PRESIDENT'S OFFICE

No. 1756. 1 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

No. 56 of 1996: Road Accident Fund Act, 1996.

ROAD ACCIDENT FUND ACT, 1996 (ACT No. 56 OF 1996)

[Assented to 24 October 1996.] [Date of commencement : 1 May 1997, except section 10: 21 April 1996.]

(English text signed by the President.)

as amended by

Road Accident Fund Amendment Act, 2001 (Act No. 15 of 2001)
Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001)
Road Accident Fund Amendment Act, 2002 (Act No. 43 of 2002)
Revenue Laws Amendment Act, 2005 (Act No. 31 of 2005)
Road Accident Fund Amendment Act, 2005 (Act No. 19 of 2005)

ACT

To provide for the establishment of the Road Accident Fund; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context otherwise indicates–

(i) "agent" means an agent of the Fund appointed under section 8; (i)

(ii) "Board" means the Board of the Fund referred to in section 10; (xii)

(iii) "Chief Executive Officer" means the Chief Executive Officer of the Fund referred to in section 12; (viii)

(iv) "convey", in relation to the conveyance of a person in or on a motor vehicle, includes–

(*a*) entering or mounting the motor vehicle concerned for the purpose of being so conveyed; and

(*b*) alighting from the motor vehicle concerned after having been so conveyed; (xv)

(v) "driver" means the driver referred to in section 17(1); (ii)

(vi) ...

[Definition of "fuel" deleted by section 125(1) of Act No. 31 of 2005 with effect from 1 April 2006.]

(vii) "Fund" means the Road Accident Fund established by section 2 (1); (vi)

(viii) "lift club" means any club of which–

(*a*) every member shall have a turn to convey or cause to be conveyed by means of a motor car the members of such a club or other persons designated by such members to or from or to and from specified places for a specified purpose; or

(*b*) every member is the owner of a motor car and of which one or some of its members shall by means of a motor car of which he or she is the owner or they are the owners, as the case may be, convey or cause to be conveyed the members of such lift club or other persons designated by such members to or from a specific place for a specific purpose; (xiii)

(ix) "Minister" means the Minister of Transport; (ix)

(x) "motor car" means a motor vehicle designed or adapted for the conveyance of not more than 10 persons, including the driver; (x)

(xi) "motor vehicle" means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle; (xi)

(xii) "owner", in relation to–

(a) a motor vehicle which a motor dealer has in his or her possession during the course of his or her business and which may in terms of any law relating to the licensing of motor vehicles not be driven or used on a public road except under the authority of a motor dealer's licence of which the motor dealer concerned is the holder, means that motor dealer;

(b) a motor vehicle which has been received for delivery by a motor transport licence holder in the course of his or her business of delivering new motor vehicles and which has not yet been delivered by him or her, means that motor transport licence holder;

(c) a motor vehicle which is the subject of an instalment sale transaction, means the purchaser in the instalment sale transaction concerned;

(d) a motor vehicle under an agreement of lease for a period of at least 12 months, means the lessee concerned; (v)

(xiii) "prescribe" means prescribe by regulation under section 26; (xvi)

(xiv) "reward", in relation to the conveyance of any person in or on a motor vehicle, does not include any reward rendering such conveyance illegal in terms of any law relating to the control of road transportation services; (xiv)

(xv) "third party" means the third party referred to in section 17(1); (iv)

(xvi) "this Act" includes any regulation made under section 26.(vii)

Establishment of Fund

2. (1) There is hereby established a juristic person to be known as the Road Accident Fund.

(2) *(a)* Subject to section 28(1), the Multilateral Motor Vehicle Accidents Fund established by the Agreement concluded between the Contracting Parties on 14 February 1989, shall cease to exist, and all money credited to that fund immediately before the commencement of this Act shall vest in the Fund, all assets, liabilities, rights and obligations, existing as well as accruing, of the first-mentioned fund shall devolve upon the Fund, and any reference in any law or document to the said Multilateral Motor Vehicle Accidents Fund shall, unless clearly inappropriate, be construed as a reference to the Fund.

(b) No moneys, duties or fees of office shall be payable by the Fund in respect of any noting or endorsement or any other written alteration which may be necessary in any contract, licence, register or other document by virtue of paragraph *(a)*.

