

17 August 2018

DEPARTMENT OF TRANSPORT

ROAD ACCIDENT BENEFIT SCHEME AMENDMENT BILL, 2017: RESPONSES BY THE DEPARTMENT OF TRANSPORT ON THE COMMENTS MADE BY NATIONAL TREASURY ON THE RABS BILL [B 17 – 2017]

Clause	Current provision	Comments from National Treasury	Response
<p><b>Clause 7</b> <b>Composition and appointment of board</b></p>	<p>"7. (1) The Administrator is governed by a Board consisting of the following members: (a) The Chief Executive Officer; (b) no more than 12 members appointed by the Minister, with qualifications in, and at least 10 years' experience in one or more of the fields of medicine, disability management, medical health insurance, hospital management, public finance, public transport, information</p>	<p><b>Composition of the Board</b></p> <p>1. National Treasury suggest that a "consideration should be given to reducing 12 to 6 members.</p> <p>2. Section 7(6) provides the CEO and DGs are <i>ex officio</i> members of the board and "may not vote at its meetings. National Treasury suggest that a "consideration should be given to the removal of this restriction."</p>	<p>Department noted comments and suggest the following reformulation of clause 7:</p> <p><b>New Proposal</b></p> <p>7. (1) The Administrator is governed by a Board consisting of the following members: (a) the Chief Executive Officer; (b) the Chief Financial Officer; (c) no more than 10 members appointed by the Minister, with qualifications in, and at least 10 years' experience in one or more of the fields of medicine, disability management, medical health insurance, hospital management, public finance, public transport, information technology systems, actuarial science and law; (d) the Director-General of the national Department of Transport, or his or her delegate;</p>

	<p>technology systems, actuarial science and law;</p> <p>(c) the Director-General of the national Department of Transport, or his or her delegate;</p> <p>(d) the Director-General of the National Treasury, or his or her delegate;</p> <p>(e) the Director-General of the national Department of Health, or his or her delegate; and</p> <p>(f) the Director-General of the national Department of Social Development, or his or her delegate.</p> <p>(2) Before the members of the Board contemplated in subsection (1)(b) are appointed, the Minister must, through the national media, invite nominations from members of the public for these positions on the Board.</p> <p>(3) The Minister must publish the list of nominees, their qualifications and experience by notice in the Gazette.</p> <p>(4) With the exception of academic employees of higher education institutions, as defined in the Higher Education Act, 1997 (Act No. 101 of 1997), the members of the Board contemplated in subsection (1)(b) may not be persons employed by the State.</p> <p>(5) The Minister must, within 30 days from the date of appointment of a member of the Board, notify Parliament of the appointment and give notice of the appointment in the Gazette.</p> <p>(6) All members of the Board may vote at its meetings.</p>	<p>(e) <u>the Director-General of the National Treasury, or his or her delegate;</u></p> <p>(f) <u>the Director-General of the national Department of Health, or his or her delegate; and</u></p> <p>(g) <u>the Director-General of the national Department of Social Development, or his or her delegate.</u></p> <p>(2) <u>Before the members of the Board contemplated in subsection (1)(b) are appointed,</u></p> <p><u>the Minister must, through the national media, invite nominations from members of the public for these positions on the Board.</u></p> <p>(3) <u>The Minister must publish the list of nominees, their qualifications and experience by notice in the Gazette.</u></p> <p>(4) <u>With the exception of academic employees of higher education institutions, as defined in the Higher Education Act, 1997 (Act No. 101 of 1997), the members of the Board contemplated in subsection (1)(b) may not be persons employed by the State.</u></p> <p>(5) <u>The Minister must, within 30 days from the date of appointment of a member of the Board, notify Parliament of the appointment and give notice of the appointment in the Gazette.</u></p> <p>(6) <u>All members of the Board may vote at its meetings.</u></p>
--	---	--

	<p>higher education institutions, as defined in the Higher Education Act, 1997 (Act No. 101 of 1997), the members of the Board contemplated in subsection (1)(b) may not be persons employed by the State.</p> <p>(5) The Minister must, within 30 days from the date of appointment of a member of the Board, notify Parliament of the appointment and give notice of the appointment in the <i>Gazette</i>.</p> <p>(6) The Chief Executive Officer and the Directors-General are <i>ex officio</i> members of the Board, but may not vote at its meetings.</p>		
<p><b>Clause 9 (1)</b></p>	<p><b>Term of office</b></p> <p>"9. (1) The members of the Board contemplated in section 7(1)(b) hold office for a period of three years and may be re-appointed for one further period not exceeding three years.</p>	<p><b>Term of office</b></p> <p>3. Section 9(1) provides for a term of office of board members of three years, and re-appointment for one further three year period. National Treasury argue that the period too short, given the time involved in understanding and engaging with the</p>	<p>Department does not agree with the suggestion and maintain 3 years term as appropriate term of office.</p>

