

REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 40441 of 24 November 2016)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 3—2017]

ISBN 978-1-4850-0350-2

No. of copies printed 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Road Accident Fund Act, 1996, so as to insert new definitions; to provide the Fund with the power to determine and amend the forms; to regulate the manner in which a final court order sounding in money against the Fund must be satisfied; to provide for the Minister to prescribe a list of injuries that are deemed serious; to authorise the Fund to offer a cost contribution with the offer of compensation; to provide for the Fund to pay compensation for accommodation, treatment and the rendering or supplying of a service on a no-fault basis for an initial period; to provide for the Minister to prescribe a single tariff; to provide for the Fund to pay only specified funeral expenses on a no-fault basis, limited to a maximum proven amount; to harmonise the prescription regime for claims; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 56 of 1996, as amended by section 125 of Act 31 of 2005

1. Section 1 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “driver” of the following definition:

“ **‘final court order’** means an order—

(a) given or confirmed by a court of final instance; or

(b) given by any other court where the time for noting an appeal against the judgment or order to a higher court has expired and no appeal has been lodged: Provided that where a court thereafter grants condonation for the late lodging of an appeal, an order given or confirmed by the court hearing such appeal;” and 10

(b) by the insertion after the definition of “lift club” of the following definition: 15

“ **‘medical practitioner’** means a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).”.

Amendment of section 4 of Act 56 of 1996, as amended by section 1 of Act 15 of 2001 and section 1 of Act 19 of 2005

2. Section 4 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the determination, and amendment from time to time, of the forms required to be submitted in accordance with this Act, following a prior process of public consultation, and subsequent publication of the form in the *Gazette*, allowing for a period of not less than 30 days before the new form comes into effect.”.

Amendment of section 15 of Act 56 of 1996

3. Section 15 of the principal Act is hereby amended by the addition after subsection (3) of the following subsections:

“(4) A third party may pursue the process set out in this section—

- (a) if a final court order against the Fund for the payment of compensation is not satisfied by the Fund within 30 days of the date of the final court order; or
- (b) if the payment of legal costs by the Fund pursuant to a court order and subsequent written agreement by the Fund and the third party of the amount of legal cost due is not paid by the Fund within 30 days of the date of the written agreement; or
- (c) if the payment of legal cost by the Fund pursuant to a court order and subsequent taxation of the bill of costs is not paid within 30 days of the date of taxation.

(5) A third party pursuing payment must serve in terms of the applicable Rules of Court on the Chief Executive Officer of the Fund—

- (a) the final court order and a certificate by the registrar or clerk of the relevant court, certifying that no appeal, review or rescission proceedings are pending in respect of the court order; or
- (b) the court order and written agreement by the Fund to pay a specified amount in respect of legal costs; or
- (c) the court order and the allocator signed by the taxing master.

(6) The Fund must, within 30 days of the date of service of the documents provided for in subsection (5), ensure that—

- (a) payment is made to the third party; or
- (b) acceptable payment arrangements have been made with the third party.

(7) If the Fund fails to ensure that—

- (a) payment is made to the third party; or
- (b) acceptable payment arrangements have been made with the third party, within the period specified in subsection (6),

the registrar of the court concerned, as the case may be, must, upon written request of the third party issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against the movable property owned by the Fund.

(8) The sheriff shall, pursuant to the writ of execution or warrant of execution contemplated in subsection (7), attach but not remove the identified movable property.

(9) The Fund may within 30 days from the date of the attachment apply to the court concerned for a stay on grounds that the execution of the attached assets is not in the interest of justice.

(10) In the absence of an application by the Fund contemplated in subsection (9), the sheriff of the relevant court may, after the expiration of the period contemplated in subsection (9), remove and sell the attached movable property in accordance with the Rules of Court.

(11) No execution, attachment or like process, other than in accordance with the procedure contemplated in this section, may be issued against the Fund, for failure by the Fund to make payment contemplated in subsection (4).”.

