THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 1106/2024 and 1479/2024

In the matter between:

ROAD ACCIDENT FUND	**FIRST APPELLANT**
CHAIRPERSON OF THE BOARD, ROAD ACCIDENT FUND	**SECOND APPELLANT**
CHIEF EXECUTIVE OFFICER, ROAD ACCIDENT FUND	**THIRD APPELLANT**

and

LEGAL PRACTITIONERS' INDEMNITY INSURANCE FUND, NPC	**FIRST RESPONDENT**
W E EMERGENCY RESPOND TEAM (PTY) LTD	**SECOND RESPONDENT**
TSHOLOFELO TLHWAJWANG obo MINOR	**THIRD RESPONDENT**
REBECCA MASABATA MOHAPI	**FOURTH RESPONDENT**
CHRISTJAN TOLO	**FIFTH RESPONDENT**
JOHANNA SUSANNA VISAGIE	**SIXTH RESPONDENT**
LUCKY DUMISANI SEBATLELO	**SEVENTH RESPONDENT**
A WOLMARANS INCORPORATED	**EIGHTH RESPONDENT**

LOUBSER VAN WYK ATTORNEYS **NINTH RESPONDENT**

ABONGILE DUMILE ATTORNEYS INCORPORATED **TENTH RESPONDENT**

THE MINISTER OF TRANSPORT **ELEVENTH RESPONDENT**

THE LEGAL PRACTICE COUNCIL **TWELFTH RESPONDENT**

PRETORIA ATTORNEYS' ASSOCIATION ***AMICUS CURIAE***

Neutral citation: *Road Accident Fund and Others v Legal Practitioners' Indemnity Insurance Fund, NPC and Others* (1106/2024 and 1479/2024) [2026] ZASCA 63 (30 April 2026)

Coram: NICHOLLS, MATOJANE and KEIGHTLEY JJA and MAMOSEBO and NORMAN AJJA

Heard: 17 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date and time for the hand-down of the judgment is deemed to be 11h00 on 30 April 2026.

Summary: Administrative Law – Promotion of Administrative Justice Act 3 of 2000 (PAJA) – Road Accident Fund Act 56 of 1996 (the Act) – whether the Minister's decision to gazette the RAF 1 form constituted an administrative action under the PAJA – whether the publication of the board notice by the RAF constituted making regulations and unlawfully encroached on the Minister's powers under s 24 of the Act.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Molopa-Sethosa, Unterhalter and Motha JJ sitting as court of appeal):

1 The appeal is dismissed, with costs, including the costs of two counsel where so employed.

2 The date in paragraph (vii) of the high court order is amended to 30 September 2026.

JUDGMENT

Nicholls JA (Matojane and Keightley JJA and Mamosebo and Norman AJJA concurring):

Introduction

[1] South Africa's statutory road accident compensation scheme is set out in the Road Accident Fund Act 56 of 1996 (the Act). The Road Accident Fund (the RAF), the juristic entity established in terms of s 2 of the Act, has the primary responsibility of paying compensation for loss or damage wrongfully caused by the driving of motor vehicles. The Act sets out the regime of liability of the RAF to pay compensation which would otherwise attach to negligent drivers at common law. It is social legislation whose primary object is to ameliorate the plight of road accident victims.[1] The Act has undergone legislative review and amendments over the years.[2] The submission of a valid claim form is the statutory gateway for the consideration of a claim under the Act.

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[1] *Law Society of South Africa and Others v Minister for Transport and Another* [2010] ZACC 25; 2011 (1) SA 400 (CC); 2011 (2) BCLR 150 (CC) para 66.

[2] *Mvumvu and Others v Minister of Transport and Another* [2011] ZACC 1; 2011 (2) SA 473 (CC); 2011 (5) BCLR 488 (CC); *Road Accident Fund v Duma And Three Similar Cases* [2012] ZASCA 169; [2013] 1 All SA 543 (SCA); 2013 (6) SA 9 (SCA).