	<p>issues at hand. A four-year term might be more appropriate</p>	
<p><b>Clause 13</b></p>	<p><b>Annual Meeting of Board with Ministers</b></p> <p>4. National Treasury "recommended that the Bill provide for an annual meeting of the Board with the responsible Ministers (of Transport, Finance, Health and Social Development) at which the financial position of the Scheme and an actuarial report are considered together with the Administrator's strategic plan for the period ahead. This would also serve as the annual meeting at which relevant determinations are made (of the prescribed caps and deemed income levels)".</p>	<p><b>Meetings</b></p> <p>"13. (1) The Board must meet as often as the business of the Administrator may require.  (2) The Board must devise the procedures for its meetings and decisions and those of its committees, and those of its committees, provided that—  (a) a quorum for any meeting of the Board or a committee shall be a majority of the members entitled to vote;  (b) if there is disagreement, decisions of the Board or a committee shall be taken by a majority of votes cast; and  (c) the person presiding at a meeting of the Board shall have a casting vote in addition to his or her deliberative vote.  (3) The Board or a committee may invite any person to attend a meeting for the purpose of advising</p>
		<p>The Department noted comments and proposes new clause 33 which provides for the consideration of actuarial valuations. In terms of clause 33, the Administrator, the Minister, the Minister of Finance, the Minister of Health, and the Minister of Social Development, or their delegates shall meet within <u>3 months from the end of the financial year</u> of receipt by the Administrator of the actuarial valuations contemplated in section 32, to consider the financial position of the Administrator and any remedial actions that may be necessary.</p> <p>The meeting shall consider the adjustment of the tariff and treatment protocols, annual average national income, pre-accident annual income cap, lump-sum funeral</p>

	<p><b>functions as a member of the Board.</b></p> <p>(3) For purposes of subsection 2(a), a financial interest means a direct material interest of a monetary nature, or to which a monetary value may be attributed, and does not include an interest held in any fund or investment if the member who holds the interest cannot influence the decisions of that fund or investment.</p>		
<p><b>Clause 26 (1) and (2)</b></p>	<p><b>Clause 26</b></p> <p>Current provision</p> <p>Financing of Administrator</p> <p>26. (1) In respect of its liabilities provided for in Chapter 6, the Administrator must be financed on a fully funded basis, benefits must be paid from its reserves and its liabilities may not exceed accumulated reserves after adjustment at year end.</p>	<p>7. National Treasury "recommended that section 26(1) of the Bill be omitted and that the preamble of the Bill be amended.</p> <p>8. National Treasury also suggest that the Bill must "provide for separate funding, budgeting and accounting for the Administration and for the funding of benefits, including different and appropriate budgeting and financial approval rules. These separate arrangements should be carried through into all sections of the Bill."</p>	<p>Department noted comments. To address the concerns of National Treasury, the Department suggest reformulation of Chapter 4 on finance and proposes the following new insertion of clauses 26 to 33:</p> <p><b>New Proposal</b></p> <p><b>26. Benefit account.</b> — (1) The Administrator must open and maintain a benefit account.</p> <p>(2) The benefit account shall consist of—</p>

<p><b>Clause 16 (2) (b)</b></p>	<p>or informing it on any matter.</p>		<p>benefit, and the limit on the provision of vocational training. Clause 33 is discussed in detail below.</p>
<p><b>Conduct</b>  <b>16 (1)</b> A member of the Board may not be employed or contracted to a position that will conflict with the proper performance of his or her functions.  <b>(2)</b> A member of the Board may not—  <b>(a)</b> attend, participate in, vote or influence the proceedings during a meeting of the Board or a committee if, in relation to the matter before the Board or a committee, that member has an interest, including a financial interest, that precludes him or her from acting in a fair, unbiased and proper manner; or  <b>(b)</b> make private use of, or profit from, any confidential information obtained as a result of performing his or her</p>		<p>5. National Treasury is of the view that <b>section 16</b> of the Bill needs further consideration.</p> <p>6. National Treasury is of the view that:  “Section 16(2)(b) should be extended to cover provision of confidential information to other persons. National Treasury is of the view that the limitation of a financial interest to circumstances in which a member can “influence the decisions of that fund or investment” in section 16(3) is insufficient. Financial interest also includes circumstances in which the decisions of the Board might affect the value or business of another fund or investment, whether or not the member is in a position to influence decisions of the fund or investment.”</p>	<p>Department agree to refer to the appropriate sections in the Public Finance Management Act (section 50).</p>

