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## GENERAL NOTICE

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### NOTICE 121 OF 2010

#### DEPARTMENT OF TRANSPORT

#### DRAFT POLICY ON THE RESTRUCTURING OF THE ROAD ACCIDENT FUND AS COMPULSORY SOCIAL INSURANCE IN RELATION TO THE COMPREHENSIVE SOCIAL SECURITY SYSTEM

I, Sibusiso Joel Ndebele, Minister of Transport hereby publish the Draft Policy on the Restructuring of the Road Accident Fund on a No Fault Basis and as Compulsory Social Insurance in Relation to the Comprehensive Social Security System for public comments as approved by Cabinet.

Interested and affected parties are invited to submit, within 60 days of publication of this notice in the Government Gazette, written representations on, or comments on the draft policy at the following addresses:

By post to: RABS/ No Fault Draft Policy  
Attention: Ms Nthabiseng Mokobodi  
Department of Transport  
Public Entity Oversight  
Private Bag X193  
Pretoria  
0001

E-mail any comments to [rabspolicy@dot.gov.za](mailto:rabspolicy@dot.gov.za)

Or hand deliver any comments to;

RABS/No Fault Draft Policy at Ground Floor, Forum Building, 159 Struben Street, Pretoria, 0002

Or by fax to (012) 309 3175

Telephonic enquiries: Ms Nthabiseng Mokobodi at (012) 309 3980

Comments received after the closing date may not be considered.



**SIBUSISO NDEBELE**  
**MINISTER OF TRANSPORT**

## **DRAFT POLICY PAPER**

# **RESTRUCTURING OF THE ROAD ACCIDENT FUND ON A NO-FAULT BASIS AND AS COMPULSORY SOCIAL INSURANCE IN RELATION TO THE COMPREHENSIVE SOCIAL SECURITY SYSTEM**

**FEBRUARY 2010**



**DEPARTMENT OF TRANSPORT**

**DIRECTORATE PUBLIC ENTITY OVERSIGHT**

## **ACKNOWLEDGEMENTS**

Committee of Inquiry into Comprehensive System of Social Security for South Africa

Department of Health

Department of Social Development

Department of Transport

National Treasury

Provincial Departments of Health: Free State, Gauteng, Western Cape

Road Accident Fund

Road Accident Fund Commission

Trauma and healthcare experts

## EXECUTIVE SUMMARY

### 1 BACKGROUND

Every year the lives of thousands of road users are disrupted by road accidents: almost 15 000 people are killed and more than 60 000 people sustain serious injuries each year. On average, more than 40 persons die on South African roads and 167 are seriously injured every day.<sup>1</sup> Those injured need to access emergency medical care, find appropriate healthcare and treatment, and often require rehabilitation. The untimely death of an earner and the residual disability of an injured person has enormous social and economic consequences for spouses or life partners, children, family units and communities.

The Road Accident Fund was established under the Road Accident Fund Act, 56 of 1996 (the RAF Act) to pay compensation "for loss or damage wrongfully caused by the driving of motor vehicles". The Road Accident Fund (RAF or Fund) is a specialised statutory insurance entity paying compensation to injured road users for personal bodily injuries sustained and death benefits to dependants of breadwinners killed in traffic collisions.

### 2 HISTORY

Compulsory motor vehicle accident (MVA) insurance was introduced in South Africa in 1942. The legislation aimed to protect innocent victims who had no redress against negligent and uninsured motorists who were unable to meet victims' claims for compensation. Other considerations were to relieve pressure on hospitals which had to bear a burden in respect of accidents. A major motivation was the adverse impact of injury and disability on road users and their families, and to care for and rehabilitate those injured in traffic accidents.

Since its commencement, the legal basis of the compensation system has remained relatively unchanged.

### 3 CHALLENGES

Over the years several problems pertaining to equity, affordability and sustainability of the system developed. Among the shortcomings of the compensation system are:

- a. the high and spiralling cost structure
- b. a focus on fault and the cause of the accident, rather than on the immediate medical and financial needs of road accident victims
- c. problems to access compensation timely
- d. long settlement delays which prolong hardship and suffering
- e. the inappropriate financing mechanism which does not link income to the scheme's liability to pay claims and expenditure incurred
- f. the growing deficit for claims liability incurred
- g. the legal complexity and the litigious environment in which it operates
- h. increasing proportions of public funds which are paid for non-economic loss.

Between 1954 and 2002 seven commissions of inquiry assessed structural, financial and other difficulties inherent in the compensation system, with the latest recommendations reported by the Road Accident Fund Commission (RAFC) in 2002. Government accepted the RAFC recommendations in principle. This policy paper builds on the work, findings and recommendations of the RAFC.

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<sup>1</sup> Road Traffic Management Corporation (RTMC) at [www.arrivealive.co.za](http://www.arrivealive.co.za).

## **4 A NEED FOR CHANGE**

The present fault-based compensation system is not achieving the purpose for which it was created. As a result the poor and disabled are disadvantaged. Government will implement more relevant policies and strategies to serve the needs of persons who are directly affected by injury or death resulting from road accidents. The overall aim is to provide an effective benefit system which is reasonable, equitable, affordable and sustainable in the long term. More specifically, substantial reforms to the present compensation system will be introduced to:

- a. expand access to include more persons exposed to the risks of road transportation by providing benefits on a no-fault basis
- b. optimise limited resources in favour of persons with serious injuries that have a life-changing and long-term impact
- c. lessen spending on minor injuries with minimal duration
- d. align benefits and resource allocation to other social insurance arrangements
- e. facilitate access to timely and appropriate medical care to reduce the impact of injury and disability
- f. focus on more curative aspects such as rehabilitation and accident prevention
- g. provide financial support to persons affected by injury or death of an earner in road accidents
- h. simplify claims procedures, reduce disputes and create certainty by providing defined and structured benefits.