[2] This appeal concerns the claim form, known as the RAF 1 form, which claimants are obliged to submit to the RAF under the Act in order that their claims may be processed. At issue in this matter are the powers of the RAF and the Minister of Transport (the Minister) to prescribe the content and information required for the RAF 1 form. For many years, the form in use was that prescribed in the 2008 RAF regulations.[3] Recently, there has been an attempt by the RAF to alter the requirements for a valid claim form. It is one such attempt that has spawned this litigation.

[3] Specifically, this Court is called upon to determine whether the full court of the Gauteng Division of the High Court, Pretoria (the full court) was correct in reviewing and setting aside two board notices. The first is Board Notice 271 of 2022 (Board Notice 271).[4] This had the effect of making claims to the RAF more onerous by requiring additional compulsory information to be submitted when lodging a claim for compensation with the RAF. The second board notice, which the full court declared unlawful and set aside, is the RAF 1 form prescribed by the Minister in terms of Board Notice 302 of 2022 (Board Notice 302).[5] In this later board notice, the Minister approved the revised RAF 1 form mooted by the RAF in Board Notice 271, incorporating the more stringent requirements for the claim form. Thus, a greater burden is placed on claimants before their claims can be properly evaluated. Central to the outcome of this appeal is whether the two impugned decisions amount to administrative action in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[4] This is a consolidated matter of cases 1106/2024 and 1479/2024. The RAF is the first appellant in both matters. The second appellant is the Chairperson of the RAF Board. The third appellant is the Chief Executive Officer (CEO) of the RAF. For convenience, the appellants will collectively be referred to as the RAF unless the context indicates otherwise. The Legal Practitioners' Indemnity Insurance Fund, the first respondent in both matters, is a non-profit company that provides professional indemnity insurance to legal practitioners with fidelity fund certificates and grants certain bonds of security to practising attorneys. The second and third respondents

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[3] RAF Regulations, GN R770, *GG* 31249, 21 July 2008.
[4] This board notice was published with the RAF Regulations, GN 46322, GG 683, 6 May 2022.
[5] This board notice was published with the RAF Regulations, GN 46652, GG 685, 4 July 2022.

were not granted condonation for filing their application outside the 180-day period and are not before this Court. The fourth to seventh respondents are persons who have submitted claims to the RAF. The eighth respondent is a firm of attorneys that specialises in road accident and personal injury claims and represents, *inter alia*, 30 medical aid schemes. The ninth respondent is also a firm of attorneys.

Legislative Framework

[5] Before dealing with the facts that led to this case, it is necessary to detail the relevant sections of the Act. The powers of the RAF are set out in s 4 of the Act, which in part provides:

'4. Powers and functions of Fund

(1) The powers and functions of the Fund shall include-

(a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;

(b) the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle, whether or not the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established;

[…]

(2) In order to achieve its object, the Fund may-

(*g*) take any other action or steps which are incidental or conducive to the exercise of its powers or the performance of its functions'

[6] Section 10 makes provision for a board of the Fund, consisting of the Director-General of Transport and eight to 12 members appointed by the Minister. Section 11 sets out the powers and functions of the Board, as well as its procedures, which include advising the Minister and approving internal rules and directions in respect of the management of the Fund.[6] Section 12 provides that the Minister, on the recommendation of the Board, shall appoint the CEO of the RAF, who shall draft internal rules and directions in respect of the management of the RAF and make recommendations in respect thereof to the Board and issue guidelines to agents regarding the manner in which they should administer claims on behalf of the RAF.[7]

[6] Section 11(1)*(a)*-*(d)* of the RAF Act.
[7] Section 12 (2)*(c)* and *(e)* of the RAF Act.

[7] Section 24 of the Act stipulates the procedure to be followed when submitting a claim:

'Procedure

(1) A claim for compensation and accompanying medical report under section 17(1) shall-

(a) be set out in the prescribed form, which shall be completed in all its particulars;

[…]

(4) *(a)* Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words 'not applicable' shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading 'Compensation claimed' and shall, where applicable, be accompanied by supporting vouchers.

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.'

