UNIT 11:  
THE RAF AMENDMENT ACT 19 OF 2005
Learning outcomes

After completing Unit 11, you should be able to do the following:

- Identify the important changes introduced by the RAF Amendment Act 19 of 2005 regarding the liability of the Fund.
- Explain what claims are affected by the amendments contained in Act 19 of 2005.
- Understand who determines whether an injury is considered serious or not and what should be taken into account when this decision is made.
- Know who pays for the serious injury assessment report.
- Know what recourse exists if a dispute arises regarding the assessment of the seriousness of an injury.
- Know who pays for the costs of the dispute resolution.

Readings


Introduction

The President of the Republic of South Africa published proclamation R 29 in Government Gazette GG 31249 of 21 July 2008. In terms of this proclamation, sections 6 to 13 of the RAF Amendment Act 19 of 2005 (RAFAA) were proclaimed as being effective from 1 August 2008. These sections effectively amend the RAF Act 56 of 1996 in respect of the claims of road accident victims in radical ways that will be discussed hereunder. It is important to remember that these amendments are only applicable to motor vehicle accidents that took place on or after 1 August 2008 as the RAF Amendment Act 19 of 2005 is not retrospective in nature.
1. Important changes introduced by the amendments in RAFAA regarding the liability of the fund

1.1 Passengers

Study this paragraph and take note that section 18(1) of the RAF Act 56/96 (hereafter referred to as the “current act”) was deleted by section 7(a) of RAFAA 19 of 2005.

Under the current act the claims of certain categories of passengers are limited to a maximum of R 25 000-00. The amendments have done away with this limitation and these passengers are now treated on an equal footing with all other types of claimants.

The lifting of this cap has the effect that certain categories of passengers will enjoy better cover than what the case is in terms of the current act.

1.2 Claimants conveyed for reward on a motorcycle

Study this paragraph and take note that section 19(b)(i) of the current act was deleted by section 8(a) of RAFAA 19 of 2005.

Under the current act claims by claimants conveyed for reward on a motorcycle are excluded. The amendments deleted this exclusion with the result that the Fund now entertains such claims.

1.3 Member of the same household

Study this paragraph and take note that section 19(b)(ii) of the current act was deleted by section 8(a) of RAFAA 19 of 2005.

The current act excludes claims by passengers, in a single motor vehicle accident, where the claimant is in law responsible for the maintenance of the driver, or where the claimant is a member of the same household as the driver. The amendments deleted this exclusion with the result that the Fund now entertains such claims.

1.4 Secondary emotional shock

Study this paragraph as well as section 19(g) of the RAF Act 56/96 which was added by section 8(b) of RAFAA 19/2005.

The current act does not exclude claims for emotional shock. The amendments however introduced a new exclusion in respect of claims for secondary emotional shock. Secondary emotional shock refers to instances where the claimant did not sustain any other physical injuries in
the accident. A typical example of secondary emotional shock would be where a claimant witnesses an accident without being involved in the accident. It is important to note that although the Fund’s liability is excluded in respect of this type of claim, the claimant retains his/her common law claim against the wrongdoer.

1.5 Common law right

Study this paragraph as well as section 21 of the RAF Act 56 of 1996 which was substituted by section 9 of RAFAA 19 of 2005.

The amendments retain the claimant’s common law right to claim against the wrongdoer only in instances where the Fund is unable to pay any compensation and in instances of secondary emotional shock. This means that except in the last-mentioned circumstances, no claim for compensation arising from a motor-vehicle accident can be brought against the owner, driver or the driver’s employer of the motor vehicle concerned.

1.6 Serious injury

Study this paragraph as well as section 17(1) of the RAF Act 56/96 which was deleted by section 7(a) of RAFAA 19 of 2005.

The amendments limit the Fund’s liability for compensation in respect of claims for non-pecuniary loss (general damages) to instances where a serious injury has been sustained.

1.7 Costs

Study this paragraph and take note that section 17(2) of the RAF Act 56/96 was deleted by section 6 of RAFAA 19/2005.

The current act contains a provision that allows a third-party claimant to recover party-and-party costs on settlement of his claim prior to the issue of summons. The amendments deleted this entitlement.

1.8 Undertaking

Study this paragraph as well as section 17(4)(a) of the RAF Act 56/96 which was substituted by section 6 of RAFAA 19/2005. Also study section 23(3) of the RAF Act 56/96 which was substituted by section 10 of RAFAA 19/2005.

The Fund may issue a claimant with an Undertaking in terms of which the Fund will compensate the claimant for future medical and related expenses. The amendments entitle the Fund to pay the compensation to the claimant or directly to the medical service provider. The amendments also
provide that claims lodged under the Undertaking shall not prescribe before the expiry of a period of five years from the date on which the cause of action arose.

1.9 Medical tariffs

Study this paragraph and section 17(4B) of the RAF Act 56/96 which was substituted by section 6 of RAFAA 19 of 2005.

The amendments limit the Fund’s liability in respect of medical expenses to one of two medical tariffs.

The first (higher) tariff will apply in all cases where emergency medical treatment was provided. Emergency medical treatment is defined as all medical treatment necessary for “... the immediate, appropriate and justifiable medical evaluation, treatment and care required in an emergency situation in order to preserve the person’s life or bodily functions, or both ...”.