		<p>financial sustainability and review of benefits, procedures and funding.”</p>
		<p>(c) subject to approval by the Minister of Transport, in consultation with the Minister of Finance, transfers to the transition account; and</p>
		<p>(d) the payment of expenses related to the maintenance of the benefit account.</p>
		<p><b>28. Transition account.—</b>(1) The Administrator must open and maintain a transition account.</p>
		<p>(2) The transition account shall consist of—</p>
		<p>(a) money that belonged to the Road Accident Fund prior to the effective date of this Act;</p>
		<p>(b) money as may be appropriated by Parliament;</p>
		<p>(c) money as may be transferred into the transition account, subsequent to the approval contemplated in section 27(c);</p>
		<p>(d) interest earned on money in the transition account; and</p>

<p>(2) The Administrator is funded from—</p> <p>(a) the Road Accident Benefit Scheme levy as provided for in the Customs and Excise Act, 1964 (Act No. 91 of 1964); and</p> <p>(b) moneys as may be appropriated by Parliament.</p>	<p>9. National Treasury also proposes the following additions to clause 26:  <i>“The Minister of Transport must at least every 24 months submit to Parliament an actuarial valuation of the Scheme.</i>  <i>If the valuation indicates that the Scheme is not in a sound financial position, the Minister must—</i>  <i>(a) take all the appropriate steps provided for in this Act;</i>  <i>(b) in consultation with the Minister of Finance, undertake a review of the benefits or an adjustment of revenue sources or both, taking into account the requirements of the Constitution, the impact on the public and the fiscal position of government; and</i>  <i>(c) if the review recommends an adjustment of any benefit or the implementation of a scheme or arrangement aimed at restoring the Scheme to a sound financial position or both, undertake the requisite legal process.”</i></p> <p>10. National Treasury further suggest that the provision “for actuarial assessments should be included in Chapter 4, and appropriate benchmarks should be prescribed for</p>	<p>(a) <u>Road Accident Benefit Scheme levies imposed in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964);</u></p> <p>(b) <u>money as may be appropriated by Parliament;</u></p> <p>(c) <u>interest earned on money in the account; and</u></p> <p>(d) <u>investment returns on invested money from the account.</u></p> <p><b><u>27. Application of money in the benefit account. —</u></b></p> <p>(1) <u>The money in the benefit account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be applied by the Chief Executive Officer for —</u></p> <p>(a) <u>the payment of benefits provided for in Chapter 6 of this Act;</u></p> <p>(b) <u>the cost related to the appointment of, and the fees of, curators appointed to assist claimants and beneficiaries;</u></p>
---	--	--



			<p><u>(2) The operations account shall consist of—</u></p> <p><u>(a) money as may be appropriated by Parliament;</u></p> <p><u>(b) money as may be donated or bequeathed to the Administrator;</u></p> <p><u>(c) money that may become due to the Administrator in terms of any other legislation;</u></p> <p><u>(c) loans made to the Administrator;</u></p> <p><u>(d) interest earned on money in the operations account;</u></p> <p><u>(e) investment returns on invested money from the account; and</u></p> <p><u>(f) money recovered in terms of any insurance or re-insurance scheme</u></p> <p><b>31. Application of money in the operations account.</b> — <u>The money in the operations account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be</u></p>
--	--	--	--

(e) investment returns on invested money from the account.

**29. Application of money in the transition account.—** The money in the transition account shall, subject to the provisions of this Act, be under the control of the Chief Executive Officer, and shall be applied by the Chief Executive Officer for

—

(a) the payment of third party compensation, expert reports and litigation expenses under the Road Accident Fund Act, 1996 (Act No. 56 of 1996), in respect of claims that arose prior to the coming into effect of this Act; and

(b) the payment of expenses related to the maintenance of the transition account.

**30. Operations account.—**

(1) The Administrator must open and maintain an operations account.

		<p>determine the sufficiency of the money in the respective accounts.</p> <p>(2) The result of the valuations referred to in subsection (1) shall be included in the Administrator's annual report.</p> <p>(3) Subject to subsection (4), the liabilities to be paid from the benefit account must, in the long-term, be financed on a fully funded basis.</p> <p>(4) In the event that the ratio of actuarial value of assets to liabilities of the benefit account, at year end, expressed as a percentage, falls below 90 percent, the Minister must take all reasonable steps provided for in this Act to restore the ratio to 90 percent or above, and may, in consultation with the Minister of Finance, undertake a review of the benefits or an adjustment of revenue sources or both.</p>
		<p><b>33. Consideration of actuarial valuations.</b> — (1) The Administrator, the Minister, the Minister of Finance, the Minister of Health, and the Minister of Social Development, or their delegates, provided that such delegates are not those contemplated in section 7 (c) to (f) of this Act, shall meet within 3 months from the end of the financial year of receipt by the Administrator of the actuarial valuations</p>