Object of Fund

3. The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.

Powers and functions of Fund

4. (1) The powers and functions of the Fund shall include–

(a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;

(b) the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;

(c) the management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties; and

(d) procuring reinsurance for any risk undertaken by the Fund under this Act.

(2) In order to achieve its object, the Fund may–

(a) purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stock, securities and all other kinds of movable and immovable property;

(b) sell, lease, mortgage, encumber, dispose of, exchange, cultivate, develop, build upon, improve or in any other way deal with its property;

(c) invest any money not immediately required for the conduct of its business and realise, alter or reinvest such investments or otherwise deal with such money or investments;

(d) borrow money and secure the payment thereof in such manner as it may deem fit;

(e) make donations for research in connection with any matter relating to injuries sustained in motor vehicle accidents on such conditions as it may deem advisable;

(f) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments, excluding share certificates;

(g) take any other action or steps which are incidental or conducive to the exercise of its powers or the performance of its functions;

(h) make financial contributions to road safety projects and programmes approved by the Minister.

[Paragraph (h) added by section 1 of Act No. 15 of 2001 with effect from 18 July 2001.]

(i) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services contemplated in this Act.

[Paragraph (i) added by section 1(a) of Act No. 19 of 2005 with effect from _____.]

(3) In the exercising of the powers conferred on it by this Act, the Fund may deal with any person, partnership, association, company, corporation or other juristic person wherever seated.

(4) *(a)* The Fund may conclude an agreement with any organ of State regarding any matter provided for in this Act in order to improve or ensure–

(i) the effective management of the Fund;

(ii) the efficiency of the Fund;

(iii) co-ordination of functions;

(iv) co-operative governance contemplated in Chapter 3 of the Constitution.

(b) The Minister shall, by notice in the *Gazette*, publish a summary of the terms of any agreement concluded under paragraph *(a)*.

[Subsection (4) added by section 1(b) of Act No. 19 of 2005 with effect from _____.]

Financing of Fund

5. (1) The Fund shall procure the funds it requires to perform its functions–

(a) by way of a Road Accident Fund levy as contemplated in the Customs and Excise Act, 1964; and

[Paragraph (a) substituted by section 126(1)(a) of Act No. 31 of 2005 with effect from 1 April 2006.]

(b) by raising loans.

(2) The Road Accident Fund levy paid into the National Revenue Fund in terms of the provisions of section 47(1) of the Customs and Excise Act, 1964, less any amount of such levy refunded under that Act, is a direct charge against the National Revenue Fund for the credit of the Fund.

[Subsection (2) substituted by section 126(1)(b) of Act No. 31 of 2005 with effect from 1 April 2006.]

(3) ...

[Subsection (3) added by section 74 of Act No. 19 of 2001 with effect from 27 July 2001 and deleted by section 126(1)(c) of Act No. 31 of 2005 with effect from 1 April 2006.]

Financial year of and budgeting for Fund

6. (1) The financial year of the Fund shall run from 1 April of any year to 31 March of the following year.

[Subsection (1) substituted by section 2 of Act No. 19 of 2005 with effect from _____.]

(2) The Chief Executive Officer shall annually prepare a budged for the Fund for consideration by the Board, and the Board shall submit the budget to the Minister for approval.

Use of resources and facilities of Fund

7. The resources and facilities of the Fund shall be used exclusively to achieve, exercise and perform the object, powers and functions of the Fund, respectively.

Appointment of agents for Fund

8. (1) The Board may appoint agents, who shall have power–

(a) to investigate and to settle on behalf of the Fund the prescribed claims, contemplated in section 17(1), arising from the driving of a motor vehicle in a case where the identity of either the owner or the driver thereof has been established; or

(b) to commence, conduct, defend or abandon legal proceedings in connection with such claims.

(2) The Fund shall guarantee or insure the obligations of agents arising from the application of this Act.

(3) The Fund shall cause the names of agents and the claims in respect of which they are liable to be published in the *Gazette*.