Among the key objectives of these social security reforms are to provide relevant and appropriate services for persons affected by injury or death in collisions, reduce income vulnerability of injured/disabled people (and so fight poverty) and to support employment.

## **5 SCOPE OF POLICY PAPER**

Government's policies to reform the current common law-based compensation system and to align it with the principles of other social insurance funds are described. Substantial changes are planned to promote values of equity, human dignity and social solidarity, and to improve administrative arrangements.

This policy document seeks to transform the current structural problems of the compensation system for road users and to align a revised benefit scheme to the principles and objectives of the Constitution. In particular, the policy aims to expand the social security safety net within the constraints of limited resources, provide more appropriate social support and introduce measures to use public resources more economically and effectively.

## **6 SITUATIONAL ANALYSIS**

### **6.1 COMMON LAW BASE AND LIABILITY INSURANCE**

At present claims against the RAF for bodily injury and personal loss arising from road accidents are based on the common law of wrongdoing (delict) and liability insurance principles. The remedy is both ineffective for claimants and inappropriate for claims on a social security scheme. Not only is the common law-based claim complex, time-consuming, expensive and fraught with practical difficulties, but the outcome is unpredictable and unreliable.

The immediate focus is on fault and blame to determine the cause of the accident and to exclude at-fault road users from compensation. As a result, injured persons are unable to access medical care in time while dependants of persons killed in road accidents are left to fend for themselves. In addition, claims are received and administered in a litigious and

dispute-ridden environment, and many cases take years to be finalised and paid. This prolongs hardship and severely impacts the poor and vulnerable.

## **6.2 FINANCING AND FUNDING**

For years the fuel levy income of the RAF has been insufficient to cover the funds required to pay claims and continue operations. Combined expenditure on claims payments and administrative costs has outstripped the RAF's income over a number of years.

There is no relationship between the RAF's income and expenditure, i.e. the liability to pay claims is not linked to the level of income required and *vice versa*. Legislation and case law require the RAF to pay compensation irrespective of its ability to do so.

In recent years the RAF often had insufficient cash to pay benefits. This severely constrained the claims operations, resulting in settlement delays, increased legal proceedings and significantly increased legal costs.

By not funding the RAF's liabilities, the deficit continues to grow. By 31 March 2008 the RAF's total liabilities were R31.125 billion, significantly up from R7.233 billion in 1997.

## **6.3 OUTCOMES OF THE SCHEME**

### **6.3.1 Ineffective benefit structure**

Large proportions of public money (up to 60% of compensation) have been paid towards non-financial loss on general damages for pain, suffering, shock, disfigurement and loss of enjoyment of life. Those factors cannot be quantified with certainty on the same basis as the costs incurred for medical treatment or income lost due to injury, and therefore such uncertain losses cannot be measured in financial terms. General damages are "sorry money" and it is inappropriate for a social security scheme to pay for vague and nebulous factors while it fails to meet real financial needs.

A substantial proportion of the fuel levy is spent on claimants with only slight injuries and on high income earners. A small number of claims result in the highest payouts. Just over 2% of the RAF's claims exceed R500 000 per individual claim, but account for 41% of the claims payments. On the other hand, 84.1% of the total number of claims are smaller than R50 000 and account for 29.2% of the total amount paid. Claims below R50 000 mostly comprise general damages and legal costs and the component for loss of earnings is between 1% and 2%.

Payment of compensation in once-and-for-all lump sums may result in over-compensation for minor injuries and under-compensation for serious injuries. Also, by paying in single lump sums, a significant proportion of the compensation is paid in advance before the loss is actually suffered. Over the financial years from 2006 to 2008, 85% of claims compensation was paid in a lump sum for non-financial losses and for anticipated prospective losses before those losses were actually suffered.

### **6.3.2 Inadequate access to medical care**

Fault and blame take precedence over the need to access appropriate medical treatment and rehabilitation. During the time that fault remains in dispute, road accident victims are not entitled to any compensation. Those who require medical care either rely on public facilities or pay for it themselves, or the minority rely on their medical aid schemes to pay. Structural problems in the system also prevent the RAF from assisting injured road users from accessing medical care at little or no costs to themselves. Once access to healthcare and rehabilitation is denied, claimants may never enter such care.

### **6.3.3 Legal complexity**

The entire compensation system has become extremely legalistic and virtually incomprehensible to the average member of public for whose benefit the scheme was

created. The claims process is cumbersome, adversarial, time consuming and expensive, and often results in expensive litigation. Social insurance benefits must be easy to access, and disputes and delays resolved in a constructive and facilitative manner.

#### 6.3.4 Delivery costs

High delivery costs to prove entitlement to compensation consume resources intended for accident victims, as is shown in the table below. When viewed over a five year period from 2004 to 2008, the RAF's delivery costs (administration, overheads and legal costs) represented 44.8% of total compensation paid.

