The Transport Department published a revised version of the Road Accident Benefit Scheme Bill, 2014 (RABS) in GenN337 GG37612/9-5-2014 and called on interested persons to submit comments. The deadline for comment was extended for a further 90 days from the original deadline of 8 July 2014.

An earlier version of the Bill had been published for public comment on 8 February last year. Following receipt of public comments, the Bill was redrafted. New regulations, rules and forms were also drafted to enable a better understanding of how the proposed scheme would operate.

The Bill provides for a new no-fault benefit scheme and a new administrator called the Road Accident Benefit Scheme Administrator (RABSA), which will replace the current Road Accident Fund (RAF) and compensation system administered by it.

The LSSA also notes that essential to providing such treatment is the promulgation of a healthcare tariff acceptable to the private sector, failing which road accident victims will merely queue up with the rest of the population in the hopes of accessing already ‘over-stretched, under-resourced and poorly administered public healthcare facilities’.

The LSSA noted that the tariffs have yet to be published in draft form for comment as provided for in s 55 and it is unknown whether any consultation has taken place with the public or private healthcare sectors on acceptable tariffs.

The LSSA stressed that the RABS Bill abolishes, entirely, the fault based system of road accident compensation that has been in place since 1946 and imposes a system of no fault benefits as part of a comprehensive social security system. The LSSA goes on to query where this leaves the innocent road accident victim. ‘The road accident victim, who also contributes to the Road Accident Fund levy as a driver, commuter, passenger and/or consumer, has had his or her civil law rights to be compensated for harm suffered as a result of another person’s fault completely abolished … Thus, those who utilise the roads for profit are protected at the expense of the commuter, passenger and pedestrian. The wrongdoer escapes from any financial responsibility for the consequences of his or her negligence. Even those guilty of a criminal offence are protected,’ it states.

The LSSA goes on to highlight the fact that, in contrast to the complete financial indemnity enjoyed by the wrongdoer, a road accident victim has access only to fair and equitable compensation from the public consultation process. This leaves the injured party or a deceased breadwinner’s family, through no fault of their own, without any right to fair and equitable compensation from the wrongdoer or the wherewithal to recover financially or to have some of the amenities of life lost in the accident restored to them. To add insult to injury, the wrongdoer, if injured in the same accident, receives exactly the same benefits,’ the LSSA states.

The LSSA noted that the Bill states that if the injured person or deceased breadwinner was not legally present in the country, the Road Accident Bene-
Rican Police Service station investigating the accident. It noted that it is very unlikely that this information would be readily available, particularly when emergency and acute phase treatment and services are provided.

The LSSA pointed out that the RABSA has far-reaching powers and discretion in regard to all benefits provided in terms of RABS and noted that the claimant will have no recourse to independent professional advice in pursuing a claim. ‘He or she will have to be advised by the very body against which they claim. In the event of a dispute on the benefits to be awarded, the dispute is referred to an internal appeal body consisting of employees of the administrator. There is no appeal to the courts from any decision made by either the administrator or the appeal body,’ the LSSA stated.

Commenting on the Bill the LSSA said that RABS makes provision for the following benefits:

- Healthcare services (Part A).
- Income support benefits (Part B).
- Family support benefits (Part C).
- Funeral benefits (Part D).

Healthcare services

The LSSA views this provision in the Bill as follows –

- a cumbersome system of claiming for payment and pre-authorisation prior to the RABSA being liable is likely to result in delays;
- an impractical provisions for direct claims by suppliers;
- nature and extent of treatment solely within the discretion of the administrator; and
- tariffs not yet published for comment.

The LSSA stated that the reality is that the injured party will be billed and if he or she is not able to pay, then private institutions and practitioners will not be prepared to render anything but emergency treatment.

The LSSA believes that the injured party will thus be denied the freedom to choose the nature and extent of treatment and services from a medical practitioner of his or her own choice and at an institution of his or her own choosing. ‘If, as with the 2005 Amendment Bill, the tariff eventually promulgated will be so low as to render it impossible for the private sector to participate, then such tariff will also be vulnerable to constitutional attack for the same reasons advanced in the original case brought by the LSSA. That challenge was upheld,’ the LSSA said.

