REPUBLIC OF SOUTH AFRICA

ROAD ACCIDENT FUND (TRANSITIONAL PROVISIONS) BILL

(As amended by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B 22B—2012]

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BILL

To provide for transitional measures in respect of certain categories of third parties whose claims were limited under the Road Accident Fund Act, 1996 (Act No. 56 of 1996), prior to 1 August 2008; 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 indicates otherwise—

"Fund" bears the same meaning as defined in the Road Accident Fund Act, 1996 (Act No. 56 of 1996);

"new Act" means the Road Accident Fund Act, 1996 (Act No. 56 of 1996), as it stood from 1 August 2008 onwards;

"old Act" means the Road Accident Fund Act, 1996 (Act No. 56 of 1996), as it stood prior to 1 August 2008;

"prescribed" means prescribed by the Minister by regulation in the *Gazette*;

"third party" means a person who has a right to claim compensation from the Fund in terms of section 17 of the old Act, whose claim is subject to the limitations imposed by section 18(1) or (2) of that Act, and whose claim has, upon this Act taking effect, not prescribed or been finally determined by settlement or judgment.

Transitional arrangements for certain third parties

2. (1) Unless the third party expressly and unconditionally indicates to the Fund on the prescribed form, within one year of this Act taking effect, to have his or her claim remain subject to the old Act, the claim of such third party is subject to the new Act under the following transitional regime:

(a) Subject to the remaining provisions of this Act, the cause of action of the third party is deemed to have arisen on 1 August 2008 for purposes of section 12 of the Road Accident Fund Amendment Act, 2005 (Act No. 19 of 2005), and section 17(4A)*(b)* of the new Act.

(b) The right of the third party to claim compensation for non-pecuniary loss is limited to a maximum amount of R25 000, unless—

(i) the third party submits a serious injury assessment report as contemplated in Regulation 3 of the Road Accident Fund Regulations, 2008, indicating a serious injury, within two years of this Act taking effect; and

(ii) it is determined in accordance with Regulation 3 of the Road Accident Fund Regulations, 2008, that the third party suffered a serious injury.

(c) The claim of the third party must be reduced by the following amounts:

(i) All amounts recovered by the third party from the owner, driver or employer of the driver of the motor vehicle involved in the motor vehicle accident concerned;

(ii) all amounts paid or accrued to the suppliers contemplated in section 17(5) of the old Act in respect of costs incurred by the third party;

(iii) all interim payments made to the third party in terms of section 17(6) of the old Act; or

(iv) all amounts that the third party may have received in compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), the Defence Act, 2002 (Act No. 42 of 2002), or any other Act of Parliament governing the South African National Defence Force.

(d) The third party must make a written declaration under oath on the prescribed form to the Fund regarding any compensation he or she may have received as indicated in paragraph *(c)*.

(e) A third party who has, prior to this Act coming into operation—

(i) lodged a claim with the Fund on the prescribed claim form in terms of the old Act, shall not be required to lodge an RAF1 form in terms of the new Act; and

(ii) instituted an action against the Fund in a Magistrate's Court, may withdraw the action and, within 60 days of such withdrawal, institute an action in a High Court with appropriate jurisdiction over the matter: Provided that no special plea in respect of prescription may be raised during that period.

(f) Notwithstanding the transitional regime contemplated in this Act, section 17(4B) of the new Act and the tariffs thereunder shall have no effect on the claims of the suppliers of goods and services in terms of section 17(5) of the old Act in respect of costs incurred by the third party prior to this Act taking effect.

(g) The owner, driver and employer of the driver of the motor vehicle involved in the motor vehicle accident concerned are absolved, with effect from the date on which this Act comes into operation, from any liability to the third party.

(2) If the third party is subject to an impediment contemplated in section 23(2) of the new Act or section 13(1)*(a)* of the Prescription Act, 1969 (Act No. 68 of 1969), the period of one year referred to in subsection (1) and the period of two years referred in subsection (1)*(b)*(i) shall commence running when the impediment ceases to exist.

Short title and commencement

3. This Act is called the Road Accident Fund (Transitional Provisions) Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND (TRANSITIONAL PROVISIONS) BILL, 2012

1. BACKGROUND

1.1 Prior to 1 August 2008, the Road Accident Fund Act, 1996 (Act No. 56 of 1996) (the old Act), provided that most categories of road accident victims could claim full compensation from the Road Accident Fund (the Fund). However, certain categories of claimants had their claims limited by section 18 of the old Act, for example passengers conveyed in a taxi were limited to claiming a maximum of R25 000 from the Fund, where the driver's negligence was solely responsible for the accident in question.