[8] Section 26 empowers the Minister to 'make regulations regarding any matter that shall or may be prescribed in terms of this Act or which it is necessary or expedient to prescribe in order to achieve or promote the object of this Act.'[8] The RAF 1 form, as prescribed under the 2008 RAF regulations, remained in force for over a decade until the RAF decided to make changes to the requirements for the lodgement of claims in 2021.

Background

[9] It is against this legislative framework that the events leading up to this appeal took place. On 8 March 2021, the RAF issued a management directive communication notice requiring claimants to submit additional documents and information under

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[8] Section 26(1) of the RAF Act.

s 24(1)*(a)* and (4) of the Act. As indicated, s 24 stipulates that any form 'which is not completed in all its particulars shall not be acceptable as a claim under this Act'.[9] This has the potential for far-reaching consequences, as the prescription period is extended from two years to five years upon the lodgement of a claim.[10]

[10] On 19 May 2021 an external communication was published listing compulsory supporting documentation that suppliers needed to submit when lodging claims with RAF.[11] These measures were followed shortly thereafter with the publication of Board Notice 58 of 2021 in the Government Gazette on 4 June 2021.[12] Board Notice 58 of 2021, like the 8 March 2021 directive, prescribed an extensive set of documents that had to be submitted for the claim to be 'valid'. It cautioned that failing to submit the said documents would render the claim invalid and would not interrupt prescription. On the same day, it published a substituted RAF 1 form under a separate notice, Board Notice 66 of 2021,[13] the effective date of which would be the date of publication. It claimed its authority to do so under regulation 7 of the RAF regulations.

[11] The publication of Board Notice 58 of 2021 resulted in a number of claimants approaching the high court to review the RAF's decision. They challenged the legality of the substituted RAF 1 form, the management directive, the board notice, as well as the constitutional validity of regulation 7(1). This case was heard by the full court of the Gauteng Division of the High Court, Pretoria, as *Mautla I*. On 15 June 2021, the full court interdicted the RAF from implementing Board Notice 58 of 2021 and the substituted RAF 1 form. The full court also declared regulation 7(1) to be unconstitutional and invalid insofar as it delegated regulatory authority to the RAF. Leave to appeal the full court's decision was refused by the high court. This Court also

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[9] Section 24(4)*(a)* of the RAF Act.
[10] Section 23 of the RAF Act.
[11] This external communication was titled 'Supplier Claims – Compulsory Supporting Documents for Lodging Claims with the Road Accident Fund'. This communication related to requirements that suppliers such as hospitals and emergency ambulance services had to comply with. The communication was one of the decisions reviewed by the full court of the Gauteng Division of the High Court, Pretoria, in *Mautla and Others v The Road Accident Fund and Others* [2023] ZAGPPHC 1843; 2023 JDR 4259 (GP) (6 November 2023) (*Mautla I*).
[12] This board notice was published in the Government Gazette under GN 44674, GG 671, 4 June 2021.
[13] RAF Regulations, GN 44747, GG 672, 22 June 2021.

refused leave to appeal. However, a reconsideration application under s 17(2)*(f)* of the Superior Courts Act 10 of 2013 was granted by the President of this Court. *Road Accident Fund and Others v Mautla and Others (Mautla II)*[14] was heard by the Supreme Court of Appeal during the last term of 2025, and judgment was handed down on 19 December 2025. This Court did not address whether the RAF had the power under the Act to adopt and implement the board notice, or whether the Minister could delegate his powers to the Fund. It merely granted leave to appeal to this Court based on the pending appeal in the current matter.

[12] Apparently, in response to the *Mautla I* decision in the high court, on 22 June 2021, the RAF published Board Notice 65 of 2021, the effect of which was to withdraw Board Notice 58 of 2021, and to suspend the effective date of the substitution of the RAF 1 form.[15] This withdrawal meant that the 2008 RAF 1 form remained in operation for the time being. At the same time, the RAF published Board Notice 66 of 2021, titled 'Draft Terms and Conditions Upon Which Claims for Compensation Shall Be Administered' and called upon interested parties to submit their comments within 30 days.[16] Various of the respondents in the present matter submitted comments in response thereto.