Income support benefits

Pertaining to the income support benefits in the Bill, the LSSA highlighted the following:

- No lump sums.
- Maximum payment R 13 738,75 per month that can be reduced, in the administrator’s discretion, by residual earning capacity regardless of actual employment.
- No compensation for the first 60 days and only payable from age 18 to 60 years.
- Confusing provisions as to whether compensation is payable to those economically inactive at the date of injury or unable to prove an income.
- Must submit claim and medical report at own cost.
- Can be suspended or terminated at the administrator’s discretion.
- The benefit terminates on death.

According to the LSSA, excluded from any income support benefit are persons who are deemed not to be ordinarily resident in South Africa who, by definition are those who are absent from the Republic for a period of longer than six months per year for the three years preceding the road accident or any consecutive three-year period thereafter.

In order to claim temporary income support benefits, an injured person is obliged to claim as provided for in the rules by lodging a RABS 3 (temporary) or 4 form (long-term) together with proof of pre-accident income (such as tax returns or salary slips) and proof of inability to perform his or her pre-accident work or earn an income and that that inability is caused by a road accident.

In terms of s 36 (4) the claim must be accompanied by a medical practitioner’s report compiled after conducting a physical examination confirming that the inability to work relates to injuries sustained in the accident and stipulating the period that the incapacity is likely to endure. The claimant must also confirm that his or her inability is permanent and relates to injuries sustained in the accident and, should he be unable to do so, such confirmation may be provided by any other person with knowledge of the reasons of the inability to earn an income.

If the claimant is impecunious and received treatment at a public health facility, the RAB 7 will have to be completed by employees of the public health ser-

The road accident victim, who also contributes to the Road Accident Fund levy as a driver, commuter, passenger and/or consumer, has had his or her civil law rights to be compensated for harm suffered as a result of another person’s fault completely abolished ....’
circumstances and the nature of the injuries suffered. If this were not so, then the Bill would have further far-reaching and devastating consequences, which are immediately obvious in the case of children, students and young adults who might be about to embark on a career but are injured before they become economically active, and who are rendered permanently unemployed by the injuries sustained. The denial of any compensation to them for lost earning capacity is manifestly unjust, particularly when coupled with the denial of common law rights and bearing in mind that for those able to afford insurance, such loss is uninsurable in terms of disability cover."

For those entitled to claim income support benefits, there are yet further restrictions. Once the maximum entitlement is established, the administrator is entitled to determine whether, in its opinion, the injured party has a residual earning capacity and the amount thereof, which the administrator deducts from the maximum monthly entitlement, regardless of whether the injured claimant is employed or not. For this purpose, the claimant can be referred to an occupational therapist chosen and paid for by the administrator. According to the LSSA, because the residual income capacity is deducted from the maximum amount due in terms of the formula (as opposed to the actual prior income), then, should the residual income capacity be more than R 13 738,75 per month, no claim will be allowed, even if an actual loss has been suffered.

The maximum period for which temporary income support benefit is paid is two years. Thereafter an injured party has to apply for long-term income support benefits. In either case no person under the age of 18 will receive any income support benefit, nor will any person over the age of 60 be paid, regardless of the facts,’ stated the LSSA.

All benefits are paid in monthly installments and will terminate on the death of the beneficiary, meaning that if the beneficiary was a sole breadwinner, his or her dependants will be left destitute.

According to the LSSA any decision made by the administrator regarding income support benefits could only be challenged by referral to an internal appeal tribunal comprised of employees of the administrator. The jurisdiction of the courts to adjudicate a disputed decision of the administrator has been ousted.

The LSSA believes that the wide discretion that vests in the administrator in many aspects of the claims procedure, the fact that none of the decisions made by the administrator are subject to appeal to the courts, the fact that the administrator is accountable to itself (and the Minister) only, the fact that the claimant can be referred to an occupational therapist chosen and paid for by the administrator, the arbitrary ground,’ the LSSA stated.