##### Comparison of total delivery cost and compensation paid: 1998 – 2008

	R Million										
Delivery costs	381	466	543	602	781	1 081	1 360	1 393	1 782	2 161	2 652
Compensation paid	1 101	1 407	1 713	2 006	2 170	2 389	3 024	2 191	3 949	4 771	6 915
Delivery costs as % of compensation	34.6	33.1	31.7	30.0	36.0	45.3	45.0	63.6	45.1	45.3	38.4

Legal expenses exceeded medical compensation paid by the RAF over 11 years. Between 2004 and 2008, the RAF spent 314% more on legal costs than medical compensation. Scarce resources are consumed in complex and costly legal processes, rather than appropriated to assist the injured to recover, rehabilitate, heal and re-assume their economic activities.

##### Analysis of legal costs v medical compensation paid: 1998-2008

Total legal costs	281	341	384	434	545	691	933	937	1 306	1 660	2 091
Total medical costs	248	316	366	417	417	267	321	289	353	466	776

#### 6.3.5 Equity challenges

The RAFC found that many contributors to the fuel levy are excluded from benefits in their time of need. *"Exclusion...perpetuate(s) disparities between urban and rural sectors, the employed and the unemployed, the rich and the poor, which is not conducive to concepts of social security. Not only is such a system inequitable, it is also inefficient, unsustainable and unreasonable."*<sup>2</sup>

#### 6.3.6 Skewed incentives and abuse

A major driving force under the current system is to present the claimant as a disabled and maimed person whose capacities for earning income and living a quality life have been irretrievably harmed, and thereby to secure the highest possible monetary reward from public funds. Such a focus is wrong and morally objectionable. A social insurance scheme must facilitate access to appropriate healthcare and rehabilitation to enhance human dignity and functionality.

The compensation system is open to abuse due to fraud, opportunistic, nuisance and over-inflated claims, mismanagement, professional malpractice and human failing.

<sup>2</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.95-14.96, p. 369.

## **7 ROAD USE AND ROAD SAFETY**

In South Africa the total number of accidents is increasing as well as the number of incidents expressed as a rate of the registered vehicle population and distances travelled. Trends show a significant increase in the rate of fatalities and casualties per 100 000 population over the last decade. The severity of crashes is also increasing as more persons are killed per fatal crash and more are injured per casualty crash.

The total costs of road accidents for South African society was estimated at R42.5 billion in 2002. Road accidents are caused by a broader range of factors than mere human error. Socio-economic and demographic factors determine the extent of exposure to risk on the roads. External factors such as road design, maintenance and law enforcement have a bearing on crash risks and the severity of accidents. Multiple risk factors affect the severity of injuries, including the presence of alcohol and drugs, delays in rescuing injured road users, lack of pre-hospital care and the quality of trauma care and rehabilitation.

Government has to review the basis on which it intervenes to manage the risks of road accidents, and structure a social insurance scheme for road users to deliver appropriate and relevant benefits and services.

## **8 LEGISLATIVE AND POLICY CONTEXT FOR REFORM**

### **8.1 THE ROAD ACCIDENT FUND COMMISSION**

In 2002 the RAFC made extensive recommendations on a reasonable, equitable, affordable and sustainable benefit system for persons affected by injury or death of breadwinners in road accidents. The RAFC proposed limited no-fault benefits which focus on the consequences of serious injuries and major losses, while limiting claims for minor injuries with negligible impact. Government accepted these recommendations in principle.

### **8.2 LEGISLATIVE CHANGES TO THE RAF ACT**

The liability of the RAF to pay claims arising from 1 August 2008 was amended to introduce limits on compensation payable for loss of income and general damages, while long-standing caps on certain passenger claims were lifted. Claims for emotional shock suffered by persons who hear about or see an accident and injuries, but who themselves are not involved or injured in the accident, have been excluded. The common law right to claim the balance of the loss not covered by the RAF from the wrongdoer is also abolished.

Government regards these amendments as interim solutions to improve the RAF's financial position, contain its liability and ensure its ability to pay claims into the future. More comprehensive and long term solutions are needed to enhance access to medical care by injured road users, and to address the sustainability, effective service delivery and affordability of the benefit scheme.

### **8.3 EXPANSION OF SOCIAL SECURITY**

Since 1994 Government has adopted a variety of policy, statutory and other measures to develop a more equitable, coherent and comprehensive social security system. Within limited resources, it has gradually expanded the scope and reach of social security benefits and services to support those in need. As a result it has extended cover to employed and unemployed persons, the poor, vulnerable and elderly, as well as to those in need of healthcare.

In addition, Government continues to review its social security programmes, re-allocate resources so that socio-economic rights currently not available or fully available, may be delivered. The restructuring of the social insurance benefits for road accident victims is part of this ongoing process.



#### 8.4 LEGAL BASE FOR SOCIAL INSURANCE

The legal base for and nature of claims in delict and social security benefits differ completely. The table below compares the differences and summarises key components of Government's policy reforms to be introduced to a benefit scheme for road users.

Comparison	Delictual claim	Social security
Legal base	Fault, negligence or wrongdoing Exclusions for own negligence	Fault not relevant; Entitlement based on need and meeting criteria to access benefits Universal access with social policy exclusions
Purpose	Protect driver from claims Compensate injured party for loss and expenses incurred	Protect against misfortune and specific risks for persons injured and those causing accidental injury
Aim	Restitution to condition before injury (impossible); financial reward	Curative and supportive to enable person to live with dignity and participate in economy and society
Focus	Individualistic approach	Social solidarity and risk pooling
Benefit structure	Open to dispute and determined by Courts	Defined benefits and rules
Mode	Money and financial award	Assistance, facilitation to access services and limited monetary benefit
Pain and suffering	Compensation paid for serious injury	No benefits paid
Frequency	Once-off lump sum payments for some categories of loss	Periodic payments
Financing	Liability insurance premiums	Taxation with the option of some risk-based financing through additional surcharges

### 9 RATIONALE FOR INTERVENTION

Since all citizens need to use the roads to participate in society, everyone is exposed to the risk of injury or death in road accidents. Government provides social insurance benefits in view of the importance of road use and the specific socio-economic risks associated with road accidents, including:

- a. the need for trauma and other medical care
- b. the risk of income loss due to injury
- c. the risk of unemployment due to temporary or permanent disability
- d. the vulnerability of family members who become exposed to financial burdens and dependency when a breadwinner dies
- e. the risk of meeting claims of persons who suffered loss due to injury or death in a road accident.