Co-operation with other institutions

9. (1) The Minister may, upon the recommendation of the Board, co-operate and enter into agreements with any public or private institution in respect of the reciprocal recognition of compulsory motor vehicle insurance or compulsory motor vehicle accidents compensation.

(2) An agreement with any public or private institution contemplated in subsection (1) shall be signed by the Minister on behalf of the Fund.

Board of Fund

[Heading substituted by section 3(a) of Act No. 19 of 2005 with effect from _____.]

10. (1) There shall be a Board of the Fund, constituted as follows:

(a) The Director-General: Transport or any other senior officer in the Department of Transport, designated by him or her; and

[Paragraph (a) substituted by section 1(a) of Act No. 43 of 2002 with effect from 4 December 2002 and by section 3(b) of Act No. 19 of 2005 with effect from _____.]

(b) at least 8, but not more than 12, members appointed by the Minister, who may not be in the full-time employment of any government, and who shall each command extensive experience in one or more of the fields of insurance, finance, medical service provision, law, accounting and actuarial science, or in matters relating to disabled persons, road users, commuters' or consumers' interests.

[Paragraph (b) substituted by section 1(b) of Act No. 43 of 2002 with effect from 4 December 2002 and by section 3(b) of Act No. 19 of 2005 with effect from _____.]

(2) Subject to this section, a member of the Board shall–

(a) declare any interest relating to the functions, duties and obligations of the Fund or its agents in terms of this Act, and such a member shall not vote in respect of any decision of the Board in so far as he or she has such an interest therein;

(b) at all times act in the best interest of the Fund;

(c) hold office for a period of three years as from the date of appointment of such member and may, subject to nomination contemplated in subsection (9), be reappointed for further terms of office not exceeding three years at a time, provided that such a member may not serve for more than three consecutive terms of office.

[Paragraph (c) substituted by section 3(c) of Act No. 19 of 2005 with effect from _____.]

(3) The Minister may remove a member of the Board referred to in subsection 1*(b)* from office if there is sufficient reason to do so.

(4) Only a member of the Board referred to in section (1)*(b)* shall, subject to subsection (2)*(a)*, have a vote on any matter before the Board.

[Subsection (4) substituted by section 3(d) of Act No. 19 of 2005 with effect from _____.]

(5) The Chief Executive Officer may attend the meetings of the Board, but has no vote.

(6) The Minister shall appoint two of the members of the Board as Chairperson and Vice-Chairperson, respectively.

[Subsection (6) substituted by section 3(e) of Act No. 19 of 2005 with effect from _____.]

(7) The Chairperson, or in his or her absence, the Vice-Chairperson, shall at all times preside at the meetings of the Board.

[Subsection (7) substituted by section 3(e) of Act No. 19 of 2005 with effect from _____.]

(8) ...

[Subsection (8) deleted by section 3(f) of Act No. 19 of 2005 with effect from _____.]

(9) Whenever it is necessary to appoint a member referred to in subsection (1)*(b)* to the Board, but subject to subsection (10), the Minister shall–

[The words preceding paragraph (a) substituted by section 1(c) of Act No. 43 of 2002 with effect from 4 December 2002.]

(a) by notice in the *Gazette* and the national news media, invite persons or bodies who have an interest in the operations of the Fund to nominate persons who comply with the criteria mentioned in subsection 1*(b)*;

(b) so publish a list of nominees received in response to such invitation, which list shall include the names of the relevant nominators.

[Subsection (9) substituted by section 3(g) of Act No. 19 of 2005 with effect from _____.]

(9A) The Minister shall cause the name of a member appointed under subsection (1)*(b)*, or reappointed under subsection (2)*(c)*, together with such member's area of expertise, to be published in the *Gazette*.

[Subsection (9A) inserted by section 3(h) of Act No. 19 of 2005 with effect from _____.]

(10) Whenever a position on the Board becomes vacant before the expiry of the term of office referred to in subsection (2)(*c*), the Minister may appoint any other competent person, as contemplated in subsection (1)(*b*), to serve for the unexpired portion of the term of office of the previous member irrespective of when the vacancy occurs.

[Subsection (10) added by section 1(d) of Act No. 43 of 2002 with effect from 4 December 2002.]