The LSSA highlighted the following points regarding the family support benefit:

- No lump sum payments.
- Support limited to 15 years maximum regardless of age of dependants.
- Children supported to age 18 only.
- No support paid to dependants resident abroad.
- Surviving spouse’s income deducted from maximum amount due, not amount actually lost.

Firstly, the LSSA pointed out that no family support benefit is paid to a dependant who is not ordinarily resident in the country. This is an extraordinary and inexplicable provision in that the exclusion does not apply to the residency of the breadwinner but that of the dependant. If a breadwinner supports a child who is for some reason or another resident in another country (for perhaps study purposes or a child in the care of a South African parent in terms of a divorce order who may be resident overseas but who is still entitled to child support) then that child is denied any benefit, regardless of the fact that the deceased may have had a legal obligation to pay, and did so. This appears to be an irrational exclusion and may be vulnerable to constitutional attack, especially as it affects the rights of a child to support and discriminates against a child on an arbitrary ground,’ the LSSA stated.

The LSSA noted that these claims are limited to 15 years, maximum, pay out. However, as the caps apply to the deemed salary of the deceased breadwinner and surviving spouse (unlike the current Act where the caps apply to the annual loss) if both the deceased and the surviving spouse earn more than the pre-accident income cap, or are ‘deemed’ to have earned the average annual national income, there will be no claim for loss of support, despite the fact that a loss might have arisen.

The LSSA noted that any benefit terminates upon the death of the beneficiary. This means that, should a breadwinner die, his family will be left destitute.’
'In determining the amounts of family support, the pre-accident income of the deceased breadwinner, less tax, may not exceed the prescribed pre-accident income cap and may not be less than the prescribed average annual national income. In addition, the pre-accident income of the surviving spouse less tax is taken into account, also limited to the pre-accident income cap,' stated the LSSA.

There is a limit on the period of support for a surviving spouse to 15 years or until age 60, whichever period is the shortest, and a dependant child is only entitled to family support until age 18, regardless of whether the deceased would have supported that child longer.

**Funeral benefits**

The LSSA noted that there is a flat rate payment of R 10 000 made to either the family or a funeral director.

The LSSA feels that the amount awarded may be inadequate to cover the costs of transporting the body of a deceased migrant worker back to the family for burial. Furthermore, it notes that the family of an ‘illegal’ foreigner killed in an accident is denied any compensation for the costs of repatriating the body or the funeral.

**Benefit review**

The LSSA noted that any benefit terminates upon the death of the beneficiary. This means that, should a breadwinner die, his family will be left destitute. Under the current legislation, an incapacitated breadwinner is paid a lump sum, which money can be invested to provide for his family’s wellbeing after his or her death. This facility is denied under the current Bill.

The administrator also has wide powers to review, suspend or terminate benefits if it is of the opinion that the beneficiary is no longer entitled to receive the benefit. The administrator may, thus, at any time, terminate the continued entitlement to any benefit should a beneficiary fail to comply with a condition imposed or should a beneficiary fail to comply with a request to attend an interview or furnish a statement or document or written consent to access records or should a beneficiary furnish ‘false’ or ‘misleading’ information.

**Claims procedure**

According to the LSSA, the vast majority of claimants will have to submit and process a claim unaided and will also have to deal with all inquiries and requests from the administrator without professional help. There is no mechanism in the Bill to enforce prosecution of a claim and the jurisdiction of the courts on disputing any decision has been ousted.

**Claims lapse and time periods**

The Bill provides that a claimant has three years to claim a benefit from the time when that person has knowledge of the facts giving rise to the claim. Persons under a disability have until one year after the impediment has ceased to exist. This follows the Prescription Act.

In terms of s 48, the administrator has 180 days (six months) to accept or reject a claim during which period interest does not run. No sanction is available to a claimant should the administrator fail to process any claim, nor is there any recourse to any outside body or court.

The LSSA believes that this lengthy period to respond to claims will actively discourage health service providers from rendering treatment with a view to claiming direct. It will also leave the claimant without any income support benefits for an extended period.

