

REPUBLIC OF SOUTH AFRICA

**ROAD ACCIDENT FUND
COMMISSION BILL**

(As introduced in the National Assembly)

(MINISTER OF TRANSPORT)

[B 93—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
PADONGELUKFONDSKOMMISSIE**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN VERVOER)

[W 93—98]

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BILL

To provide for the establishment of a commission of inquiry to inquire into, and to make recommendations regarding, a system for the payment of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents; and to provide for incidental matters.

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

Definitions

1. In this Act, unless inconsistent with the context—
- “Chairperson” means the Chairperson of the Commission, referred to in section 3(3);
 - “Commission” means the Road Accident Fund Commission, established by section 2(1);
 - “injury” means a bodily injury;
 - “Minister” means the Minister of Transport;
 - “road accident” means an accident or collision caused by or arising from the driving of a motor vehicle;
 - “Road Accident Fund” means the Road Accident Fund established by section 2(1) of the Road Accident Fund Act, 1996 (Act No. 56 of 1996); and
 - “this Act” includes any regulation made under section 13.

Establishment and object of Commission

2. (1) A commission of inquiry to be known as the Road Accident Fund Commission is hereby established.
- (2) The object of the Commission is to inquire into and to make recommendations regarding a reasonable, equitable, affordable and sustainable system for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents in the Republic.

Constitution of Commission

3. (1) The Commission consists of three members appointed by the President in consultation with the Cabinet.
- (2) The members of the Commission must be persons who, in the opinion of the President, are fit for appointment because by reason of their qualifications and experience they will contribute to the effective performance or exercise of the functions, powers and duties of the Commission.
- (3) One of the members of the Commission must be a judge of the Constitutional Court or of a High Court, and is the Chairperson of the Commission.
- (4) The President must make the names of the persons appointed as members of the Commission known by proclamation in the *Gazette*.
- (5) A person appointed as a member of the Commission holds office for the duration of the Commission.

Remuneration of members of Commission

4. (1) A member of the Commission is entitled to such remuneration, allowances and other benefits, if any, as the President may determine.

(2) The remuneration determined for the Chairperson of the Commission may be higher than that determined for the other members.

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Functions of Commission

5. (1) The Commission must inquire into—

(a) the nature of the existing system for the payment of compensation in the event of the injury or death of persons in road accidents, with reference to—

(i) the terms and conditions governing that system, as provided for in terms of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), and the regulations thereunder, and the problems experienced in this respect; and 10

(ii) the current financial condition of the Road Accident Fund, taking full account of all likely contingent liabilities that have already arisen, whether the claims relating thereto have already been lodged or not, and whether those claims have already been settled or not; and 15

(b) the nature and the relative advantages and disadvantages of—

(i) all available representations concerning the matters referred to in paragraph (a) received in writing or orally, where records exist, by the Ministry and the Department of Transport, by the Road Accident Fund and the Multilateral Motor Vehicle Accidents Fund, and by the Portfolio Committee on Transport of the National Assembly, since 10 May 1994; and 20

(ii) the issues raised and the proposals contained in the White Paper on the Road Accident Fund, Notice No. 170 of 1998, published in the *Gazette* No. 18658 of 4 February 1998, and in the preceding drafts thereof, and the available submissions thereon made to the bodies referred to in subparagraph (i) in writing or orally, where records exist, as well as recordings of public hearings and meetings. 25

(2) The Commission must make recommendations to the President on a reasonable, equitable, affordable and sustainable system for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents in the Republic, and in doing so the Commission must have due regard to the provisions of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). 30 35

(3) The recommendations referred to in subsection (2) must take into account and must be made with reference to the necessity or desirability of achieving, as soon as may be practicable, the Road Accident Fund's solvency in the sense that its liabilities, contingent or otherwise, are fully funded. The Commission must also consider the audit reports of the Auditor-General in respect of the Road Accident Fund and the Multilateral Motor Vehicle Accidents Fund, covering several years before the making of the recommendations. 40

(4) The Minister must make available to the Commission all the documents and records contemplated in subsection (1)(b)(i) and (ii).