Powers and functions of Board, and procedure

11. (1) The Board shall, subject to the powers of the Minister, exercise overall authority and control over the financial position, operation and management of the Fund, and may *inter alia*–

(a) make recommendations to the Minister in respect of–

(i) the annual budget of the Fund;

(ii) any amendment of this Act;

(iii) the entering into an agreement with any institution referred to in section 9;

(iv) ...

[Subparagraph (iv) deleted by section 4 of Act No. 19 of 2005 with effect from _____.]

(v) any regulation to be made under this Act;

(b) terminate the appointment of any agent and determine the conditions on which such appointment is effected or terminated;

(c) approve the appointment, determination of conditions of employment and dismissal by the Chief Executive Officer of staff of the Fund on management level;

(d) approve internal rules and directions in respect of the management of the Fund;

(e) approve loans made or given by the Fund;

(f) approve donations for research in connection with any matter regarding injuries sustained in motor vehicle accidents;

(g) determine guidelines in relation to the investment of the money of the Fund; and

(h) delegate or assign to the Chief Executive Officer and any member of the staff of the Fund any power or duty of the Board as it may deem fit, but shall not be divested of any power or duty so delegated or assigned, and may amend or withdraw any decision made by virtue of such delegation or assignment.

(2) The Board may as often as it deems necessary, but shall at least once during a financial year, or when requested by the Minister to do so, report to the Minister regarding matters dealt with during that year or as requested by the Minister.
(3) A quorum for any meeting of the Board shall be majority of its voting members.
(4) The Board shall meet as often as the business of the Fund may require.
(5) *(a)* The member of the Board referred to in section 10(1)*(a)* shall be reimbursed by the Fund for all reasonable expenses incurred in attending meetings of the Board.
(b) Members of the Board referred to in section 10(1)*(b)* shall be remunerated by the Fund for services rendered as such members and reimbursed for all reasonable expenses incurred in attending meetings of the Board: Provided that the Chairperson of the Board may receive such higher remuneration than that of the other members, as may be determined by the Board.
(6) *(a)* Resolutions of the Board shall, whenever practicable, be taken on the basis of consensus.
(b) If consensus cannot be reached and except where otherwise expressly provided, all matters before the Board shall be decided by a majority of the votes cast.

Chief Executive Officer and staff

12. (1) *(a)* The Minister shall upon the recommendation of the Board appoint the Chief Executive Officer of the Fund on such terms and conditions of employment as the Board may determine.
[Paragraph (a) substituted by section 5(a) of Act No. 19 of 2005 with effect from _____.]
(b) The Chief Executive Officer shall be a person who is suitably qualified and experienced to manage the day to day affairs of the Fund.
[Paragraph (b) substituted by section 5(b) of Act No. 19 of 2005 with effect from _____.]
(2) Subject to the directions of the Board, the Chief Executive Officer shall conduct the current business of the Fund, and he or she may–

(a) exercise the powers and shall perform the functions of the Fund mentioned in section 4(1)*(b)*, *(c)* and *(d)*, (2) and (3);
(b) appoint, determine the conditions of employment of and dismiss the staff of the Fund, excluding members of staff on management level;
(c) draft internal rules and directions in respect of the management of the Fund and make recommendations in respect thereof to the Board;
(d) enter into an agreement with any person for the rendering of a particular service related to the management of the Fund or its functions;
(e) issue guidelines to agents regarding the manner in which claims should be administered by them on behalf of the Fund; and
(f) exercise such powers and shall perform such duties as may be delegated and assigned to him or her by the Board under section 11(1)*(h)*.

Annual report

13. (1) The Board shall publish an annual report containing–

(a) the audited balance sheet of the Fund together with a report by the auditor, contemplated in section 14, in respect of such audit; and
(b) a report on the activities of the Fund during the year to which the audit relates.

(2) The Minister shall lay upon the Table in Parliament a copy of the annual report within 30 days after receipt thereof if Parliament is then in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

Financial control

14. (1) The Fund shall keep proper records of all its financial transactions and its assets and liabilities.
(2) *(a)* The accounts of the Fund shall be audited annually by the Auditor-General appointed in terms of

section 2 of the Auditor-General Act, 1989 (Act No. 52 of 1989), in accordance with the said Act and with such other laws as may be referred to in that Act.

