

END OF THE ROAD FOR THE ROAD ACCIDENT FUND: WHERE TO FROM HERE?



With only seven (7) days remaining until the 30 September 2026 deadline imposed by the Supreme Court of Appeal (SCA), the Road Accident Fund (RAF) finds itself at a critical juncture.

Two recent judgments have placed the RAF under significant pressure. The first concerns the validity of the RAF's 2022 claim form and the consequences for claims lodged, or attempted to be lodged, using that form. The second concerns the RAF's attempt to exclude foreign nationals who are unlawfully present in South Africa from the protection of the Road Accident Fund Act 56 of 1996 (RAF Act).

The 2022 RAF 1 form: the clock is ticking

In *Road Accident Fund and Others v Legal Practitioners' Indemnity Insurance Fund NPC and Others* [2026] ZASCA 63, the SCA dismissed the RAF's appeal against the judgment concerning the 2022 RAF 1 claim form. The SCA amended the relevant deadline to **30 September 2026**.

The judgment has significant consequences for claims that were lodged, or where an attempt was made to lodge a claim, using the 2022 form. For legal practitioners and claimants whose claims were declined, rejected or not acknowledged by the RAF because they were submitted on the 2022

form, the immediate practical step is to resubmit the claim using RAF Form 1 (2008) by no later than 30 September 2026.

The resubmission should:

- be made on the RAF Form 1 (2008);
- include proof of the earlier attempted lodgement on the 2022 form;
- include any correspondence received from the RAF concerning the earlier attempted lodgement; and
- be lodged at the relevant RAF office, or dispatched by registered post, on or before 30 September 2026.

The RAF has advised the LSSA that, where these requirements are met, the claimant will retain the benefit of the original attempted lodgement date, rather than the date on which the claim is resubmitted. The RAF has further indicated that its systems will record both dates.

Claims that have already been accepted by the RAF on the 2022 form, according to the RAF's advice, do not need to be resubmitted on the 2008 form.

Given the potential volume of affected claims, as previously advised by the LSSA, legal practitioners should not wait until the final days before taking action.

A communication crisis as well as a claims crisis
The legal implications are only part of the problem.

On 15 September 2026, the RAF engaged with representatives of the legal profession, with discussions focusing primarily on the claims administration crisis and, in particular, the handling of rejected claims. The engagement also highlighted concerns regarding communication between the RAF and the legal profession.

The timing is significant. The engagement took place only 15 days before the 30 September deadline.

For practitioners, this is not merely an administrative inconvenience. Uncertainty surrounding whether a claim has been validly lodged, whether it has been acknowledged, and what steps must now be taken can have consequences for prescription, litigation strategy and practitioners' professional obligations to their clients.

The issue is, therefore, larger than the mechanics of completing a new form. It concerns the ability of practitioners and claimants to obtain clear, timely and reliable information from the institution responsible for administering the statutory compensation scheme.

The second judgment: foreign nationals and the limits of RAF power

The second important development concerns the RAF's attempt to exclude foreign nationals who are unlawfully present in South Africa from claiming compensation under the RAF Act.

In *Road Accident Fund v Mudawo and Others*; *Road Accident Fund v Lyton and Others* [2026] ZASCA 54, the SCA dismissed two appeals brought by the RAF. The central question was whether the words 'any person' in section 17(1) of the RAF Act could be interpreted as excluding foreign nationals who were unlawfully present in South Africa. The SCA held that neither the Minister nor the RAF had the power to create such an exclusion through a directive or amended claim form.

The SCA's judgment, therefore, dealt directly with the legality of the RAF's 2022 directive and the corresponding amendments to the RAF 1 claim form.

The matter has since reached its final judicial stage. The Constitutional Court has refused the RAF's application for leave to appeal, with costs, on the basis that the application had no reasonable prospects of success.

There is consequently no longer a pending appeal upon which the Fund can rely on to maintain the exclusion of qualifying foreign national claimants on the basis of immigration status.

Two judgments, one underlying question

Although the *LPIIF* and *Mudawo* matters arose from different disputes, they have a common thread.

The *LPIIF* judgment concerns what form the RAF may lawfully require for the lodgement of a claim. The *Mudawo* judgment concerns who the RAF may lawfully exclude from the statutory compensation scheme.

In both instances, the courts have scrutinised the extent to which the RAF may use administrative instruments, whether a claim form, directive or any other measure to alter the practical operation of rights created by the RAF Act.

The message emerging from these judgments is that the administration of the RAF scheme must remain anchored in the legislation itself.

What does this mean for legal practitioners?

For legal practitioners, the immediate priority is clear. Where a claim was previously lodged or attempted to be lodged on the 2022 form and was rejected, declined or not acknowledged on that basis, the claim should be resubmitted on RAF Form 1 (2008) before 30 September 2026, together with evidence of the earlier lodgement or attempted lodgement and relevant RAF correspondence.

Practitioners should also retain a clear documentary record of:

1. the original attempted lodgement;
2. the date and method of that lodgement;
3. the RAF's response, if any;
4. the resubmission on the 2008 form; and
5. proof of the resubmission before the deadline.

This is particularly important given the RAF's stated position that the original attempted lodgement date will be recognised where the prescribed resubmission requirements are met.

In relation to foreign national claimants, practitioners should similarly approach claims in accordance with the RAF Act and the binding decisions of the courts.

So, where to from here?

The more difficult question is what happens after 30 September 2026.

The RAF is facing more than a series of isolated litigation outcomes. The recent judgments

expose fundamental questions about the relationship between the RAF, the legal profession and the people who depend on the statutory compensation scheme.

The immediate challenge is to ensure that affected claims are correctly identified and resubmitted before the deadline. But the longer-term challenge is rebuilding confidence in the claims administration process. That requires more than new forms or revised directives. It requires clear communication, consistent application of the law, reliable claims administration and meaningful engagement with the legal practitioners who administer thousands of claims on behalf of accident victims.

The question now is not so much what the courts have said, but whether the RAF can translate those judgments into a claims administration system that is lawful, predictable and accessible.

With the 30 September 2026 deadline only days away, that process needs to begin immediately.

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