In a developing country such as South Africa, a significant proportion of road users will neither have the financial means to access appropriate healthcare and rehabilitation, nor to commence legal action to recover their loss. Further, a substantial number of road users will neither be able to look after themselves nor to meet claims of others for losses caused by accidental injury or death in a road accident.

## 10 THE ROAD ACCIDENT BENEFIT SCHEME

### 10.1 OVERVIEW

It is proposed that Government will provide a scheme of benefits for road users which will form part of the comprehensive social security system in South Africa, and in particular the social insurance tier. This will be known as the Road Accident Benefit Scheme (RABS) and will be administered by the Road Accident Benefit Scheme Administrator (RABSA).

The RABS will be universal and accessible to all victims of road accidents, whether they are injured or deprived of financial support due to the death of a family member. The RABS will be based on principles of social solidarity in order to assist and support those in need, rather than focusing on blameworthy conduct and expecting persons who made mistakes to be self-reliant. Thereby Government will expand the social security safety net and "*respect, protect, promote and fulfil*" the universal right to social security recognised in the Constitution of South Africa.<sup>3</sup>

The RABS will offer simultaneous protection to all road users, who may either be:

- a. persons who are unable to look after themselves following an injury or the death of an earner in a road accident, or
- b. eligible drivers and vehicle owners in respect of claims against them arising out of their negligence or other unlawful conduct on the road.

Government will assume a more holistic approach to social security and social insurance for road users, by focusing on protection against misfortune, enabling rehabilitation and encouraging risk prevention.

By adopting a social insurance instead of a liability insurance model for road accident benefits, Government will direct services and cash payments to actual needs. A social insurance model will also enable periodic payments of structured benefits which increase the incentive for the injured person to work and earn, and so reduce a culture of dependency.

### 10.2 STRATEGIC OBJECTIVES

The strategic objectives of the RABS will be to:

- a. facilitate access to timely and appropriate healthcare
- b. enable and encourage rehabilitation to prevent or reduce permanent disability and to advance the independence, earning capacity and social participation of persons injured in road accidents
- c. provide long-term and life care for the seriously injured
- d. relieve (not necessarily restore) loss of income and financial support by alleviating financial hardship of persons injured and of defined dependants or family members due to the death of an earner in a road accident
- e. be accessible and be efficiently administered, with less resources spent on delivery costs, and more resources allocated to healthcare and to relieve financial losses
- f. be accountable to road users, assist victims of road accidents and provide relevant and timely service to claimants.

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<sup>3</sup> Section 7(2) and 27 of the Constitution of South Africa.

### 10.3 LEGAL BASIS AND COVERAGE

RABS benefits will be made available to eligible claimants on a no-fault basis, with no deductions or penalties applied for the road user's own negligence. The RABS will be inclusive and provide universal cover to all categories of road users, i.e. drivers, pedestrians, motorcyclists, cyclists and passengers. Bodily injury or death caused by or arising out of a road accident from whatsoever cause and which involves a motorised vehicle at any place anywhere in South Africa will be covered.

### 10.4 FINANCING OF THE SCHEME

The primary source of financing of the RABS will be a fuel levy imposed on fuel sold for use on land. Because the fuel levy alone does not take into account all the risk factors relevant in the benefit scheme, it is proposed that secondary sources of funding to enhance equity be introduced. These include surcharges on:

- a. registration fees of light delivery vans, panel vans, trucks, buses and minibus taxis to recognise the greater risks posed by these vehicles
- b. all fines relating to traffic offences and driving contraventions
- c. the sale of alcohol, in view of the large number of road injuries and fatalities which can be directly linked to raised blood alcohol levels.

At the same time these surcharges serve as preventative measures and link safe road use with the RABS.

### 10.5 FUNDING METHOD

The RABS will be fully funded so that the compulsory contributions are sufficient to meet liabilities as they accrue. Assets will be set aside to meet the cost of claims and services relating to injuries and deaths resulting from accidents in a particular financial year. The funding model will link income to expenditure, liability and risk, and enable the scheme to build up reasonable reserves to cover contingencies. Revenue and expenditure will be monitored to ensure that a balance is maintained between costs and revenue.

Oversight over the financing mechanism and funding model will be exercised by a Joint Ministerial Committee (JMC), comprising of the Ministers of Transport, Health and the National Treasury.

## 11 HEALTHCARE PROVISION

### 11.1 POLICY CONSIDERATIONS

The fuel levy is charged to deal with losses due to personal injury or death caused by road accidents. It is fair and reasonable that the healthcare system should be financed to meet the demand that injured road users place on it.

The RABSA will cooperate with public and private sector providers to enable the delivery of quality healthcare to road accident victims across South Africa at affordable cost. The healthcare component of the RABS will primarily be structured in the form of accessible services to injured road users, rather than cash benefits. Healthcare financing will be structured to enable injured road users to have seamless access to emergency medical and appropriate acute care.