<p><u>applied by the Chief Executive Officer for</u></p> <p><u>—</u></p> <p><u>(a) the payment of administrative expenditure arising from the duties of the Administrator set out in section 5 of this Act;</u></p> <p><u>(b) the payment of administrative expenditure arising from the powers of the Administrator set out in section 6 of this Act;</u></p> <p><u>(c) the payment of remuneration and allowances for the Board as provided for in section 14 of this Act;</u></p> <p><u>(d) the payment of all non-claim liabilities of the former Road Accident Fund as provided for in section 63 of this Act; and</u></p> <p><u>(e) the cost of the actuarial valuations contemplated in section 32.</u></p>	<p><b><u>32. Actuarial valuations.—</u></b></p> <p><u>(1) The assets and the liabilities to be funded, respectively, from the benefit account and the transition account, shall be valued annually by an actuary appointed by the Administrator, to</u></p>
--	---

			<p>contemplated in section 32, to consider the financial position of the Administrator and any remedial actions that may be necessary.</p> <p>(2) In addition to the matter contemplated in subsection (1), at the meeting, the respective ministers specified in section 60 shall consider the adjustment of the tariff and treatment protocols, annual average national income, pre-accident annual income cap, lump-sum funeral benefit, and the limit on the provision of vocational training.</p>
--	--	--	--

<p>Clause 28.</p>	<p><b>Current provision</b>  <b>Exclusion of liability of owner, driver and employer of driver</b></p> <p>28. No civil action for damages in respect of bodily injury or</p>	<p>11. National Treasury "recommended that Section 28 should be expanded to include indemnity of pedestrians or other persons who might be determined to be responsible for road accidents. It is also important that there should be appropriate limitations of indemnity in respect of cases of</p>	<p>Department suggest the following reformulation of Clause 27(4)</p> <p>27(4) <u>The liability of the Administrator is limited to payment for the provision of emergency health care services [i]f -</u></p>
-------------------	--	---	---

	<p>death of any person caused by or arising from a road accident shall lie against—</p> <p>(a) the owner or driver of a vehicle involved in the road accident;</p> <p>or</p> <p>(b) the employer of the driver.</p>	<p>deliberately causing an accident, malicious intent or driving under the influence of alcohol.”</p>	<p>(a) [at the time of the road accident, an] the injured person [or deceased breadwinner was] is not a citizen or permanent resident of the Republic or the holder of a valid permit or visa issued in terms of the Immigration Act, 2000 (Act No. 13 of 2002), or the Refugees Act, 1998 (Act No. 130 of 1998)], the liability of the Administrator is limited to payment for the provision of emergency health care services provided to such injured person or deceased breadwinner, while he or she was alive.];</p> <p>(b) the claimant or beneficiary drove the vehicle, or was conveyed in or on the vehicle, during the course of the commission of, or in furtherance of, a crime listed in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or section 65 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), for which crime the claimant or</p>
--	---	---	---

			<p>beneficiary was convicted or paid an admission of guilt fine;</p> <p>(c) the claimant or beneficiary sustained a bodily injury during the course of the commission of, or in furtherance of, a crime listed in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or section 65 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), for which crime the claimant or beneficiary was convicted or paid an admission of guilt fine; or</p> <p>(d) the claimant or beneficiary sustained the bodily injury intentionally.</p> <p>(5) The liability of the Administrator to a dependent of a person who dies in circumstances contemplated in subsection (4)(d) is limited to the provision of a funeral benefit.</p> <p>(6) The liability of the Administrator to a dependent of a person who dies in circumstances contemplated in subsection (4)(a), (b) or (c)</p>
--	--	--	--

<p>Clause 59(1)(g)</p>	<p><b>Regulations and certain notices by Minister</b></p> <p>59.(1)The Minister must prescribe— (g) in consultation with the Minister of Finance, the average annual national income;</p>	<p>12. National Treasury indicated that the Bill proposes that deemed income be set at average national income but “no substantive definition of “average annual national income” is provided.</p> <p>13. National Treasury suggest the following alternatives: (a) “One option would be to replace “average annual national income” with an expression which more accurately captures the intent of the Bill, which is that the minimum income support reference income should be determined administratively, taking relevant considerations into account.”</p> <p>(b) A second alternative to “replace reference to “average annual national income” with reference to the national minimum wage, or an amount</p>	<p><u>is limited to the provision of a funeral benefit if the dependent is not a citizen or permanent resident or the holder of a valid permit or visa issued in terms of the Immigration Act, 2000 (Act No. 13 of 2002), or the Refugees Act,1998 (Act No.130 of 1998).</u></p>
			<p>The Department suggest the following amendment to the definition of average national income: “average annual national income” means t“average annual national income” means the average annual after-tax income earned in the Republic, for the whole of the employed and unemployed population between the ages of 18 and 59, inclusive, calculated in accordance with the methodology prescribed by the Minister in consultation with the Minister of Finance.</p>



		calculated by reference to the national minimum wage."	
--	--	--	--