[13] Eleven months later, on 6 May 2022, the RAF again sought to amend the RAF 1 form by publishing Board Notice 271 of 2022, the first impugned decision in this matter.[17] Its avowed purpose was to enable the RAF to 'effectively and efficiently administer claims' by stipulating 'Terms and Conditions Upon Which Claims for Compensation Shall Be Administered.' These amendments were purportedly provided for in terms of regulation 7 and set out new mandatory requirements for lodging claims. Board Notice 271 went further by dictating conditions for payment, such as the requirement of a valid tax clearance certificate, notwithstanding that the claims had been settled and that the settlement agreement had been made an order of court.

[14] *Road Accident Fund and Others v Mautla and Others* [2025] ZASCA 200; 2025 JDR 5385 (SCA) (19 December 2025) (Mautla *II*).
[15] See fn 12 above.
[16] RAF Regulations, GN 44747, *GG* 672, 22 June 2021.
[17] See fn 4 above.

[14] The RAF published other board notices on 27 and 31 May 2022,[18] respectively. The first board notice substituted the RAF 1 form dated 21 July 2008 with the terms and conditions set out in Board Notice 271 of 2022. The other board notice, dated 31 May 2022, withdrew the substitution set out in the previous board notice dated 27 May 2022, but did not withdraw Board Notice 271 of 2022, the first impugned decision, which remained intact.

[15] On 17 June 2022, a memorandum drafted by the Acting Director-General to the Minister entitled 'Request the Honourable Minister to Approve the Publication of the Revised Road Accident Fund Form 1 for Incorporation into the Road Accident Fund Regulations' was sent to the Minister of Transport. The memorandum references *Mautla I,* which it noted resulted in an application being instituted against the RAF on the basis that it does not have the requisite power to amend the RAF 1 form. It referred to an internal meeting where it was agreed that the power to make regulations resided with the Minister in terms of s 26, and not the RAF. It was considered expedient that the Minister publish the RAF 1 form. Accordingly, the recommendation was that the Minister approve the publication of the revised RAF 1 claim form and incorporate it into the RAF's regulations.

[16] On 30 June 2022, the Minister signed off on the recommendation, and on 4 July 2022, the Minister published Board Notice 302, which incorporated the new RAF 1 form under the Minister's regulation-making powers. The Minister's decision is the second impugned decision. The RAF's position was that the Minister had 'validated' the terms and conditions contained in the RAF 1 form and began enforcing compliance with those requirements retrospectively.

Litigation History

[17] The respondents, as applicants in the high court, instituted review proceedings

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[18] RAF Regulations, GN 46422, GG 683, 27 May 2022 and Road Accident Fund Regulations, GN 46456, GG 683, 31 May 2022.

in the Gauteng Division of the High Court, Pretoria on the basis that the two impugned decisions, Board Notice 271 and Board Notice 302, were both procedurally and substantively illegal. A challenge to regulation 7(1) of the 2008 RAF regulations was also instituted.

[18] The respondents sought that the decisions be reviewed and set aside in terms of s 8(1) of PAJA, alternatively in terms of the principle of legality. They challenged regulation 7(1) to the extent that it purported to empower the RAF, rather than the Minister, to amend or substitute the RAF 1 form. The challenge to the legality of the RAF 1 form before the full court was that the Minister adopted the RAF 1 form 'with an ulterior motive, under unlawful dictation, without regard to the requirements of procedural fairness, and by recourse to irrelevant considerations'.

[19] The respondents alleged that the RAF had usurped the Minister's legislative power by issuing Board Notice 271 and that the Minister merely rubber-stamped the RAF's dictates by issuing Board Notice 302. By doing so, both parties failed to comply with their constitutional and statutory obligations to the public and, more specifically, to the rights of motor accident victims. Accordingly, the new requirements for lodging claims undermined the social-security purpose of the state by unjustifiably denying or delaying compensation to deserving claimants.

[20] The matter was heard by a full court, which found both board notices were unlawful and set them aside. It was of the view that it did not need to determine the legality of the delegation of power that led to the publication of regulation 7(1).