Powers of Commission on conducting inquiry

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6. (1) When conducting the inquiry referred to in section 5(1), the Commission may—

(a) in such manner as the Chairperson may determine, invite any specific person or body or in general any person or body to submit oral or written evidence or arguments to the Commission;

(b) through the Chairperson, in writing request from any person or body such written particulars and information as it may consider necessary for the inquiry; 50

(c) by written notice signed by the Chairperson, addressed to and delivered by a member of the staff of the Commission or by a sheriff to any person, require

that person to appear before the Commission in relation to the inquiry at a time and place specified in the notice and, if required, to produce to it all or any documents in the possession or under the control of that person which the Commission may consider necessary for the inquiry; and

(d) through the Chairperson, have full access to the Minister, the Board and the management of the Road Accident Fund, and Government departments. 5

(2) The Commission may, through the Chairperson or a member of its staff designated by the Chairperson, administer an oath to or take an affirmation from any person appearing before it in terms of subsection (1), and question that person under oath or affirmation regarding any matter which it may consider necessary for the inquiry. 10

(3) Any person appearing before the Commission in terms of subsection (1)(c) is entitled to receive as witness fees an amount equal to the amount which that person would have received as witness fees had the person been subpoenaed to attend civil proceedings in the High Court held at the place mentioned in the written notice in question. 15

(4) Any person questioned by the Commission in terms of subsection (2) is, despite the provisions of any law or the common law to the contrary, but subject to the provisions of subsection (5)—

(a) competent and compelled to answer all questions put to that person regarding any matter connected with the inquiry despite that the answer may be self-incriminating; and 20

(b) compelled to produce to the Commission all or any documents in the possession or under the control of that person which the Commission may consider necessary for the inquiry.

(5) The provisions of subsection (4) are not to be interpreted as meaning that a self-incriminating answer referred to in subsection (4)(a) is admissible as evidence against the person concerned in any criminal proceedings. 25

(6) A member of the Commission or a member of the staff of the Commission designated in writing for that purpose by the Chairperson may, for the purposes of the inquiry, at all reasonable times enter upon and inspect any premises and demand and seize any document kept on those premises relating to the inquiry. 30

(7) A person may not without the written permission of the Chairperson disseminate any document submitted or produced to the Commission by any person concerning the inquiry or publish the contents or any portion of the contents of such a document.

(8) The Commission may hold such public hearings as it may consider necessary for the purposes of the inquiry. 35

Duties of Commission on completion of inquiry

7. (1) The Commission must complete the inquiry referred to in section 5(1) within a period of nine months from the date of appointment of the members of the Commission in terms of section 3(1). 40

(2) The Commission must, after the completion of the inquiry, prepare a written report containing its findings and conclusions, and the recommendations referred to in section 5(2).

(3) (a) Decisions by the Commission on the contents of the report must be taken on the basis of consensus amongst the members. 45

(b) In the event of consensus not being reached, decisions may be taken by a two-thirds majority of the members of the Commission.

(c) In the case contemplated in paragraph (b), minority views may be presented in the form of footnotes or annexures to the report.

(4) The Commission must submit its report to the President within a period of three months from the completion of the inquiry. 50

(5) The Commission is dissolved on submission of its report to the President.

Publication of report of Commission

8. (1) The President must, within a period of one month from the submission of the report by the Commission, submit the report to the Speaker of the National Assembly for tabling in the National Assembly. 55

(2) A person may not publish the report or a copy or any part thereof before the tabling of the report in terms of subsection (1).

Staff of Commission

9. (1) In the performance or exercise of its functions, powers and duties, the Commission must be assisted by a staff consisting of— 5

- (a) officers in the public service made available for that purpose by the Director-General: Transport; and
- (b) such other persons as the Minister may determine in consultation with the Chairperson.

(2) Every member of the staff of the Commission must help to preserve confidentiality regarding any matter or information that may come to the knowledge of a member of the staff in the performance of the duties of that member concerning the functions of the Commission, unless the Chairperson may in writing authorise such a member otherwise. 10

(3) A member of the staff of the Commission referred to in subsection (1)(a) is entitled to such allowance, and a member of the staff referred to in subsection (1)(b) is entitled to such remuneration and allowance, as the Minister may determine with the concurrence of the Minister of State Expenditure. 15

Expenditure concerning Commission

10. The expenditure concerning the performance or exercise of the functions, powers and duties of the Commission must be borne by the Road Accident Fund and accounted for by the Director-General: Transport. 20

Limitation of liability

11. A member of the Commission or of its staff or person acting on behalf of or on the instruction of the Commission, is not liable for anything done or omitted in good faith under any provision of this Act. 25