1.2 In enacting the Road Accident Fund Amendment Act, 2005 (Act No.19 of 2005) (the Amendment Act), Parliament recognised that these limits, which applied only to certain categories of passengers were inequitable, unfair and discriminatory. Parliament therefore abolished those provisions and replaced them with provisions that have a far more generous limit on claims, and which apply to all claimants. The constitutionality of this new approach was upheld by the Constitutional Court.

1.3 The Amendment Act, however, applies only to causes of action arising after its commencement on 1 August 2008. As a result, claimants whose claims were limited (or capped) by section 18 of the old Act and whose causes of action arose prior to 1 August 2008, derived no benefit from the regime created by the Amendment Act. These claimants are still subject to the unfair, inequitable and discriminatory limitations to their claims under section 18 of the old Act.

1.4 On 17 February 2011, the Constitutional Court in Mvumvu v Minister of Transport and another CCT 67/10 [2011] ZA CC 1, concluded that limitations and certain provisions in section 18 of the old Act were unconstitutional and invalid to the extent in that they constituted unfair discrimination. This finding was correctly not opposed by the Minister of Transport (the Minister) or the Fund.

1.5 The Constitutional Court agreed with the Minister and the Fund that it would not be appropriate to declare the sections invalid with immediate or retrospective effect. Instead the Constitutional Court held that ''Parliament is best suited to determine the extent of compensation to which the applicants are entitled''. The Constitutional Court accordingly suspended the declaration of invalidity for 18 months. The Constitutional Court also added that while its judgment only concerned three of the caps created by section 18 of the old Act, there were three other caps created by the same section which had not been before the Constitutional Court. It held that ''it is desirable that Parliament address the plight of those affected by these subsections as well''.

1.6 It is therefore clear from the judgement of the Constitutional Court that—

- Parliament must devise a new regime applicable to a discrete category of road accident victims, i.e. those who were involved in accidents prior to 1 August 2008 and whose claims are capped by section 18 of the old Act;
- the legislation concerned should propose some middle ground, which increases the compensation available to the victims but does not amount to full compensation; and
- the legislation should not have the effect of forcing all road accident victims affected to be subject to the Road Accident Fund Act, 1996 (Act No. 56 of 1996), as it stood after 1 August 2008 (the new Act), as this would retrospectively remove the rights that they had under the old Act.

2. OBJECTS OF BILL

2.1 The Road Accident Fund (Transitional Provisions) Bill, 2012 (the Bill) seeks to provide for transitional measures in respect of certain categories of third parties whose claims were limited under the old Act, and to give effect to the Constitutional Court judgement of Mvumvu v Minister of Transport.

2.2 Clause 1 defines "new Act" and "old Act". Clause 1 also defines "third party" as a person who has a right to claim in terms of section 17 of the old Act and whose claims have not prescribed or been finally determined when the Act comes into operation. This is necessary both for the purposes of certainty and to avoid the undesirable consequences of re-opening finalised cases. The Constitutional Court has repeatedly held that this is a permissible approach and has indeed adopted this approach in its own remedial orders.

2.3 Clause 2(1) affords a choice to road accident victims whose cause of action arose prior to the Amendment Act coming into operation. While the default position is that they will become subject to a version of the new Act, they can elect if they prefer to remain subject to the old Act. Thus a victim who wishes to be subject to the new Act will get all the benefits of the new Act, including an entitlement to claim up to R25 000 in general damages, even if not seriously injured. This is in addition to claims for medical expenses, loss of income and support and, if the claimant is seriously injured, uncapped general damages.

2.4 Clause 2(1)*(c)* and *(d)* makes it clear that a victim obtaining the benefits of the new Act cannot claim double compensation from the Fund in respect of a motor vehicle accident. For instance, if they have obtained compensation from the private wrongdoer, this must be disclosed and deducted from the amount claimed from the Fund.

2.5 Clause 2(1)*(g)* provides that where a victim chooses to have his or her claim governed by the new Act, he or she is no longer entitled to sue the owner, driver or employer of the driver of the motor vehicle concerned for damages. This is consistent with the scheme of the new Act and was found to be constitutionally permissible by the Constitutional Court.

4. CONSULTATION

The draft Bill was published for public comments in Government *Gazette* No. 34530. Comments were received from various stakeholders and, where necessary, they have been incorporated in the Bill.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Transport are of the opinion that this 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 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this 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 customs of traditional communities.

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