The LSSA submitted that there should be some method to enforce claims other than an internal tribunal that only sits to consider disputes once claims have been adjudicated.

**Dispute resolution**

A beneficiary has 30 days to appeal any decision of the administrator in the manner set out in the rules, failing which there is no further recourse. The appeal is to an internal tribunal body comprising three employees of the administrator who may affirm or reverse any decision made by the administrator, refer any issue raised to a medical or other expert for an opinion and/or refer any issue to a medical or other expert for final determination.

The appeal body has 180 days after lodgment of an appeal to inform the appellant of the outcome provided that, when a claim is deemed to have been rejected after the administrator has failed to deal with it for a period of 180 days, the appeal must be determined within 30 days.

The decision of this appeal body is final and binding with no right of appeal to the courts.

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**Submissions by the Black Lawyers Association (BLA)**

In its submissions, the BLA stated that a majority of its members’ clients are indigent or live below the poverty line and are not in a position to fund their RAF claims adequately or at all. As a result, almost all the RAF claims are conducted on a contingency basis where the legal practitioner funds the case on the understanding that, at the successful finalisation of the case he or she will be reimbursed his or her disbursements. These disbursements cover a number of aspects like payment to experts for medico-legal reports, travelling, accommodation, subsistence allowance and other related expenses.

The seriously injured road accident victim’s case may require financial assistance of more than R 100 000. The practitioners assist their clients financially on the understanding that they will recover the expended disbursements. The fact that the current road accident system pays the award to the client through the legal representative and that the RAF covers the claim’s costs and disbursements, in a way, guarantees that the practitioner will get the costs and the disbursements associated with running the claim. Taking away the guarantee will adversely affect road accident victims.

The BLA highlighted the fact that a number of the provisions which are to be introduced by RABS will make it fundamentally impossible for victims of road accidents to be placed in the position they would have been had it not been for the accident.

‘What makes matters even worse is that the victims of the road accident will not have recourse against the wrongdoer as the common law right in this regard has been ousted. The BLA welcomes the positive changes which are to be ushered by the enactment of the new legislation herein. We are, however, worried by those provisions which will bring hardships to our members, practitioners at large and the victims of road accidents; and all those who will both be affected and feel the effects of such accidents,’ stated the BLA.

The BLA believes that the scheme brings about major changes to the victims of road accident. ‘One of the most important changes it brings is that contrary to the current Road Accident Fund Amendment Act where you have to establish fault on the part of the other driver (insured driver), RABS will be a no-fault based system. Victims need not prove negligence on the part of the insured driver. The no-fault scheme also has problems of its own,’ stated the BLA.

The BLA highlighted the following problems with the Bill:...
Right to social security

According to the BLA, the road accident scheme or system, as a social security agent, derives its mandate or authority from s 27(c) of the Constitution which states that ‘[e]veryone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.’

The BLA believes that under the circumstances, the provisions of the RABS Bill, in as far as social security responsibilities are concerned, should comply with the direction of the Constitution.

Access to courts

The BLA said that s 34 of the Constitution provides that ‘[e]veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum’. The BLA stressed that the rights of road accident victims to have their dispute resolved in a fair, public hearing is covered by this section of the Constitution. ‘Such disputes include delictual disputes and/or or non-pecuniary damages disputes. Under the circumstances it will be unconstitutional for the RABS Bill to deny road accident victims a legal recourse to be compensated for non-pecuniary loss from both the scheme itself and the wrongdoer,’ it stated.

According to the BLA, s 28 of the Bill outlines the scenarios where the wrongdoer is not protected by the scheme and the administrator is not liable to provide the benefit to the injured. This will, in terms of subs (1) occur in the event that the bodily injury or death was caused by or arose from the use of a vehicle to perpetrate a terrorist activity. The Bill however, does not define what constitutes a ‘terrorist activity’.

