

**SUPPLEMENTARY SUBMISSIONS TO PORTFOLIO COMMITTEE ON
TRANSPORT ON RABS 2017 BILL BY LAW SOCIETY OF SOUTH AFRICA**

DUTY TO SUPPORT DEPENDANTS AND THE 2017 RABS BILL

1. Section 38 (1) of the proposed Bill excludes payments for family support benefits to any dependant who is not ordinarily resident in the Republic.
2. The effect of this is to deprive dependants of a breadwinner killed in a motor vehicle accident in South Africa of the support to which they would ordinarily be entitled, both in terms of the common law and in terms of statute.
3. It is not uncommon for parents of dependants to be resident in different jurisdictions. This, in itself, does not excuse any person with a duty to support another from that duty.
4. In order to give effect to the natural obligation of a breadwinner to support his/her dependants (wherever they may be resident) **THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT 80 OF 1963 (REMO)** was enacted and came into effect in South Africa on 22 January 1965.
5. Section 3 of **REMO** provides:-

“Whenever a certified copy of a Maintenance Order made before or after the commencement of this Act against any person by any Court in a

proclaimed country is transmitted to the Minister through diplomatic channels by any authority of such country recognised for the purpose by the Minister, the Minister or any person acting under his authority shall transmit a copy of the Order to a Maintenance Court, and the order shall, on receipt thereof, be registered by that Court in the prescribed manner”.

6. In terms of the **REMO** a maintenance order obtained in any one of the prescribed countries can therefore be registered in Maintenance Court in another proclaimed country for enforcement without the necessity of litigation. Thus a maintenance order obtained in Zimbabwe **shall** be registered in a South African maintenance court and a maintenance order granted in a South African Court **shall** be registered in Zimbabwe and enforced there.
7. A wide range of countries participate in this arrangement and include Australia, Botswana, Canada, Cypress, Fiji, Germany, Guernsey, Lesotho, Malawi, Mauritius, Namibia, New Zealand, Nigeria, Singapore, Swaziland, the United Kingdom, the United States of America, Zambia and Zimbabwe.
8. If a Maintenance Order is obtained against any breadwinner in a country which is not a proclaimed country the dependant is not by reason of that fact excluded from pursuing a claim against the breadwinner in South Africa but must do so through the Courts. This is just a more costly and time consuming process which will eventually result in an order being obtained if maintenance is due and owing.

9. The enactment of Section 38 (1) of the Bill will thus run not only contrary to the common law but also to the provisions of **REMO**.

ALTERNATIVE SCHEME TO 2017 RABS BILL

LSSA currently holds no mandate from its constituent members to put up formal proposals for a compensation scheme alternative to that currently in place in terms of the existing Road Accident Fund Act 56 of 1996. Its sole mandate is to comment on the proposals in the RABS Bill currently before the Committee.

Any remarks to the contrary reflect the personal view of the presenters and are not necessarily the views of the Society.