should be some method to enforce claims other than an internal tribunal which only sits to consider disputes once claims have been adjudicated.

DISPUTE RESOLUTION

In contrast to the above, a beneficiary has thirty days to appeal any decision of the Administrator in the manner set out in the Rules, failing which there is no further recourse. The appeal is to an internal tribunal body comprising three employees of the Administrator who may affirm or reverse any decision made by the Administrator, refer any issue raised to a medical or other expert for an opinion and/or refer any issue to a medical or other expert for final determination.

The appeal body has 180 days after lodgment of an appeal to inform the Appellant of the outcome provided that, when a claim is deemed to have been rejected after the Administrator has failed to deal with it for a period of 180 days, the appeal must be determined within thirty days.

The decision of this appeal body is final and binding with no right of appeal to the courts.

Whilst this procedure may be apposite relative to COIDA (where the injured workman retains the common law right to sue any wrongdoer other than his direct employer) and has assistance from his or her employer, it hardly seems equitable in relation to the unequal playing fields in the proposed RABS scheme.

GENERAL PROVISIONS

A driver of a vehicle involved in an accident is obliged to report to the Administrator in the manner set out in the rules (RABS 1) within 30 days.

Section 52 excludes liability for the Administrator to contribute to the costs of an injured person, claimant or beneficiary, including his or her medical and legal costs to prepare and submit a claim or an appeal or to meet any requirement of the Act.

The Administrator and any official employed is indemnified for any failure to perform or negligence, unless intentional wrongdoing is proved.

No benefit may be transferred, ceded or pledged or in any other way encumbered, unless the Minister of Transport consents thereto in writing on good grounds shown.

Section 55 empowers the Minister of Transport to prescribe by regulation tariffs for healthcare services, medical reports and vocation ability assessments, as well as for subpoenas and notices. The Minister is also empowered to prescribe any ancillary or incidental matter necessary for the implementation or administration of the Act, including the adjustment of temporary and long term benefits, family support benefits and funeral benefits to take into account the effects of inflation and setting the limits on the provision of the vocational training to beneficiaries. Before prescribing the above, the Minister is obliged to publish regulations for public comment in draft form and allow thirty days for the submission of comments.

The Minister, in consultation with the Minister of Finance, is authorized to determine by notice in the gazette the average annual national income as well as the pre-accident annual income cap and may thereafter adjust the amounts to take into account the effects of inflation. The Minister is not required to publish notices regarding the average annual national income or pre-accident annual income cap for comment prior to promulgation.

The board of the Administrator is empowered in terms of Section 56 to make rules, which rules have been published for comment together with the draft Bill.

Section 57 provides for offences and penalties and Section 58 for transitional provisions and savings.

Section 58(4) and (5) provide that Sections 55 and 56 apply retrospectively to validate any steps taken by the Minister to consult with the public before this Act comes into operation. It is presumed that this refers to "*consultation*" pertaining to the 2013 draft in the form of calling for public comment.