More resources will be channelled to the public health sector for treating road accident patients and to improve emergency medical services, trauma care and rehabilitation.

### 11.2 FINANCING HEALTHCARE

The current ineffective and expensive fee-for-service and reimbursement practices will be replaced with a capitation model<sup>4</sup>. Preferred medical and healthcare providers will be paid directly to care for injured road users in accordance with appropriate contractual arrangements, including minimum standards and protocols for treatment and care. The RABSA will pay the providers a monthly fee partially up-front, where the advance payment is based on the expected capitation-based cost of treatment. Further performance based fees will be payable to medical service providers, depending on the actual number of patients treated as well as relative measured outcomes. Provision will also be made for a contingency fee if the number of patients is significantly more than anticipated (e.g. a serious bus accident in an area where few patients were expected).

### 11.3 PHASES OF HEALTHCARE

The RABS will enable injured road users to have access to a range of healthcare services, from pre-hospital and emergency care, trauma and acute care through to rehabilitation and long-term care for those who require it. Cost control measures will be used to monitor the use, trends in service delivery and the public-private sector mix.

### 11.4 MANAGING THE RISKS

The RABSA will enable and facilitate quality healthcare by implementing managed healthcare practices, quality assurance measures, protocols of treatment which set minimum standards, case management interventions and appropriate cost control measures. A statutory medical advisory board comprising medical experts and health economists will advise the RABSA on all aspects of the healthcare provision and financing under the scheme.

## 12 BENEFIT STRUCTURE

The RABS will offer the following benefits:

- a. Medical and healthcare services available in South Africa will be funded by contributions by the RABSA to healthcare service providers.
- b. An income support benefit (for lost income and loss of earning capacity) will be payable subject to thresholds and ceilings, and maximum caps, and be paid periodically. The benefit will be formula-based, determined by a disability assessment and related to pre-accident earnings. Defined benefit rules will create certainty about entitlement and accommodate injured road users who were unemployed or a child or learner at the time of the collision. The benefit will be reviewable.
- c. A family support benefit will be payable to the spouse or life partner and dependent children of a breadwinner killed in a road accident, subject to thresholds and ceilings, and maximum caps, and be payable periodically. The benefit will be related to the deceased road user's pre-accident earnings, and if the deceased was unemployed or a learner at the time of the collision, the level of benefit to be paid will be determined by defined benefit rules. The benefit will be reviewable.
- d. A flat-rate funeral benefit will be paid as a lump sum.

No benefits will be payable for non-financial loss, e.g. for pain and suffering. Although the scheme will aim to provide annual increases to the benefits to recognise the effects of

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<sup>4</sup> Capitation arrangements enable a defined population (road accident victims) to access a specific menu of healthcare services against the payment by a third party funder (the RABSA) of a fixed monthly fee. The payment remains the same irrespective of the number of services provided.

inflation, such increases cannot be guaranteed, and are subject to affordability in the event of adverse experience.

### 13 COLLATERAL BENEFITS

Benefits paid to the claimant for the same injury or death from private and employment sources will not be deductible from the RABS benefits payable. To avoid "double-dipping" benefits paid from other state or public sources will be deducted by the RABSA.

### 14 COSTS OF SCHEME

Allowing for the RABSA administration costs of 10% of benefit payments, the estimated total cost of the RABS will be approximately as follows (in 2009 monetary terms):

Benefit	Estimated cost (R million)	Estimated cost (cents/litre)
Income support benefit	R3 930	17.1c
Family support benefit	R1 000	4.3c
Funeral benefit	R 150	0.7c
Medical benefits	R7 300	31.7c
Administration	R1 240	5.4c
<b>TOTAL</b>	<b>R13 620</b>	<b>59.2c</b>

It should be noted that the cost of medical benefits estimated includes some services already rendered by the public healthcare sector and included in the budget allocation to the Department of Health.

### 15 EXCLUSIONS FROM BENEFITS

While a social insurance scheme must be as inclusive as possible to promote social solidarity and cast a wide safety net to those in need, it should also promote socially responsible behaviour and road use. Social policy considerations call for the exclusion of or limitation of access to benefits for perpetrators of self-harm, socially reprehensible and socially destructive behaviour. It is not reasonable and equitable to "reward" such categories of road users in a social insurance scheme which is financed by taxpayers.

Total exclusion from the scheme will apply in respect of emotional shock of secondary victims, participants in and spectators of organised motor sport, and benefits for the duration of imprisonment, following conviction of a crime.

Partial exclusions (with access to healthcare only) will apply in respect of self-inflicted injury or death, injury or death arising from drunk driving, hijacking or attempted hijacking of a vehicle, whilst driving a stolen or unregistered vehicle, and driving without a valid driver's licence.

### 16 INJURY AND DISABILITY ASSESSMENT

Trained and accredited medical practitioners will use an internationally-accepted assessment guideline or classification framework to describe the injury and its impact on the claimant. In order to calculate the RABS income support benefit, a disability assessment will revolve around assessment of the claimant's ability to meet the demands of his or her own occupation and alternative occupations for which the claimant may be qualified. Actual post-morbid income will also be taken into account.

The RABSA will cooperate with the organised medical profession to establish panels of doctors, therapists, occupational health specialists and rehabilitation practitioners to assess claimants and furnish independent professional opinion.