Offences and penalties

12. (1) A person commits an offence if that person—

- (a) refuses or fails to furnish written particulars or information requested from that person in terms of section 6(1)(b);
- (b) refuses or fails to comply with a written notice in terms of section 6(1)(c); 30
- (c) refuses to take an oath or to make an affirmation at the request of the Commission in terms of section 6(2);
- (d) refuses to answer any question put to that person in terms of section 6(2) or gives to such a question an answer which to that person's knowledge is false;
- (e) insults, disparages or belittles the Commission or does anything concerning the proceedings at a public hearing of the Commission which would have constituted contempt of court if those proceedings were proceedings in a court of law; 35
- (f) wilfully hinders or obstructs the Commission or a member of its staff in the performance or exercise of its or that member's functions, powers or duties; 40
- (g) wilfully interrupts the proceedings at a public hearing of the Commission or misbehaves in any other manner in the place where such a public hearing is held;
- (h) anticipates the proceedings at a public hearing or the findings of the Commission in a manner calculated to influence such proceedings or findings or does anything calculated to influence the Commission improperly in respect of any matter being or to be considered by the Commission concerning the inquiry referred to in section 5(1); or 45
- (i) contravenes or fails to comply with any provision of this Act aimed at preserving confidentiality. 50

(2) A person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

Regulations

13. (1) The Minister may make regulations prescribing any matter which is permitted to be prescribed in terms of this Act or which in the opinion of the Minister is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act. 5

(2) Regulations under subsection (1) affecting State expenditure may be made only with the concurrence of the Minister of State Expenditure.

Short title

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14. This Act is called the Road Accident Fund Commission Act, 1998.

**MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT
FUND COMMISSION BILL, 1998**

1. The complex problems of the existing compensation system for road accident victims are to some extent public knowledge, having been the focal point of the White Paper on the Road Accident Fund which was published earlier this year. The White Paper proposed certain interim solutions designed to contain the ever-increasing deficit of the Road Accident Fund to its current level, while yet providing reasonable benefits within that constraint. This interim benefit scheme was to be implemented until a commission of inquiry had reconsidered in its entirety the system of compensation or benefits for road accident victims.

2. Desirable though it was and still is to bring about the savings contemplated by those interim measures proposed in the White Paper, the logistical costs involved in introducing these changes and reversing some or all of them again when the commission has made its recommendations, are in themselves not inconsiderable. This, coupled with possible legal and constitutional problems which according to expert legal opinion may arise with the immediate introduction of those interim proposals, have now prompted the conclusion that the implementation of the interim benefit scheme should not be proceeded with at this stage prior to the completion of the commission of inquiry.

3. The Road Accident Fund Commission Bill provides for the establishment of a statutory commission of inquiry, to be known as the Road Accident Fund Commission, to inquire into and to make recommendations to the President regarding a reasonable, equitable, affordable and sustainable system for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents in the Republic (clause 2).

4. The Commission will consist of three members to be appointed by the President. One of the three must be a judge of the Constitutional Court or of a High Court, and will be the Chairperson (clause 3).

5. The Commission will have nine months to conduct its inquiry (clause 7(1)). During that period it will have to inquire into the nature of the existing compensation system, the problems experienced in this respect, the current financial condition of the Road Accident Fund, the nature and the relative advantages and disadvantages of representations concerning these matters made by interested parties since 10 May 1994, the issues raised and the proposals contained in the White Paper, and the submissions thereon made by those interested parties (clause 5(1)).

6. When conducting its inquiry the Commission will have all the usual powers of a judicial commission of inquiry. In addition, it will have full access to the Minister of Transport, the Board and the management of the Road Accident Fund, and Government departments (clause 6).

7. After completion of its inquiry the Commission must prepare a report which must be submitted to the President within three months (clause 7). When making its recommendations, the Commission must specifically also take account of the provisions of the Constitution, as well as the question of achieving the solvency of the Road Accident Fund (clause 5(2) and (3)).

8. In the performance or exercise of its functions, powers and duties, the Commission will be assisted by the necessary staff (clause 9). The expenditure concerning the Commission will be borne by the Road Accident Fund and accounted for by the Department of Transport (clause 10).

9. In the opinion of the State Law Adviser the Bill should be dealt with in accordance with the procedure laid down in section 75 of the Constitution.