The BLA noted that the Bill states that an injured person who is in the country illegally will not be protected by the scheme save with respect to the emergency healthcare services. The BLA stated that this is absurd because serious criminals will be protected by the scheme; save in the event of terrorism which in any event will not be easy to prove. ‘The illegal foreigners deserve full healthcare services. The benefit of a person who is illegally within the country may be limited by excluding income support benefits and the family support benefits; these benefits or any other social benefits applicable can be afforded him or her from his or her country of origin. The person who is illegally within the country should be entitled to non-pecuniary damages. He or she should also be liable to compensate his or her victim for non-pecuniary damages,’ the BLA stated.

The BLA believes that under the circumstances, the provisions of the RABS Bill, in as far as social security responsibilities are concerned, should comply with the direction of the Constitution.

Reasonable and equitable

The BLA said that it found the scheme to be unreasonable and inequitable on the following grounds:

In terms of reasonableness, the BLA believes that the scheme places the victim of a wrongful and unlawful driving of a motor vehicle in the same position as the culprit. At times, the perpetrator may be placed at a better place than the victim.

The BLA highlighted that the benefit is not subject to an inflation adjustment and that the pre-accident income cap per year is R 219 820. ‘If the Bill is passed into law in its current form, road accident compensation will be profitable to criminal drivers who wilfully disregard road safety. It is unreasonable and against public policy that the victim of a crime gets the same or less protection from the law compared to the perpetrator,’ the BLA stated.

In terms of equity, the BLA stated that the principle of equity demands that people should be afforded the quality of fairness and impartiality. Therefore, the principle requires that everyone should be treated fairly and equally. The BLA quoted s 9(1) of the Constitution which provides that ‘everyone is equal before the law and has the right to equal protection and benefits of the law.’ According to the BLA, victims of road accidents should also be treated as equals before the law and should be entitled to equal protection and benefits of the law. ‘One of the protections which the victims of road accidents are entitled to is a delictual compensation for pain and suffering caused by the wrongdoer and/or its substitute – the scheme in this regard. This right can only be limited by a law of general application which is reasonable and justifiable in an open democratic society based on dignity, equality and freedom. The RABS Bill does not meet this standard because the Bill is not the law of general application. It will apply only to victims of road accidents. All other victims who are subjected to personal injuries will continue to be compensated for the non-pecuniary damages by the culprits. For instance, victims of medical negligence, rail transport and assault will continue to exercise and enjoy their common law right in this regard,’ the BLA stated.

‘We therefore submit that it is beyond reasonable doubt that the Bill and the constitutional provisions are clearly incompatible and as such same must be re-drafted in order to comply with the constitutional requirements,’ said the BLA.

According to the BLA, s 31(2)(c) limits the number of times an individual may receive medical treatment at the expense of the scheme. It disregards the personal circumstance of an individual injured person.

Section 31(2)(f) closes doors for new medical practitioners because it requires a ‘service provider who . . . normally provides the healthcare service’. According to the BLA, it will be difficult to establish if a medical practitioner normally provides the particular healthcare service.

Section 32(1)(f), which deals with pre-authorisation in respect of non-emergency healthcare, will – according to the BLA – undoubtedly result in unnecessary delays and undue hardship for the injured to get the necessary treatment.

The BLA believes that s 33(1)(f) is unfair because it denies the injured victim quality medical treatment and it ignores the reality that an ordinary resident, who was involved in an accident in South Africa, may after leaving the country, fall ill from the injuries of the accident which occurred within the country. The BLA proposes that the administrator must, in the event of healthcare provided outside the Republic, limit its costs to the reasonable amount payable within the Republic for similar treatment received outside the Republic.

The BLA was in agreement with the LSSA that the provisions under the income support benefit in ss 35(1) and (2) (a) read with s 39(1) and (2) (a) read with s 39(1) and (2) take away the benefits from the youth who are studying on scholarships abroad and people who have employment contracts which require them to spend six months abroad and six months at home.

The BLA further stated that ss 36(1) (a) and (3) read with s 37(1)(b) do not take into account the potential of the injured, his or her career path, possible promotional increases and the economic circumstances.