## **17 BENEFIT REVIEW AND PEER REVIEW**

The RABSA will be able to review and revise a claimant's entitlement to benefits. A system of medical peer review will facilitate objectivity in and consistency of medical and disability assessments, enable cases to be reviewed and resolve disputes relating to assessments affecting entitlement to RABS benefits.

## **18 DISPUTE RESOLUTION**

An internal administrative review function will monitor decisions on benefits, perform reviews to rectify incorrect decisions, monitor claims practices against policies and settle disputes. If the dispute relates to a medical or disability assessment, the internal review panel may refer the matter for peer review.

An aggrieved claimant may appeal to a review board (constituted by a few members of the RABSA and a majority of independent members not employed by the RABSA). Appeals against decisions of the review panel may be brought to an appeal tribunal, with independent members appointed by the Minister. A right of appeal to the Courts will be available.

Review procedures will be simple and easy to understand so that claimants may themselves pursue complaints or reviews, without the need of engaging professional assistance.

The approach of the review bodies will be to resolve disputes in a facilitative, constructive, cost- and time-effective manner.

## **19 CLAIMS PROCEDURE AND PROCESSES**

### **19.1 SYSTEMS AND PROCEDURE**

Claims procedures will be simple and accessible to enable claimants to pursue claims themselves, without the assistance of legal professionals. Claim forms will be user-friendly and provide sufficient information to enable the RABSA to validate, assess and process a claim. The RABSA will be required to:

- a. furnish information to road users on claims requirements, procedures and processes via its website, brochures, and government information centres
- b. design and implement efficient, effective and streamlined claims systems to receive, assess, process, settle and pay claims speedily
- c. use information technology and electronic transaction facilities to receive, assess, process and pay claims promptly.

Claims will be submitted in a shorter timeframe than statutory prescriptive periods.

### **19.2 ASSISTANCE TO CLAIMANTS**

The RABSA and its agents will be authorised to provide claimant interface services, and must assist claimants and their families to prepare claims, present supporting documents, and maintain entitlement to benefits.

### **19.3 TRANSACTION COSTS**

The proposed RABS must be as cheap to administer as possible. The RABSA must adopt effective measures to control its overhead and administration costs. Fees charged by service providers such as healthcare professionals, investigators, lawyers and experts in claims assessment will be tariff-based, monitored and controlled.

## **20 COMMON LAW RIGHT**

The question to retain or abolish the common law right to sue for the balance of damages is both complex and critical for all road users. After careful consideration of the state's constitutional obligations, the purpose of the scheme and the limitation, and after balancing many competing demands, Government resolved to remove the common law right. The common law right to sue the wrongdoer for the balance of the loss not covered under the RAF's statutory liability has been removed in respect of personal injury and death claims resulting from road accidents from 1 August 2008.

The RABSA will provide access to services and financial support to injured persons and dependants of deceased earners beyond the scope of the common law. It supplants the essentially individualistic common-law position by a social security arrangement which will enable injured road users to access healthcare and receive income support benefits, without the risks associated with enforcing the common law right. All road users pay towards the fuel levy which funds the scheme, and in return, assistance is either granted in the form of benefits, or immunity from liability.

## **21 ROAD SAFETY**

Government intends that the RABS will be an integrated social security scheme by providing benefits and incorporating preventative measures. The RABSA will be expected to play a pro-active role in the prevention of road accidents by cooperating with the RTMC and Minister of Transport.

## **22 RESEARCH AND ANALYSIS**

Government will require the RABSA to initiate and conduct research on the nature and extent of injuries and disability, and feed this information into policies and investment in road safety measures. The RABSA must commission and fund research into the incidence and nature of trauma, treatment and outcomes thereof and use the information to fund programmes to reduce the severity of the impact of trauma, and to improving treatment outcomes.

## **23 GOVERNANCE AND OVERSIGHT**

The RABSA will be a Schedule 3A national public entity as defined in section 1 of the Public Finance Management Act, 1999. Government's governance oversight over the RABSA will be structured to include:

- a. Parliament (National Assembly) through the relevant Portfolio Committee and the Standing Committee on Public Accounts (SCOPA)
- b. the executive authority: the Minister of Transport
- c. the board of the new entity

The board of directors of the RABSA will act as accounting authority and be ultimately accountable to Government for the performance and affairs of the scheme and entity. In addition, the board will be responsible to the main stakeholders, i.e. the taxpayers and persons injured or affected by death in road accidents, regarding the use of resources to provide benefits and services. Board members will be independent and act with fidelity, honesty, integrity and in the best interests of the RABSA.

## **24 TRANSITION AND IMPLEMENTATION**

### **24.1 PUBLIC CONSULTATION**

Public consultation will take place on the policy framework to provide social insurance benefits to persons affected by injury or death in road accidents on a no-fault basis. This process will include publication of the policy document for comment.

## 24.2 RUN-OFF OF CURRENT SCHEME

The RAF will remain responsible for claims arising from road accidents prior to the date of enactment of the RABS. Government will commit parallel supplementary funds towards the run-off of the existing RAF compensation schemes, and liabilities incurred in terms thereof, in addition to providing financing for the new RABS. The compensation schemes administered by the RAF will be ring-fenced to separate sources of income and expenditure, as well as the reporting on financial results for distinct compensation systems. Once most of the current scheme has run off, the administration of the RAF's statutory undertakings will be transferred to the RABSA.

## 24.3 PLANNING FOR IMPLEMENTATION

Overall policy implementation will be carried out by the RAF and oversight exercised by the DoT. Government's oversight function will be strengthened by an oversight committee consisting of senior Government officials from the Department of Health (DoH), DoT and the National Treasury (NT).