Amendment of section 17 of Act 56 of 1996, as amended by section 6 of Act 19 of 2005

4. Section 17 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a);

- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,
- be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee’s duties as employee: Provided that the obligation of the Fund to compensate a third party for—
- (i) non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum;
- (ii) the cost of accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods or services, provided within the 30 day period following immediately after the cause of action arose, irrespective of the negligence or other wrongful act of the driver or the owner of the motor vehicle or his or her employee in the performance of his or her duties; and
- (iii) loss or damage specified in subsection 18(4) irrespective of the negligence or other wrongful act of the driver or the owner of the motor vehicle or his or her employee in the performance of his or her duties.”;
- (c) by the substitution for subsection (1A) of the following subsection:
- “(1A) (a) **[Assessment]** Subject to paragraph (c), assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.
- (b) The assessment shall be carried out by a medical practitioner **[registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974)].**
- (c) The Minister shall prescribe a list of injuries that are deemed to be serious.”;
- (d) by the insertion after subsection (1A) of the following subsection:
- “(1B) The Fund may offer the third party a cost contribution with the offer of compensation.”;
- (e) by the substitution in subsection (4B) for paragraph (a) of the following paragraph:
- “(a) The liability of the Fund or an agent regarding any tariff contemplated in subsections (4) (a), (5) and (6) shall be based on the **[tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be]** tariff prescribed after consultation with the Minister of Health.”;
- (f) by the substitution in subsection (4B) for paragraph (b) of the following paragraph:
- “(b) The tariff **[for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003—**
- (i) **shall be negotiated between the Fund and such health care providers; and**
- (ii) **shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay]** referred to in paragraph (a) shall be adjusted annually by the Fund, by notice in the Gazette, in order to counter the effect of inflation.”; and
- (g) by the deletion in subsection (4B) of paragraph (c).

Amendment of section 18 of Act 56 of 1996, as amended by section 7 of Act 19 of 2005

5. Section 18 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) The liability of the Fund or an agent to compensate a third party for any loss or damage contemplated in section 17 which is the result of the death of any person shall in respect of funeral expenses be calculated to an amount not exceeding R10 000.00 and shall be limited to the **[necessary actual] costs [to cremate the deceased or to inter him or her in a grave]** in respect of—

(a) transporting the body;

(b) storing the body;

(c) embalming the body;

(d) cremating the body;

(e) the coffin or casket or burial shroud;

(f) the grave;

(g) equipment hired to lower the coffin into the grave; and

(h) the funeral undertaker fee.”; and

(b) by the addition after subsection (4) of the following subsection:

“(5) The Fund shall, by notice in the *Gazette*, adjust the amount referred to in subsection (4) annually, in order to counter the effect of inflation.”.

Amendment of section 22 of Act 56 of 1996

6. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) When, as a result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if the driver is not the owner, of the motor vehicle shall, if reasonably possible within 14 days after the occurrence, furnish the Fund, on the **[prescribed] form determined by the Fund**, with particulars of the occurrence **[together with the prescribed statements]**, and the Fund shall furnish such information to the agent who in terms of section 8 is responsible for any claim arising from the occurrence.”.

Amendment of section 23 of Act 56 of 1996, as amended by section 10 of Act 19 of 2005

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent **[in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established,]** shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.”.

Amendment of section 24 of Act 56 of 1996

8. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) be set out in the **[prescribed] form determined by the Fund**, which shall be completed in all its particulars;”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(a) The medical report shall be completed on the **[prescribed] form determined by the Fund** by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person

was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.”; and 5

- (c) by the substitution for subsection (3) of the following subsection: 10
 “(3) A claim by a supplier for the payment of expenses in terms of section 17 (5) shall be in the **[prescribed]** form determined by the Fund, and the provisions of this section shall apply *mutatis mutandis* in respect of the completion of such form.”.

Amendment of section 26 of Act 56 of 1996, as amended by section 11 of Act 19 of 2005 15

9. Section 26 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1A) after paragraph (a) of the following paragraph: 20
 “(aA) injuries which are, for the purpose of section 17, deemed serious;”; and
 (b) by the insertion in subsection (1A) after paragraph (b) of the following paragraph:
 “(bA) the tariff contemplated in subsection 17(4B).”.