[21] The full court noted that the only record of the Minister's decision was confined to the memorandum, as the Minister did not file any papers. With no evidence before it, the full court held that the Minister must have regard to the contents of the RAF 1 form in order to determine whether the adoption and publication of the form was, as s 26(1) of the Act requires, necessary or expedient to achieve or promote the object of the Act. Considering that there was no evidence to point to the fact that the Minister

complied with s 26(1) of the Act, the full court was of the view that this was sufficient to render the decision of the Minister unlawful as it failed to meet the requirement of rationality and legality. The court also found the Minister's decision unlawful for want of a public enquiry and consultation as required by s 4(1) of PAJA.

[22] With regard to Board Notice 271, the full court held that it is for the Minister to make the regulation prescribing the content of the form to be completed to make a claim for compensation, with the board only enjoying the power to make recommendations to the Minister. The full court pointed out that what the board notice requires is that the listed documents be included as part of the claim's supporting documents when lodging a claim with the fund, a terrain that is regulated by s 24.

[23] Ordinarily, having reached the conclusion it did, the full court would have set aside the decisions and remitted them for reconsideration. However, considering that there needed to be a regulatory regime in place for claims to be lodged, and that there were claimants who had successfully lodged claims using the regime created by the RAF 1 form and the board notice (as well as those whose claims had failed), their positions needed to be considered. As a result, the court ultimately ordered that the RAF revert to the RAF 1 claim form that came into operation on 1 August 2008.

[24] The RAF filed an application for leave to appeal against the full court judgment and was granted leave to appeal to this Court on limited grounds. The grounds of appeal advanced by the RAF were that the RAF 1 form does not constitute a regulation and, consequently, does not qualify as administrative action. It submitted that the publication of the RAF 1 form does not amount to the making of subordinate legislation constituting an administrative action and therefore cannot be reviewed in terms of PAJA. The full court was of the view that there were no prospects of success. However, the finding in *Mautla I,* which held that the RAF lacked the power to issue the RAF 1 form, was on appeal before this Court, and the outcome could have an

impact on this matter.[19] Further, the full court took the view that there were reasons of public policy as to why the Supreme Court of Appeal should be the ultimate arbiter on the matter. Having taken these considerations into account, the full court granted leave to appeal only in respect of that part of the order which declared Board Notice 271 invalid. The RAF successfully petitioned this Court for special leave on those issues on which the full court had not granted leave to appeal. It is therefore the entirety of the judgment and all the orders that are on appeal before us.

In this Court

[25] The RAF, in its heads of argument, submitted that the full court erred in finding that:

(a) The RAF 1 form constituted administrative action under PAJA.

(b) The Minister adopted the RAF 1 form solely to resolve a dispute between the Minister and the RAF over who had the authority to publish the form.

(c) The Minister failed to observe his obligations under s 7(2) of the Constitution.

(d) The publication of the board notice constituted the exercise of a regulation-making power and thus fell outside the RAF's remit, which finding was made without the full court having properly considered the RAF's statutory powers and responsibilities.

(e) The full court's reliance on the principle of sufficiency, as espoused by *Road Accident Fund v Busuku*,[20] was misapplied without proper consideration of the context and purpose of the new claim form.

[26] At the commencement of this hearing, counsel for the RAF made important concessions. First, the issue of the constitutionality of regulation 7 was abandoned for determination in *Mautla II.* Second, the RAF conceded that it was in no position to defend the decision of the Minister who had elected not to oppose the application and had not filed an affidavit explaining the reasons for his decision. This effectively

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[19] This was factually incorrect but nothing turns on it. A petition for leave to appeal was refused, However the matter was heard by this Court pursuant to an application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013*)*.

[20] *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA) (*Busuku*).

eliminated all those grounds of appeal where the RAF attempted to justify the Minister's decision and limited the RAF's challenge to Board Notice 271. It was accepted that if the RAF 1 form constituted administrative action, then the appeal must fail.

The Minister's Decision

[27] Board Notice 302, the impugned decision of the Minister, states 'The Minister of Transport, in terms of section 26 of the Road accident Fund Act, 1996 (Act No. 56 of 1996) herewith prescribe[s] the RAF Form 1 in the Schedule'. The schedule sets out the RAF 1 form, which, *inter alia*, includes the additional documentation and mandatory information required by the RAF's Board Notice 271.