The RAF will lead a multi-disciplinary project team to plan and prepare for the implementation of the scheme and do so in accordance with an approved project plan. The project team will consist of senior Government officials and experts on healthcare provision, healthcare financing, health economics, business development, change management, information systems technology, finance, and so on. The RAF's project teams will engage with relevant stakeholders to plan, coordinate and execute the implementation plans.

## 24.4 POLICY ADVOCACY

Upon approval of the final policy framework (following public consultations), the RAF will develop and coordinate an extensive communications plan and strategy to communicate the policy to the broader South African public and the relevant stakeholders. The communications plan will convey the policy objectives and implications thereof for road users and role-players. The DoT will approve the communications strategy and exercise oversight over the execution thereof.



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**APPENDIX A** List of Abbreviations**APPENDIX B** Definitions of Terminology

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## SECTION 1

### 1 INTRODUCTION

#### 1.1 BACKGROUND

Each year the lives of thousands of road users are disrupted by road accidents. In 2007 more than 947 000 crashes occurred on South African roads in which almost 15 000 people died and another 220 000 were injured.<sup>5</sup> Those injured need to access emergency medical care, find appropriate healthcare and treatment, and often require rehabilitation to continue with employment. Children, spouses, dependants, friends and employers of injured or killed road users also share in the burden of road accidents. If injured road users are so disabled that they cannot resume gainful employment, or are killed, their families and loved-ones may suffer for many years. In essence, road accidents may cause extensive damage, loss, anxiety and distress.<sup>6</sup>

Government intervenes on two levels to address the suffering caused by road accidents:

- a. By applying measures in criminal law to punish offenders who are prosecuted for driving under the influence of alcohol, reckless or negligent driving, or who are found guilty of culpable homicide following the death of a road user, etc.
- b. In recognising a civil law remedy for the aggrieved victim who has a financial claim against the wrongdoer for the loss or damage caused.<sup>7</sup> The Road Accident Fund Act, 56 of 1996, provides such a remedy which is based on the common law of delict and on statutory provisions.

The Road Accident Fund (RAF or Fund) was established under the Road Accident Fund Act, 56 of 1996 (the RAF Act) to pay compensation "*for loss or damage wrongfully caused by the driving of motor vehicles*".<sup>8</sup> As a specialised statutory insurance entity, the RAF pays compensation to injured road users for personal bodily injuries sustained and death benefits to dependants of breadwinners killed in traffic accidents. The Fund provides liability insurance in the form of compensation for loss of earnings and support, general damages, and medical and funeral costs of road accident victims caused by third parties.

#### 1.2 HISTORY

Compulsory motor vehicle accident (MVA) insurance was introduced in South Africa in 1942 and came into effect in 1946. The need for motor vehicle accident (MVA) legislation was to protect innocent victims who had no redress against negligent and uninsured motorists who, as 'men of straw', were unable to meet victims' claims for compensation.<sup>9</sup> Other considerations were the number of accidents that left many innocent victims without compensation and to relieve pressure on hospitals which had to bear a burden in respect of accidents.<sup>10</sup> A major motivation was the adverse impact of injury and disability on road users and their families, especially young children who were deprived of enjoying "*their legitimate share in life*". It was stressed that road users who endured suffering and hardship had to "*be looked after*", the injured had to "*be nursed back to health*" amidst the constraints of limited resources and finances, and be assisted in rehabilitation and re-employment.<sup>11</sup> The first MVA legislation was aimed "*at the protection of those who cannot*

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<sup>5</sup> Road Traffic Management Corporation. Accident statistics for 2007.

<sup>6</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.1–6.3, p. 104–105.

<sup>7</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.3, p. 105.

<sup>8</sup> Section 3 of the Road Accident Fund Act, 56 of 1996.

<sup>9</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.26 – 6.28, p. 108–109.

<sup>10</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.28, p. 109.

<sup>11</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.30 – 6.31, p. 109–110.

*look after themselves". Although it was admitted that the MVA legislation would "impose additional burdens which affect the poorer sections of the population much more severely...it should be clearly understood that it is for the protection of those self-same people".<sup>12</sup>*

Since its commencement, the legal basis of the compensation system for MVA victims has remained relatively unchanged.<sup>13</sup> Over its sixty year span several problems pertaining to equity, affordability and sustainability of the system developed. Between 1954 and 2002 seven commissions of inquiry assessed structural, financial and other difficulties inherent in the compensation system, with the latest recommendations reported by the Road Accident Fund Commission (RAFC) in 2002.

South Africa's road accident insurance arrangement evolved from a common law and fault-based system into a social insurance provision which reflects an ineffective, inefficient and expensive compromise between indemnity and compensation principles.

During its lifespan the MVA compensation system has been plagued by numerous challenges including service delivery problems, restricted access to medical care, long administrative and settlement delays, spiralling costs, insufficient funding to pay claims, an ever-growing liability, ineffective appropriation of resources, multiple complex and legalistic hurdles due to the adversarial nature of the system, and uncertainty whether compensation is ultimately used for the intended purpose.

### 1.3 A NEED FOR CHANGE

There are concerns that the compensation scheme is not achieving the purpose for which it was created. As a result the poor and disabled are disadvantaged. It is believed that it is necessary to implement more relevant policies and strategies to serve the interests of road users and persons who are directly affected by injury or death resulting from road accidents. Substantial reforms consistent with the constitutional right to social security, healthcare and dignity will be introduced. More specifically, access to benefits will be expanded and the use of limited resources in favour of persons with serious injuries will be optimised and the benefits will be aligned to social security arrangements.