Savings

10. Any claim for compensation under section 17 of the principal Act in respect of which the cause of action arose prior to the date on which this Act takes effect must be dealt with as if this Act had not taken effect. 25

Short title and commencement

11. This Act is called the Road Accident Fund Amendment Act, 2017, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 30

**MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT
FUND AMENDMENT BILL, 2017**

1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

- 1.1 The Road Accident Fund Act, 1996 (Act No. 56 of 1996) (the Act), provides for the payment of compensation for loss or damage wrongfully caused by the driving of motor vehicles.
- 1.2 The Act was amended by the Road Accident Fund Amendment Act, 2005 (Act No.19 of 2005) (the Amendment Act), which came into operation on 1 August 2008. The objects of the Amendment Act were to improve the governance of the Fund, provide for a more equitable, fair and transparent compensation system, whilst limiting the liability of the Fund.
- 1.3 One of the amendments introduced by the Amendment Act is the regulation of the Fund's obligation to compensate a claimant for hospital or medical expenses in accordance with one of two tariffs. One tariff provides for emergency medical treatment and was negotiated with health care providers (the Emergency Treatment Tariff). The other tariff was based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003) (the Non-Emergency Treatment Tariff).
- 1.4 The Non-Emergency Treatment Tariff was successfully challenged by the Law Society of South Africa and others and was declared invalid by the Constitutional Court, on 25 November 2010, in the case of *Law Society of South Africa & others v Minister for Transport & another [2010] JOL 26483 (CC)*.
- 1.5 The Court found that the Non-Emergency Treatment Tariff was inadequate and unsuited for paying compensation for medical treatment of road accident victims in the private health sector and ordered that:

“Until the Minister for Transport prescribes a new tariff for health services in terms of section 17(4B)(a) of the Road Accident Fund Act, a third party who has sustained bodily injury and whom the Road Accident Fund is obliged to compensate as contemplated in sections 17(4)(a), 17(5) and (6) of the Road Accident Fund Act, is entitled to compensation or health services as if he or she had been injured before the Road Accident Fund Amendment Act, 19 of 2005 came into operation.”
- 1.6 Following the order no tariff is in force for medical treatment that is not emergency medical treatment. The Emergency Medical Tariff is currently still in force. The application of the Emergency Medical Tariff, in the absence of the Non-Emergency Tariff, creates uncertainty and gives rise to disputes. The administration of a two-tariff system further adds administrative complexity to the system.
- 1.7 It is intended, following the amendment of the Act, that the Minister will prescribe a new single medical tariff for paying compensation for medical treatment of road accident victims. This new medical tariff will be adequate to ensure that road accident victims will have access to the private health care sector.
- 1.8 The Department of Transport, on 8 February 2013, published the Road Accident Benefit Scheme Bill, 2013 for comment. The envisaged new no-fault benefit scheme will replace the existing fault-based scheme administered by the Road Accident Fund. Upon commencement of the new no-fault scheme the Road Accident Fund will cease to exist and all its assets, liabilities, rights and obligations, existing as well as accruing, will devolve upon the new Administrator. The new Administrator will therefore also continue to administer claims under the Act, which claims arose before the commencement of the new no-fault scheme, and which claims may in certain

instances be lodged up to 18 years, and even later, after the cause of action arose.

- 1.9 Consequently the Act will, irrespective of the establishment of the new no-fault scheme, continue to have effect for several years.

2. OBJECTS OF THE BILL

The object of the Road Accident Fund Amendment Bill (“the Bill”) is to amend the Act, so as to create a scheme that facilitates effective financial management and enables the timely, efficient and cost-effective delivery of compensation.

3. CLAUSE BY CLAUSE DISCUSSION

3.1 Clause 1

- 3.1.1 Clause 1 of the Bill amends section 1 of the Act which provides for definitions, by the insertion of a new definition for “final court order” to make clear when an order is considered final.
- 3.1.2 Clause 1 of the Bill amends section 1 of the Act which provides for definitions, by the insertion of a new definition for “medical practitioner” to make clear that only a medical practitioner may complete the medical report contemplated in section 24(2) of the Act.

3.2 Clause 2

- 3.2.1 Clause 2 of the Bill amends section 4 of the Act which provides for the powers and functions of the Fund, by the insertion of paragraph “aA” in subsection (1) to authorise the Fund to determine and amend the forms required to be submitted by the Act.
- 3.2.2 The proposed amendment however requires the Fund to follow a public consultation process, since the determination of the forms is administrative action as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- 3.2.3 The proposed amendment furthermore requires that the Fund allow a minimum of 30 days’ notice prior to the implementation of a revised form, to enable the affected parties to take note of the revised form and to arrange their affairs accordingly.
- 3.2.4 Authorising the Fund to determine the claim forms required to be submitted under the Act ensures faster administration of required amendments which enhances service delivery.