All medical treatment that can not be defined as emergency medical treatment will be compensated on the lower tariff. The lower tariff envisaged by the legislator was the Uniform Patient Fee Schedule (UPFS tariff) for fees payable to public health establishments by full-paying patients, prescribed under section 90(1)(b) of the National Health Act, 2003 (Act No. 61 of 2003), as revised from time to time. This was however struck down by the Constitutional Court and victims will be entitled to medical treatment or health services to which they would have been entitled had the Amendment Act not been passed. They will therefore be able to claim for private health care until such time as the Minister of Transport determined the new tariff to be applied for non-emergency medical treatment.

1.10 Loss of income

Study this paragraph and sections 17(4)(c) and 17(4A) of the RAF Act 56/96 which was substituted by section 6 of RAFAA 19 of 2005.

The amendments limit the Fund’s liability in respect of claims for loss of income to R 189 017-00 per year, irrespective of the actual loss.

1.11 Loss of support

Study this paragraph as well as section 17(4)(c) and 17(4A) of the RAF Act 56/96 which was substituted by section 6 of RAFAA 19 of 2005.

The amendments limit the Fund’s liability in respect of claims for loss of support to R 189 017-00 per year, irrespective of the actual loss, in respect of each deceased breadwinner.
In terms of the amendments the Fund is required to adjust the R 189 017-00 limit on a quarterly basis, to counter the effects of inflation, by giving notice of the adjusted statutory limit in the Government Gazette.

2. What claims are affected by the amendments?

Study this paragraph and section 28(1) of the RAF Act 56/96.

All claims arising from accidents that occur on, or after 1 August 2008 will fall to be assessed in terms of the amendments. Claims that arise from accidents that occurred prior to 1 August 2008 will be assessed in terms of the current act, i.e. the amendments will have no impact on these claims.

3. Who determines whether an injury is considered serious or not and what should be taken into account when this decision is made?

Study this paragraph.

This question is answered by a medical practitioner who assesses the claimant by following a process of elimination prescribed in the RAF regulations.

Firstly, the medical practitioner must have regard to a list of non-serious injuries. This is a list that may be published by the Minister of Transport, after consultation with the Minister of Health. If an injury appears on this list that injury may not be assessed to be serious by the assessing medical practitioner. Where no list has been published the assessing medical practitioner may skip this step and move on to the next step.

The next step involves the assessment of the injury, by the medical practitioner, in terms of the American Medical Association’s Guides to the Evaluation of Permanent Impairment, Sixth Edition (“the AMA Guides”). If the injury resulted in 30 per cent or more Impairment of the Whole Person as provided in the AMA Guides, the injury shall be assessed as serious.

The last step in the assessment process will only be followed where the injury is not listed on the list of non-serious injuries and where the injury did not result in 30 per cent or more Impairment of the Whole Person. In terms of this step the medical practitioner may assess an injury as serious if the injury resulted in:

(a) a serious long-term impairment or loss of a body function;
(b) permanent serious disfigurement;
(c) severe long-term mental or severe long-term behavioural disturbance or disorder; or
(d) loss of a foetus.

The medical practitioner who performed the assessment must complete a serious injury assessment report (RAF 4).

The claimant may lodge the RAF 4 with the Fund separately after the submission of the claim at any time before the expiry of the periods for the lodgement of the claim prescribed in the RAF Act 56/96 and the RAF regulations.

4. **Who pays for the serious injury assessment report?**

Study this paragraph.

(a) The Fund shall only bear the cost of the assessment if the claimant’s injury is found to be serious and the Fund attracts overall liability in terms of the RAF Act 56/96 (merits, prescription, etc.); or

(b) If the Fund decides that there is a reasonable prospect that a medical practitioner may assess the injury to be serious and the claimant lacks sufficient funds to obtain an assessment, the Fund may, at the Fund’s cost, at the request of the claimant, make available to the claimant the services of, or, alternatively, refer the claimant to a medical practitioner for purposes of an assessment.

5. **What recourse exists if a dispute arises regarding the assessment of the seriousness of an injury?**

Study this paragraph.

The amendments provide for dispute resolution where the medical practitioner has assessed an injury as “not serious” or where the Fund has rejected a serious injury assessment report by a medical practitioner in terms of which the injury has been assessed as “serious”.

A claimant wishing to lodge a dispute must do so within 90 days of being notified of the outcome of the assessment or being notified of the rejection of the serious injury assessment report by the Fund. The dispute must be lodged, on the prescribed form (RAF 5), with the Registrar of the Health Professions Council of South Africa (“the HPCSA”).

The dispute will be determined by an appeal tribunal appointed by the Registrar of the HPCSA, which will publish its findings within 90 days from the date that the dispute was referred to the Registrar.
6. Who pays for the costs of the dispute resolution?

Study this paragraph.

The Fund shall bear the reasonable costs of the HPCSA. The Fund shall also bear the reasonable fees and expenses of the persons appointed to the appeal tribunal.

The claimant will have to bear the cost of his/her attorney in those instances where he/she is represented by an attorney/advocate.

Activity 1

1. Briefly discuss the important changes introduced by the amendments in RAFAA 19/2005 regarding the liability of the Fund.
2. What can a claimant do if a dispute arises regarding the assessment of the seriousness of an injury which he/she sustained in a motor-vehicle accident?