(b) The Auditor-General shall submit to the Board copies of any report referred to in section 6 of the Auditor-General Act, 1989.

(3) The Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), shall–

(a) exercise financial supervision over the Fund in accordance with the Financial Supervision of the Road Accident Fund Act, 1993 (Act No. 8 of 1993), and with such other laws as may be referred to in that Act;

(b) submit copies of any reports on the business of the Fund compiled by that Board in terms of the provisions of the Financial Supervision of the Road Accident Fund Act, 1993, to the Board of the Fund; and

(c) consult with the Minister prior to the making of regulations under section 5 of the Financial Supervision of the Road Accident Fund Act, 1993.

Legal status of and proceedings by Fund, and limitation of certain liability

15. (1) The Fund may–

(a) institute or defend legal proceedings; and

(b) commence, conduct, defend or abandon legal proceedings in connection with claims investigated and settled by it.

(2) An action to enforce a claim against the Fund or an agent may be brought in any competent court within whose area of jurisdiction the occurrence which caused the injury or death took place.

(3) No member of the Board or officer or employee of the Fund, or other person performing work for the Fund, shall be liable for anything done in good faith in the exercise of his or her powers or the performance of his or her functions or duties under or in terms of this Act.

Exemption from taxation

16. (1) *(a)* The Fund, its assets, property, income and its operation and transactions shall be exempt from all taxation, or the Fund shall be refunded all taxation paid by it, as the case may be.

(b) The Fund shall be exempt from–

(i) all customs, excise and stamp duties; and

(ii) liability for payment, withholding or collecting of any tax or duty.

(2) Goods which have been acquired or imported free from customs or excise duty by the Fund shall not be sold, hired out or otherwise disposed of unless authority has been obtained in advance and any necessary duties and taxes paid.

(3) Notwithstanding subsection (1), the Fund shall not claim exemption from taxes which are no more than charges for public utility services.

Liability of Fund and agents

17. (1) The Fund or an agent shall–

(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(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 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.

(1A) *(a)* 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).

(2) ...

(3) *(a)* No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order.

(b) In issuing any order as to costs on making such award, the court may take into consideration any written offer, including a written offer without prejudice in the course of settlement negotiations, in settlement of the claim concerned, made by the Fund or an agent before the relevant summons was served.

(4) Where a claim for compensation under subsection (1)–

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, the Fund or an agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the agent to furnish such undertaking, to compensate–

(i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or

(ii) the provider of such service or treatment directly, notwithstanding section *19(c)* or *(d)*,

in accordance with the tariff contemplated in subsection (4B);

(b) includes a claim for future loss of income or support, the amount payable by the Fund or the agent shall be paid by way of a lump sum or in instalments as agreed upon;

(c) includes a claim for loss of income or support, the annual loss, irrespective of the actual loss, shall be proportionately calculated to an amount not exceeding–

(i) R160 000 per year in the case of a claim for loss of income; and

(ii) R160 000 per year, in respect of each deceased breadwinner, in the case of a claim for loss of support.

(4A) *(a)* The Fund shall, by notice in the *Gazette*, adjust the amounts referred to in subsection (4)*(c)* quarterly, in order to counter the effect of inflation.

(b) In respect of any claim for loss of income or support the amounts adjusted in terms of paragraph *(a)* shall be the amounts set out in the last notice issued prior to the date on which the cause of action arose.

(4B) *(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 prescribed after consultation with the Minister of Health.

(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.

(c) In the absence of a tariff for emergency medical treatment the tariffs contemplated in paragraph *(a)* shall apply.

(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19*(c)* or *(d)*, claim an amount in accordance with the tariff contemplated in subsection (4B) direct from the Fund or an agent on a prescribed form, and such claim shall be subject, *mutatis mutandis*, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.

(6) The Fund, or an agent with the approval of the Fund, may make an interim payment to the third party out of the amount to be awarded in terms of subsection (1) to the third party in respect of medical costs, in accordance with the tariff contemplated in subsection (4B), loss of income and loss of support: Provided that the Fund or such agent shall, notwithstanding anything to the contrary in any law contained, only be liable to make an interim payment in so far as such costs have already been incurred and any such losses have already been suffered.