3.3 Clause 3

Clause 3 of the Bill amends section 15 of the Act which provides for legal status of and proceedings by Fund, and limitation of certain liability, by the addition of subsections (4) to (11) which seek to introduce a provision, comparable to section 3 of the State Liability Act, 1957(Act No. 20 of 1957), to regulate the process of managing final court orders sounding in money. This amendment will create room for effective financial management, by allowing the Fund to manage payment of settled claims and court orders, in a manner that will see both represented and unrepresented claimants share equitably in the funds received by Fund for the payment of compensation. In the absence of a process to manage writs, unrepresented claimants wait longer to receive compensation, because represented claimants issue writs to enforce payment. The proposed process to regulate court orders will allow the Fund to manage writs and perform the necessary due diligence before paying a writ, whilst still ensuring payment of claims by unrepresented claimants, thereby ensuring a

more equitable distribution of available funds to pay compensation in respect of settled claims and court orders.

3.4 Clause 4

- 3.4.1 Clause 4 of the Bill amends section 17(1)(b) of the Act which provides for liability of the Fund and agents, by the insertion of subparagraphs (i) to (iii) of subsection (1)(b). The Bill seeks to authorise the Minister to prescribe a list of injuries that would automatically be deemed serious, for purposes of obligating the Fund to compensate the claimant for non-pecuniary loss. The introduction of the proposed prescribed list will expedite claim administration in respect of claims pertaining to alleged serious injuries, and will also reduce unnecessary costs incurred in respect of assessments conducted under the prescribed assessment method. Injuries not qualifying for assessment or not listed on the prescribed list may still be assessed under the prescribed assessment method.
- 3.4.2 Clause 4 of the Bill amends section 17 of the Act which provides for liability of the Fund and agents, by the insertion of subsection (1B) to authorise the Fund to offer a cost contribution to the claimant with the offer of compensation, thereby reducing the incentive for the claimant to litigate to recover legal costs from the Fund.
- 3.4.3 The Bill seeks to introduce a specified period, following immediately after the accident, during which claimants will be able to access medical and related treatment for injuries sustained in the accident on a no-fault basis. This amendment seeks to provide cover to all persons injured in road accidents, to ensure that timely medical treatment is available during the initial critical period following immediately after the road accident.
- 3.4.5 Private medical service providers are hesitant to treat road accident victims who are not medical scheme members, or who do not have independent means to pay for the treatment, because of the risks associated with fault, which could see the Fund repudiating or reducing the claim by the medical service provider. By providing for an initial no-fault period, and by prescribing a reasonable medical tariff, the risk to private medical service providers is removed, ensuring timely treatment of injuries resulting in a better overall outcome for the injured and reduced liability for the Fund in the long-term.
- 3.4.6 Clause 4 of the Bill also amends section 17 of the Act by the substitution for subsection (4B) in order to introduce a single medical tariff.
- 3.4.7 It is intended that the Minister will prescribe a new medical tariff for paying compensation for medical treatment of road accident victims. This new medical tariff will be adequate to ensure that road accident victims will have access to the private health care sector.

3.5 Clause 5

- 3.5.1 Clause 5 of the Bill amends the Act by the substitution of section 18(4) which provides for liability limited in certain cases, to limit the Fund's liability to compensate funeral expenses, by specifying the type of expenses the Fund is liable to compensate, and by introducing an overall limit of the Fund's liability. The Bill further seeks to obligate the Fund to compensate funeral expenses on a no-fault basis. The amendment will expedite claim processing, reduce disputes pertaining to what expenses are compensated by the Fund, and will also ensure improved equity and fairness in that the rich will not recover

disproportionate compensation at the expense of the poor; and by the addition of subsection (5) pertaining to the adjustment of the amount annually, in order to counter the effect of inflation.

- 3.5.2 The fact that the funeral expense items to be compensated by the Fund will be pre-defined, and the fact that this type of claim will not be dependent on fault, will ensure that the Fund is able to provide the family of the deceased with faster provision of compensation at a time when the compensation is most required.

3.6 Clause 6

Clause 6 of the Bill amends the Act by the substitution of section 22(1) of the Act which provides for the submission of information to the Fund, agent and third party, to provide that the Fund may determine the form to be used by the owner or driver to provide to the Fund with the particulars of the road accident.