The BLA reiterated the views of the LSSA that the amount of R 10 000 for fu-
The LSNP said that the direct effect of juries and/or death of victims. The victim is usually assisted by an attorney who investigates and submits proof of the innocence of the victim in the context of future medi- cal treatment is to be severely compro- mised, insofar as the Bill seeks to allow the administrator to dictate what medi- cal treatment is to be administered to the victim and even which medical prac- titioners are to administer such treat- ment.

The motivation for affecting the rights of innocent victims in this drastic man- ner is to extend the proposed benefits to the very persons that have caused the injuries of the victims.

The LSNP said that it found it discon- certing that members of the public have been informed of the Bill in a ‘somewhat sugar-coated manner.’ It said that the information given to the public was fac- tually incorrect, adding that it was una- ware of publications by either the RAF or the Transport Department which are more informative in any meaningful way.

The LSNP suggested that a more in- formative campaign on the Bill should be launched and that the public should be informed that the Bill effectively de- primed the vast majority of its members of the option of obtaining legal represen- tation to enforce their rights.

The LSNP fears that the rights of citi- zens are to be severely curtailed without reliable factual and present-day investi- gation into the actual necessity to cur- tail such rights; the actual causes for the necessity; and whether the system pro- posed will be capable of being managed effectively reducing the total expense of road accident compensation by any sig- nificant margin as well as whether the system proposed by the Bill will actually be capable of being implemented.

The LSNP went on to state that it was unaware of recent, if any, feasibility studies published regarding the applica- tion of the scheme proposed by the Bill in a country with difficulties as unique as South Africa, adding that it was fore- seen that the administrative costs of the system would far exceed the present sys- tem, especially in respect of the employ- ment and training of sufficient staff. It pointed out that, at present, very little of the investigation of a claim is done by the claims handlers of the RAF. The victim is usually assisted by an attorney who investigates and submits proof of the innocence of the victim in the context of future medi- cal treatment is to be severely compro- mised, insofar as the Bill seeks to allow the administrator to dictate what medi- cal treatment is to be administered to the victim and even which medical prac- titioners are to administer such treat- ment.

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the accident, injuries as well as the impact of the accident on the victim’s employment.

The LSNP was of the view that the proposed system would deny the administrator of such assistance, multiplying its investigative duties. Furthermore, many victims live in remote areas of the country with limited access to transport and communication. It is assumed that to execute its duties and assist claimants effectively, the administrator would have to be geographically much more accessible than the RAF.

‘Government would be remiss in the execution of its duties, if it were not to take cognisance of the performance of such a system in practice, prior to replacing a system which provides equitable compensation to victims, with an inefficient procedure,’ stated the LSNP.

The LSNP reiterated the LSSA’s views regarding the appeals tribunal. The LSNP stated that there can be no question that the intended appeal tribunal would be called to determine factual disputes, ‘insofar as s 49(2) of the Bill intends the appeal tribunal to consist of solely officers of the administrator, it does not begin to make any pretence of independence and impartiality. The review jurisdiction afforded by the Promotion of Access to Justice Act does not include the determination of such disputes. It follows that these provisions are plainly unconstitutional,’ it stated.

The LSNP was also in agreement with the LSSA regarding the non-liability for illegal aliens clause. The LSNP said that it should be borne in mind that s 29 of the Bill sought to strip the road accident victim of his common law remedies against his wrongdoer. According to the LSNP, ss 32, 33 and 34 dealing with contracted healthcare services, treatment plans, pre-approval and forced healthcare, represented a complete disregard of the right to bodily integrity of the victim and are irreconcilable with s 12(2) of the Constitution.

Section 32 of the Bill essentially sought to introduce a system of preferred healthcare providers, who would presumably be appointed without input from any persons or representatives protecting the interests of victims. Section 34 entitles the administrator virtually to take control of the bodily integrity of the victim, prescribe treatment to be undertaken and, in terms of s 33(3), designate the medical service provider at whose mercy the victim is to subject himself.

Regarding s 35(1), which disentitles all persons not ordinarily resident in South Africa from any income protection, irrespective of the citizenship of the victim and s 35(2) which deprives a victim if they have been absent from the Republic in excess of six months per year for a period of three years preceding the accident, the LSNP noted that this made an astonishing inroad into the rights of the victim, bearing in mind that he is simultaneously deprived of redress against his wrongdoer.

