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ROAD ACCIDENT FUND AMENDMENT BILL 2023

On 8 September 2023 the Department of Transport published a draft Road Accident Fund Amendment Bill 2023. The last effective day for public comment is Friday 6 October 2023.

If the draft bill becomes law, the rights of all drivers, passengers and pedestrians to claim compensation for injuries they suffer in a motor vehicle accident will be taken away. In its place will be significantly curtailed ***"social benefits"***.

In effect only very limited benefits will be paid and the changes amount to a drastic restriction of existing rights which will affect all South Africans (especially the poorest persons). Some of the most important restrictions on existing rights are:

Loss of earnings

1. Currently, a claim for loss of income is paid out in a lump sum. Under the new system claimants will receive annuity (partial) payments that will eventually equal the lump sum. There is also the qualification that the amount payable is subject to periodic

review of the Fund's liabilities. If a claimant dies before the full annuities are received the payments will stop and their heirs will inherit nothing.

Pain and suffering

2. Claimants will no longer receive compensation for pain, suffering, disfigurement and shock as this category of damage will be totally abolished.

Exclusion from compensation

3. Currently a claimant is covered for the negligent driving of a motor vehicle irrespective of where it is driven. Under the new system the accident must have taken place on a public road. Injuries suffered in motor vehicle accidents in parking areas, sports fields, farm roads, driveways, private estates, game reserves or any other private road will not be covered. Pedestrians crossing a highway are also specifically excluded.

4. Claimants will not be covered if hit by an unidentified vehicle. Under the present system, so-called "hit and run" incidents are compensated.

5. Presently anyone, regardless of nationality, who is injured by a motor vehicle in South Africa is covered.

6. The proposed changes also specifically exclude from compensation any driver, pedestrian or cyclist over the legally prescribed alcohol limit, regardless of who was at fault, as well as their dependents should they be killed. It is also probable that this section will be interpreted to mean that passengers of persons who have drunk alcohol will also be excluded. Importantly, the RAF will be able to recover expenditure from persons who have drunk alcohol even if they did not cause the accident that they were involved in.

7. Other exclusions from compensation include, for example, cases where there may be a product liability claim, persons injured whilst filming a movie or advertisement and passengers who may be covered by the operator's passenger liability insurance – despite the fact that that cover may be very limited.

Medical expenses

8. There will be no reimbursement of expenses covered by medical aid/insurance. This will drastically increase premiums with dire consequences for all medical aid members. The proposed amendments also bans compensation for any person who is not a South African citizen or direct permanent resident.

9. Unlike the current dispensation, all future medical claims will have to be pre-authorised by the RAF or they will not be paid.

Claims against the person who caused the accident

10. Although the changes drastically restrict the right of accident victims to claim compensation it does not allow innocent victims to sue the wrongdoer for damages not recovered from the RAF.