3.7 Clause 7

Clause 7 of the Bill amends the Act by the substitution of section 23(1) of the Act which provides for a prescription regime that only applies to claims where the identity of the driver or owner of the vehicle that caused the accident has been established. So called “hit-and-run” claims are subject to a less generous prescribed prescription regime. A number of legal challenges are currently pending where the differentiation between the two classes of claims are at issue. This amendment will harmonise the prescription regime so that prescription of all claims are dealt with in terms of section 23 of the Act.

3.8 Clause 8

- 3.8.1 Clause 8 of the Bill amends section 24 of the Act in order to align the section with amendments effected in section 4.

3.9 Clause 9

Clause 9 of the Bill amends section 26 of the Act, to give the Minister powers to prescribe the list of injuries that will be deemed serious and the new single medical tariff.

3.10 Clause 10

The envisaged Road Accident Fund Amendment Act, 2016, will not apply to claims in respect of which the cause of action arose prior to the commencement of that Act. It would be unfair, and arguably unconstitutional, to accord retrospectivity to the Act. Thus, the Act will only apply to claims that arose after the commencement of the Act.

4. PARTIES CONSULTED

- 4.1 The draft Bill was published in the Government *Gazette* on 03 November 2014 and comments were received from the following stakeholders:

- KwaZulu-Natal Association of Personal Injury Lawyers (KAPIL), Bove Attorneys, Rontgen & Rontgen Inc., South African Medical Device Industry Association (SAMEDI), Rural Rehab SA, Marais Basson Attorneys, South African Orthopaedic Association, South African Spine Society & Neurological Society, Dr Enslin for APRAV, Law Society of South Africa (LSSA), Black Lawyers Association (BLA), South African Orthotic & Prosthetic Association (SAOPA), Western Cape Department of Health and Life Health.

- 4.2 The comments were considered by the Department, and incorporated where appropriate.
- 4.3 The draft Bill was subjected to the Socio Economic Impact Assessment System (SEIAS).
- 4.4 The National Economic Development and Labour Council (NEDLAC) task team meetings to consider the Bill in detail were held on 15 July 2015, 05 August 2015 and 12 August 2015. The task team suggested one minor change to the Bill, which was incorporated appropriately.
- 4.5 The draft Bill was presented and approved by the Economic Sectors, Employment and Infrastructure Development Cluster (ESEID DG Cluster) on 07 September 2016.

5. FINANCIAL IMPLICATIONS FOR THE STATE

None

6. IMPLICATIONS FOR PROVINCES

None

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Transport are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.
- 7.2 The Constitution regulates the manner in which legislation may be enacted by the legislature. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.
- 7.3 The test for tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. The test for tagging is distinct from legislative competence in that it focuses on all the provisions in the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 to the Constitution and not whether any of its provisions are incidental to its substance.
- 7.4 In the case of *Tongoane and Other v Minister for Agriculture and Land Affairs and Others, 2010 (8) BCLR 741(CC)*, the Constitutional Court pronounces on the test to be used when tagging legislation. The case deals with Communal Land Rights Act, 2004 (Act No.11 of 2004), (“CLARA”), which had been enacted in terms of section 75 of the Constitution. Parliament was of the view that the main purpose of CLARA did not fall within any Schedule 4 functional area. The applicants contended that the wrong test had been used and that for the purposes of tagging, it should be determined whether some provisions in substantial measure fall within a functional area listed in Schedule 4.
- 7.5 In *Tongoane* the Constitutional Court held that ‘the test for determining how a Bill is to be tagged must be broader than that from determining legislative competence’. The tagging test ‘focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance’. In applying the tagging test to the Bill, the question that should be asked is whether the provisions in the Bill substantially affect a Schedule 4 functional area. Road Accident Fund is not an item listed in Schedule 4 or 5 of the Constitution.

- 7.6 The Bill introduces a single tariff for the payment of compensation for medical treatment of road accident victims. The new tariff will ensure that the road accident victims have an access to the private health care sectors.
- 7.7 As the Bill does not deal with a functional area listed in Schedule 4 or Schedule 5 of the Constitution, we submit that section 44(a)(ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on “any matter”.
- 7.8 We are of the view that the Bill must be dealt with in accordance with the legislative procedure outlined in section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.9 The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.