[Section 17 substituted by section 6 of Act No. 19 of 2005 with effect from _____.]

Liability limited in certain cases

18. (1) ...

[Subsection (1) deleted by section 7(a) of Act No. 19 of 2005 with effect from _____.]

(2) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned and who was an employee of the driver or owner of that motor vehicle and the third party is entitled to compensation under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in respect of such injury or death–

(a) the liability of the Fund or such agent, in respect of the bodily injury to or death of any one such employee, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund or such agent and any lesser amount to which that third party is entitled by way of compensation under the said Act; and

[Paragraph (a) substituted by section 7(b) of Act No. 19 of 2005 with effect from _____.]

(b) the Fund or such agent shall not be liable under the said Act for the amount of the compensation to which any such third party is entitled thereunder.

(3) Without derogating from any liability of the Fund or an agent to pay costs awarded against it or such agent in any legal proceedings, where the loss or damage contemplated in section 17 is suffered as a result of bodily injury to or death of a member of the South African National Defence Force, other than a person referred to in subsection (2), and the third party is entitled to compensation under the Defence Act, 1957, or another Act of Parliament governing the said Force in respect of such injury or death–

(a) the liability of the Fund or such agent, in respect of the bodily injury to or death of any such member of the said Force, shall be limited in total to the amount representing the difference between the amount which that third party could, but for this paragraph, have claimed from the Fund or such agent and any lesser amount to which that third party is entitled by way of compensation under the said Defence Act or the said other Act; and

(b) the Fund or such agent shall not be liable under the said Defence Act or the said other Act for the amount of the compensation to which any such third party is entitled thereunder.

(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 limited to the necessary actual costs to cremate the deceased or to inter him or her in a grave.

Liability excluded in certain cases

19. The Fund or an agent shall not be obliged to compensate any person in terms of section 17 for any loss or damage–

(a) for which neither the driver nor the owner of the motor vehicle concerned would have been liable but for section 21; or

(b) ...

[Paragraph (b) deleted by section 8(a) of Act No. 19 of 2005 with effect from _____.]

(c) if the claim concerned has not been instituted and prosecuted by the third party, or on behalf of the third party by–

(i) any person entitled to practise as an attorney within the Republic; or

(ii) any person who is in the service, or who is a representative of the state or government or a provincial, territorial or local authority; or

(d) where the third party has entered into an agreement with any person other than the one referred to in paragraph *(c)*(i) or (ii) in accordance with which the third party has undertaken to pay such person after settlement of the claim–

(i) a portion of the compensation in respect of the claim; or

(ii) any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from the person contemplated in paragraph *(c)*(i) or (ii); or

(e) suffered as a result of bodily injury to any person who–

(i) unreasonably refuses or fails to subject himself or herself, at the request and cost of the Fund or such agent, to any medical examination or examinations by medical practitioners designated by the Fund or agent;

(ii) refuses or fails to furnish the Fund or such agent, at its or the agent's request and costs, with copies of all medical reports in his or her possession that relate to the relevant claim for compensation; or

(iii) refuses or fails to allow the Fund or such agent at its or the agent's request to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner; or

(f) if the third party refuses or fails–

(i) to submit to the Fund or such agent, together with his or her claim form as prescribed or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim concerned are fully set out; or

(ii) to furnish the Fund or such agent with copies of all statements and documents relating to the accident that gave rise to the claim concerned, within a reasonable period after having come into possession thereof; or

(g) suffered as a result of an emotional shock sustained by that person when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.

[Paragraph (g) added by section 8(b) of Act No. 19 of 2005 with effect from _____.]

Presumptions regarding driving of motor vehicle

20. (1) For the purposes of this Act a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.

(2) For the purposes of this Act a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle while it moves from that place as a result of gravity, or while it is stationary at that place or at a place to which it moved from the first-mentioned place as a result of gravity.

(3) Whenever any motor vehicle has been placed or left at any place, it shall, for the purposes of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such place by the owner of such vehicle.

Abolition of certain common law claims

21. (1) No claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie–

(a) against the owner or driver of a motor vehicle; or

(b) against the employer of the driver.