[28] The only document proffered as to the reason for the Minister's decision to prescribe the amended RAF 1 Form is the memorandum from the Acting Director-General of Transport referred to above. This was obtained pursuant to an application to compel. If regard is had to the content of the memorandum, it appears to apprise the Minister of recent developments in *Mautla I*. It sets out that the Department of Transport's view that all forms must be prescribed by regulation, which is defined in s 1 of the Act to mean prescribed by regulation under s 26 of the Act. Section 26 empowers the Minister, and not the RAF, to make regulations. It goes on to state that: '[t]he RAF 1 Form forms part of the Regulations; therefore, the RAF Board cannot exercise the power to prescribe forms. In terms of section 11 of the RAF Act, the RAF is only empowered to make recommendations to the Minister in respect of any regulations to be made under the RAF Act.'[21] The memorandum explained that at a meeting held on 16 May 2022 between the RAF and the department, it was agreed that it 'may be expedient and advantageous that the Minister publish the RAF 1 Form'.[22]

[29] The memorandum correctly states that the RAF's power to administer a claim under s 4 does not extend to the making of regulations to prescribe what the form must

[21] Memorandum from the Department of Transport date June 2022 para 3.14.
[22] Memorandum from the Department of Transport date June 2022 para 3.16.

contain to lodge a valid claim. It is the preserve of the Minister in terms of s 26 of the Act to make regulations regarding any matter. Section 4 of the Act empowers the RAF to stipulate terms and conditions upon which claims for compensation shall be administered. To 'prescribe' in terms of the definition means 'by regulation under section 26'. The proviso to s 26 is that the Minister may make regulations which are 'necessary or expedient to achieve or promote the objects of the Act'.

[30] There is no evidence that any consideration was given to whether the regulation was necessary or expedient to achieve the purpose of the Act, which, as we know, is to compensate accident victims for damages suffered. To the contrary, the regulation, by introducing the new RAF 1 form, placed substantial impediments in the way of accident victims' claims through more stringent requirements. This goes against the tenor of cases which have taken a more permissive approach when considering whether a claim form was compliant. It has been held that ss 24(1)*(a)* and (4) of the Act which set out the requirements for a valid claim form, are considered directory and not peremptory.[23] As such, 'substantial compliance with such requirements suffices'.[24] This Court has recently revisited the issue in *Busuku*, affirming the principle of substantial compliance and further holding that the RAF 1 form does not call for detailed information.[25]

[31] The next question is whether the Minister's decision constituted administrative action as defined in PAJA. Section 1*(b)* of PAJA provides that administrative action includes any decision taken by an organ of state that 'adversely affects the rights of any person and which has a direct external legal effect […].' As an organ of state, the Minister exercised a public power in prescribing the RAF 1 form under s 26 of the Act. The Minister's decision has adversely affected claimants, as it requires them to submit an extended prescribed set of documents to the RAF in order for a claim to be valid. Since then, the RAF has been rejecting claims without giving reasons for refusing to

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[23] *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA); [2014] 3 All SA 324 (SCA) para 19.
[24] *Busuku* para 14.
[25] Ibid para 16.

accept their claims. The claim form is the statutory gateway to access compensation under the Act.

[32] Section 23(3) of the Act provides that no claim lodged in terms of s 23(1) read with ss 17(4)*(a)* or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose. Lodgement thus extends the ordinary period of prescription by two years. The contents of the RAF 1 form directly affect what is required of persons to lodge a claim. It thus has a direct, external legal effect on the period of prescription, which adversely affects the rights of persons who wish to lodge claims under the Act. The RAF 1 form accordingly falls within the definition of administrative action under PAJA, and thus constitutes administrative action.