‘The deeming provision in s 35(2)(b) subjects the victim to the same fate if he or she fails to submit proof of residency within a reasonable time of being requested to do so. Once established that a reasonable time has elapsed, it appears that the victim remains so disentitled, irrespective of the reason for his failure,’ the LSNP stated.

According to the LSNP, the provision holds considerable peril for many South Africans who, by virtue of a lack of employment opportunities in South Africa, are forced to work outside the borders of the country.

The LSNP was of the view that, on the face of it, the deprivation seemed arbitrary and was a flagrant disregard of the equality clause in s 9 of the Constitution, adding that it was doubtful whether the deprivation would pass constitutional muster at the hands of the equality clause in respect of foreigners legally but temporarily present in the country.

Income support benefits

According to the LSNP, ss 36(3) 36(4)(b) appeared to entitle persons who were economically inactive immediately before the accident to temporary income support benefits, subject only to the fact that their injuries would have prevented them from working if they had been employed.

The LSNP noted that this provision appeared to be gratuitous and hardly in line with the purpose of the Bill to relieve the effects of an accident. ‘Bearing in mind that various classes of claimants (persons younger than 18, older than 60, and persons not ordinarily resident), whose actual income have been affected by accidents are deprived of benefits, the extension of the benefits to economically inactive persons seems unjustified,’ it stated.

The LSNP believed that the difficulty in adopting the system provided for in terms of COIDA is that that system is designed for persons employed formally making the determination of benefits relatively simple. Pre-incident income is determined by simple reference to salary. ‘Road accident victims are not necessarily employed. Victims include children, self-employed persons and persons informally employed, as well as persons still at the beginning of their career paths,’ the LSNP noted, adding that ‘the system proposed does not cater for child victims whose income earning capacities have been destroyed. It is unlikely that even a reasonable percentage of the parents of minor children will ever be able to finance a proper investigation to show that their injured children will eventually become entitled to benefits when they reach normal income earning age. Insofar as they are economically inactive at the time of the accident, they appear to be sentenced to forever be receiving benefits relevant to the average annual national income.’

According to the LSNP, these benefits make the Bill open to constitutional attack by virtue of a gross violation of the equality clause in terms of s 9 of the Constitution and the children’s clause in s 28. The LSNP added that it was obvious that the exclusion from income support benefits of persons younger than 18 and older than 60 years was open to attack in terms of the equality clause and the children’s clause.

Family support benefits

The LSNP was in agreement with the LSSA and the BLA that s 39 of the Bill introduced a further, apparently arbitrary,
deprivation of benefits to dependants who are not ordinarily resident in the Republic.

It said that this provision is unlikely to pass constitutional muster.

In conclusion, the LSNP stressed that it foresaw difficulties with the claims and appeal procedures as the claimant was principally responsible for submission and proof of his or her claim.

Because of the necessity to safeguard against fraud and the notorious inefficiency of bureaucratic systems, the LSNP foresaw that claimants are likely to have their limited benefits ‘unacceptably delayed’ as they get tied down in paper wars with the administrator.

According to the LSNP, unlike in the present system, the victim would not be able to approach an attorney willing to work on contingency and to finance medico-legal reports. The LSNP added that lay persons would have limited to non-existent knowledge of the principles of administrative justice and would lack the knowledge and skill to effectively conduct PAJA litigation.

Insofar as the Bill’s intention to provide an effective and equitable compensation system to alleviate the impact of road accidents on victims, the LSNP foresaw a severe danger that the proposed Bill would accomplish exactly the opposite.

The LSNP concluded by stating that it could not and did not support the Bill.

‘The insult to injury is that the administrator is absolved of virtually all responsibility in terms of s 52 of the Bill. It is unclear why this particular organ of state should enjoy such a privileged position.’

• The full submissions by the LSSA, BLA and LSNP can be accessed on the LSSA website at www.LSSA.org.za under ‘Legal practitioners’ LSSA comments.
• See 2014 (Aug) DR 10.

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