(2) Subsection (1) does not apply–

(a) if the Fund or an agent is unable to pay any compensation; or

(b) to an action for compensation in respect of loss or damage resulting from emotional shock sustained by a person, other than a third party, when that person witnessed or observed or was informed of the bodily injury or the death of another person as a result of the driving of a motor vehicle.

[Section 21 substituted by section 9 of Act No. 19 of 2005 with effect from _____.]

Submission of information to Fund, agent and third party

22. (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 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.

(b) Whenever the question arises whether it was reasonably possible to furnish the Fund with the information contemplated in paragraph *(a)* within 14 days after the occurrence, the onus of proving that it was not reasonably possible to do so shall be on the person who in terms of that paragraph must so furnish the information.

(2) The agent or the Fund shall within a reasonable period after the third party has complied with the requirements contemplated in section 19*(f)*(i), furnish the third party or his or her agent with a copy of the information and statements which the owner or driver furnished in terms of subsection (1), together with all statements which were or are obtained from witnesses to the accident.

Prescription of claim

23. (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.

(2) Prescription of a claim for compensation referred to in subsection (1) shall not run against–

(a) a minor;

(b) any person detained as a patient in terms of any mental health legislation; or

(c) a person under curatorship.

(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17(4)*(a)* or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.

[Subsection (3) substituted by section 10 of Act No. 19 of 2005 with effect from _____.]

(4) Notwithstanding section 36 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), any right under subsection 1*(b)* of that section to recover an amount which under the said Act is required to be paid to a third party in circumstances other than those mentioned in section 18 (2) of this Act shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarred by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.

(5) Notwithstanding section 149*ter* of the Defence Act, 1957 (Act No. 44 of 1957), or of a similarly worded section of another Act of Parliament governing the South African National Defence Force, any right under the said sections to recover an amount which under the said legislation is required to be paid to a third party in circumstances other than those mentioned in section 18(3), shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarred by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.

Procedure

24. (1) A claim for compensation and accompanying medical report under section 17(1) shall–

(a) be set out in the prescribed form, which shall be completed in all its particulars;

(b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

(2) *(a)* The medical report shall be completed on the prescribed form 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.

(b) Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in subsection 1*(a)* shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of expenses in terms of section 17(5) shall be in the prescribed form, and the provisions of this section shall apply *mutatis mutandis* in respect of the completion of such form.

(4) *(a)* Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent–

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19*(f)* have been complied with:

Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.

Right of recourse of Fund or agent

25. (1) When the Fund or an agent has paid any compensation in terms of section 17 the Fund or agent may, subject to subsections (2) and (3), without having obtained a formal cession of the right of action, recover from the owner of the motor vehicle concerned or from any person whose negligence or other wrongful act caused the loss or damage concerned, so much of the amount paid by way of compensation as the third party concerned could, but for the provisions of section 21, have recovered from the owner or from such person if the Fund or agent had not paid any such compensation.

(2) The Fund's or agent's right of recourse against the owner of a motor vehicle under subsection (1) shall only be applicable in any case where the motor vehicle at the time of the accident which gave rise to the payment of the compensation was being driven–

(a) by a person other than the owner and the driver was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident and the owner allowed the driver to drive the motor vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug; or

(b) by a person other than the owner without the driver holding a licence issued under any law governing the licensing of drivers of motor vehicles which the driver was required to hold, or the driver, being the holder of a learner's or other restricted licence issued under such law, failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence, and the owner allowed the driver to drive the motor vehicle knowing that the driver did not hold such a licence or that the driver failed to comply with the requirements or conditions of a learner's or restricted licence, as the case may be; or

(c) by the owner and he or she was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident; or

(d) by the owner without holding a licence issued under any law governing the licensing of drivers of motor vehicles, which he or she was required to hold, or the owner, being the holder of a learner's or other restricted licence issued under such law, failed, while he or she was so driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence; or

(e) by the owner and he or she failed to comply with any requirement contemplated in section 22(1) with reference to the said accident, or knowingly furnished the Fund or the agent with false information relating to such accident and the Fund or agent was materially prejudiced by such failure or by the furnishing of such false information, as the case may be.