[33] The full court's finding that the Minister's decision constituted administrative action on the basis of the holding of plurality in the Constitutional Court in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others*,[26] is unassailable. There, the Constitutional Court characterised the making of delegated legislation as an essential part of public administration, and to hold that it does not constitute administrative action would be contrary to the Constitution.[27] Although there may be a number of exclusions, these did not include the making of regulations.[28] This Court has repeatedly found that the making of regulations by a Minister constituted administrative action within the ambit of s 33 of the Constitution and of PAJA.[29] In *Esau*, this Court agreed with both the finding in *New Clicks* and *Cable City* that the making of regulations was administrative action. When the RAF board and the Minister took the impugned decisions to promulgate binding requirements that affect the public's ability to claim compensation, they were exercising public powers of an administrative nature.

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[26] *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* [2005] ZACC 14; 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) (*New Clicks*).

[27] Ibid paras 95-101.

[28] Ibid para 126.

[29] *City of Tswane Metropolitan Municipality v Cable City (Pty) Ltd* [2009] ZASCA 87; [2010] 1 All SA 1 (SCA); 2010 (3) SA 589 (SCA); 72 SATC 285 (*Cable City*), para 10; *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* [2021] ZASCA 9; [2021] 2 All SA 357 (SCA); 2021 (3) SA 593 (SCA) (*Esau*), paras 77-83.

[34] Once the making of regulations is found to be administrative action, there are several prescripts in terms of PAJA to be complied with. The Minister did not comply with the requirements of s 4(1) of PAJA[30] which sets out the procedure to be followed where the rights of the public are affected. He failed to follow the prescribed notice and comment procedure, nor was a public enquiry held. The fact that the RAF called for public comment in Board Notice 66 of 2021,[31] did not absolve the Minister of his own obligations under s 4 of PAJA.

[35] The respondents rely on s 6(2)*(e)(*iii)[32] of PAJA to allege that the Minister's decision was made for an ulterior motive; s 6(2)*(e)*(iv)[33] in that it was on the unwarranted dictates of the RAF, and s 6(2)*(e)*(vi)[34] in that it was taken arbitrarily. If one has regard to the memorandum and its apparent purpose to obviate the dispute as to who has the power to prescribe the RAF 1 form, there is merit in this submission. While the section does not prevent the Minister from taking advice, he is prohibited from merely rubber-stamping a decision which he should have taken himself. In the absence of an affidavit or reasons in terms of rule 53(1)*(b),* of the Uniform Rules of Court, the evidence before us suggests that the Minister agreed to gazette the form, not for legitimate public-interest considerations but to side-step an internal dispute between the Department of Transport and the RAF. There is nothing before the Court which is indicative of an independent decision-making exercise on the part of the Minister.

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[30] Section 4 of PAJA provides that:
'Administrative action affecting public
(1) In cases where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether-
(a) to hold a public inquiry in terms of subsection (2);
(b) to follow a notice and comment procedure in terms of subsection (3);
(c) to follow the procedures in both subsections (2) and (3);
[…]'
[31] See fn 15 above.
[32] Section 6(2)*(e)*(iii)of PAJA provides that 'the action was taken because irrelevant considerations were taken into account or relevant considerations were not considered'.
[33] Section 6(2)*(e)*(iv) of PAJA provides that 'the action was taken because of the unauthorised or unwarranted dictates of another person or body'.
[34] Section 6(2)*(e)*(vi)of PAJA provides that: 'the action was taken arbitrarily or capriciously'.

[36] On PAJA grounds alone, the Minister's decision is fatally flawed for want of procedural fairness. But it does not end there. As stated earlier, the Minister did not consider whether the regulation was necessary or expedient as enjoined by statute. Furthermore, there is no rational connection between the decision taken and the purpose for which the power was given. Rationality is a minimum threshold for lawful administrative action. It is of little consequence whether the decision should be set aside under PAJA or on the principle of legality; the exercise of public power is reviewable under both. Therefore, on either ground, the Minister's decision to approve and gazette the RAF 1 form is unlawful and falls to be set aside.

Board Notice 271 of 2022

[37] Once Board Notice 302, the Minister's decision, is set aside, what is the status of Board Notice 271? Board Notice 271, which sets out the further requirements for a valid claim, expressly states that '[t]he implementation of these terms and conditions shall be effected with the due and necessary amendment of the RAF 1 claim form, as provided for in Regulation 7(1) of the Road Accident Fund Regulations, 2008'.