(3) The provisions of subsection (2)*(c)*, *(d)* and *(e)* shall apply *mutatis mutandis* in respect of any right of recourse by the Fund or the agent against any person who, at the time of the accident which gave rise to the payment of the compensation, was driving the motor vehicle concerned with or without the consent of its owner.

Regulations

26. (1) The Minister may make regulations regarding any matter that shall or may be prescribed in terms of this Act or which it is necessary or expedient to prescribe in order to achieve or promote the object of this Act.

(1A) Without derogating from the generality of subsection (1), the Minister may make regulations regarding–

(a) the method of assessment to determine whether, for purposes of section 17, a serious injury has been incurred;

(b) injuries which are, for the purposes of section 17, not regarded as serious injuries;

(c) the resolution of disputes arising from any matter provided for in this Act.

(1B) Any regulation made under subsection (1A)*(a)* or *(b)* must be made after consultation with the Minister of Health.

(2) Any regulation contemplated in subsection (1) or (1A) may for any contravention of or failure to comply with its provisions or the provisions of this Act, provide for penalties of a fine or imprisonment for a period not exceeding three months.

[Section 26 substituted by section 11 of Act No. 19 of 2005 with effect from _____.]

Repeal and amendment of laws

27. (1) Subject to section 28–

(a) the laws mentioned in Part I of the Schedule are hereby repealed; and

(b) all laws, including proclamations and decrees, which amended the laws mentioned in Part I of the Schedule are hereby repealed in so far as they so amended those laws.

(2) The Financial Supervision of the Multilateral Motor Vehicle Accidents Fund Act, 1993 (Act No. 8 of 1993), is hereby amended as indicated in Part II of the Schedule.

Savings

28. (1) Notwithstanding section 2(2), this Act shall not apply in relation to a claim for compensation in respect of which the occurrence concerned took place prior to the commencement of this Act in terms of a law repealed by section 27, and any such claim shall be dealt with as if this Act had not been passed.

(2) The repeal of any law by section 27 shall not affect–

(a) the previous operation of such law or anything duly done or permitted under such law; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under such law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed in terms of such law; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act has not been passed.

Short title and commencement

29. This Act shall be called the Road Accident Fund Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*, except section 10, which shall be deemed to have come into operation on 21 April 1996.

SCHEDULE

PART I

No. and year of law	Short title
Act No. 32 of 1980	Compulsory Motor Vehicle Insurance Act, 1980 (Bophuthatswana)
Act No. 28 of 1986	Motor Vehicle Accidents Act, 1986 (Ciskei)
Act No. 84 of 1986	Motor Vehicle Accidents Act, 1986
Decree No. 9 of 1988	Decree No. 9 (Motor Vehicle Accidents) of 1988 (Transkei)
Act No. 5 of 1989	Multilateral Motor Vehicle Accidents Fund Act, 1989 (Bophuthatswana)
Act No. 7 of 1989	Multilateral Motor Vehicle Accidents Fund Act, 1989 (Venda)
Decree No. 9 of 1989	Decree No. 9 (Multilateral Motor Vehicle Accidents Fund) of 1989 (Transkei)
Act No. 17 of 1989	Multilateral Motor Vehicle Accidents Fund Act, 1989 (Ciskei)
Act No. 93 of 1989	Multilateral Motor Vehicle Accidents Fund Act, 1989

PART II

The Financial Supervision of the Multilateral Motor Vehicle Accidents Fund Act, 1993, is hereby amended–

(a) by the substitution for the long title of the following long title:

"ACT

To further regulate the affairs of the **[Multilateral Motor Vehicle Accidents]** Road Accident Fund; and to provide for matters connected therewith.";

(b) by the substitution in section 1 for the definition of "Fund" of the following definition:

"'Fund' means the **[Multilateral Motor Vehicle Accidents]** Road Accident Fund mentioned in the **[Multilateral Motor Vehicle Accidents Fund Act, 1989 (Act No. 93 of 1989)]** Road Accident Fund Act, 1996; and

(c) by the substitution for section 6 of the following section:

"Short title

6. This Act shall be called the Financial Supervision of the Road Accident Fund Act, 1993.".