[38] From the above, it is apparent that for the board notice to be 'validated', it requires the Minister to make a regulation to that effect. In its own terms, board notice 271 is of no force and effect without the 'necessary amendment' of the RAF 1 form, as provided for in the regulations. Board Notice 271 is inextricably linked to the validity of the Minister's decision, which counsel for the RAF has already conceded he cannot defend. It has no separate legal existence. The board notice is rendered ineffective once the Minister's decision is set aside. This being the case, should the Minister's decision be set aside, then Board Notice 271 automatically falls with it.

[39] In conclusion, because the Minister's decision cannot stand, nor can Board Notice 271. The impugned RAF 1 form is thus unlawful and falls to be set aside. This means that the status reverts to that in operation under the 2008 regulations. The RAF complains that, whilst it cannot defend the decision of the Minister, it would be unfair

to force it to revert to the same 'skeletal' form which is causing backlogs in the operating system of the RAF.

[40] The full court was cognisant of the implications of such a situation and addressed these in its orders at (v) to (ix), which provides as follows:

'(v) It is declared that Claimants whose claims were accepted by the Second Respondent ('the RAF') to have been lodged in compliance with the Board Notice and/or the RAF 1 Form are deemed to have been lodged in terms of the RAF Act, and the RAF will continue to investigate and process these claims as lodged claims;

(vi) From 6 May 2022, the prescribed form contemplated in s 24 (1)(a) of the RAF Act shall be deemed to be the RAF 1 third party claim form ('the 2008 RAF 1 Form), forming part of the Regulations published by the Minister on 7 July 2008 in Government Gazette No 31249, until such time as the Minister prescribes an amendment to the 2008 RAF 1 Form in terms of s 26 of the RAF Act;

(vii) Claimants who sought the lodgement of their claims in terms of the Board Notice or the RAF 1 Form, but lodgement was declined by the RAF or was not acknowledged by the RAF, are afforded a period until 30 September 2024 to resubmit their claims to the RAF in terms of the 2008 RAF 1 Form and those claimants who thereby secure lodgement will enjoy the benefits of such lodgement as from the date on which lodgement was originally sought by them;

(viii) The RAF will take all reasonable measures to inform Claimants referenced in (v) and(vii) above of the contents of this order, which measures shall include the publication of this order in at least three newspapers circulated nationally, and, in addition, the RAF will take reasonable measures to inform the public of this order;

(ix) The Minister is ordered to adopt and publish a revised RAF 1 Form within 6 months hereof.'

[41] Aware of the implications of its order, the full court carefully tailored an order that would address the harm and the claimants' rights while preserving regulatory coherence. The remedy is equally applicable today and should remain, other than the date in order (vii), which should be amended accordingly.

[42] As regards costs, there is no reason why costs should not follow the result.

The following order is made:

1 The appeal is dismissed, with costs including the costs of two counsel where so employed.

2 The date in paragraph (vii) of the high court order is amended to 30 September 2026.

C E HEATON NICHOLLS
JUDGE OF APPEAL

Appearances:

For the appellants:	J Motepe SC
Instructed by:	Malatji & Co Attorneys, Johannesburg
	Honey & Partners Incorporated,
	Bloemfontein
For the first respondent:	J P van den Berg SC, with E van AS
Instructed by:	Adams & Adams Attorneys, Pretoria
	Lovius Block Incorporated, Bloemfontein
For the fourth to seventh respondents:	B P Geach SC, with B Bester
Instructed by:	Van Dyk Steenkamp Attorneys Inc.
	Roodeplaat
	Symington De Kok Incorporated,
	Bloemfontein
For the eighth respondents:	N Ferreira, with D Sive
Instructed by:	A Wolmarans Attorneys Inc, Randburg
	A Wolmarans Attorneys Inc, Randburg Bloemfontein
For the ninth respondent:	C G Jordaan, with A C J van Dyk
Instructed by:	Loubser Van Wyk Attorneys, Pretoria
	Kramer Weihmann Incorporated,
	Bloemfontein.