### 1.4 SCOPE OF POLICY DOCUMENT

This document sets out the policy to reform the current common law based compensation system and to align it with the principles of other social insurance funds within the Comprehensive Social Security System (CSSS).<sup>14</sup> Substantial changes are envisaged to social insurance funds such as the Road Accident Fund to enhance administrative arrangements and promote values of equity and social solidarity. Among the key objectives of these social security reforms are to provide relevant and appropriate services for persons affected by injury or death in collisions, reduce income vulnerability of injured/disabled people (and so fight poverty) and to support employment.<sup>15</sup>

In formulating a new policy framework for a benefit scheme for persons affected by injury or death in collisions, the following aspects into account:

- a. The history and purpose for which the compensation system was created

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<sup>12</sup> Department of Transport. Notice 1315 of 2006. *Strategy for the Restructuring of the Road Accident Fund as Compulsory Social Insurance in relation to the Comprehensive Social Security System*. Government Gazette No 29017, 8 September 2006, p. 8.

<sup>13</sup> With effect from 1 August 2008, the Road Accident Fund Amendment Act, 19 of 2005, introduced limitations on the Fund's liability to pay certain categories of compensation, and removed long-standing restrictions to pay.

<sup>14</sup> The CSSS, a major Government-led reform project, will establish a broad-based social security framework and be introduced over a period between 2007 and 2010.

<sup>15</sup> National Treasury. *2007 Budget Review*, Chapter 6, Social Security, p. 99-100.

- b. The financing, funding and financial position of the scheme administered by the RAF
- c. The appropriateness of the legal base and remedy available to road accident victims, as well as the complex structural problems inherent in and challenges faced by the current compensation system
- d. Road use and road safety in South Africa
- e. The extensive work and comprehensive recommendations of the Road Accident Fund Commission (RAFC), as well as responses to Government's strategy document<sup>16</sup> which described a revised and structured system of state benefits for road accidents victims on a no-fault basis
- f. The need and purpose of social security as well as Government's strategic policies to create a comprehensive social security system to support poor people whose livelihoods are most at risk, and assist vulnerable people exposed to defined-risk events
- g. International experience in relation to benefit systems for road accident victims
- h. The costs of proposed benefits.

In preparing this policy document information was gathered and discussions held with the RAF, Department of Health (DoH), Department of Social Development (DoSD), National Treasury (NT), the Road Traffic Management Corporation (RTMC), the Department of Transport (DoT), the then Department of Environmental Affairs and Tourism, the Department of Labour, healthcare and trauma experts.

## 1.5 OBJECTIVES OF THE POLICY DOCUMENT

This policy document seeks to transform the current structural problems of the compensation system for road users and to align a revised benefit scheme to the principles and objectives of the Constitution and social insurance arrangements. In particular, the policy document introduces measures to

- a. Expand social security cover for dependants of road users killed and persons injured in accidents by providing benefits on a no-fault basis
- b. Enhance timely access to appropriate medical care to reduce the impact of injury and disability
- c. Channel a greater proportion of resources towards serious injuries with a life-changing and long-term impact
- d. Reduce spending on minor injuries with minimal duration
- e. Provide financial support to persons affected by injury or death of an earner in road accidents
- f. Simplify claims procedures, reduce disputes and create certainty by introducing defined and structured benefits
- g. Address more curative aspects such as timely rehabilitation and accident prevention
- h. Strive to ensure that the scheme is equitable, reasonable, affordable and sustainable in the long term.

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<sup>16</sup> Department of Transport. 2006. *Strategy for the restructuring of the Road Accident Fund as compulsory social insurance in relation to the comprehensive social security system*. Notice 1315 of 2006, *Government Gazette* No 29017, 8 September 2006.

At the same time the policy document will serve as a basis for discussions with the public and interest groups who wish to engage with Government in the fundamental review and overhaul of the compensation system.

## 1.6 OUTLINE OF POLICY DOCUMENT

This policy document is structured as follows:

- a. Section 1 contains a situational analysis of and problem statement on the current RAF compensation scheme. In Chapter 2 the financing and financial position of the scheme are considered, as well as trends in claims paid and the outcomes of the scheme. Chapter 3 highlights the status quo in respect of road use and road safety. The role of the RAF and challenges in the provision of healthcare to injured road users are also discussed. Chapter 4 outlines the legislative and policy context for change, including the work of the RAFC and the expansion of the social security provision in South Africa.
- b. Section 2 outlines Government's new policy direction and introduces the mandate and strategic objectives of the Road Accident Benefit Scheme (Chapter 5).
- c. In Section 3, Chapter 6 sets out the benefit framework for the new scheme, including aspects such as benefit structure, healthcare provision, medical assessment and dispute resolution mechanisms. Chapter 7 outlines the institutional arrangements for and governance of the new administrative authority. Chapter 8 discusses details of the benefit structure and estimated costs of the benefits based on a set of assumptions. Chapter 9 considers the common law right to claim full compensation for losses from the wrongdoer, and the implications if this remedy were to either be retained or abolished when the new benefit scheme is implemented.
- d. Chapter 10 in Section 4 outlines implementation planning, transition arrangements and key indicators to evaluate the policy.

## 2 SITUATIONAL ANALYSIS

### 2.1 CURRENT RAF COMPENSATION SCHEME

#### 2.1.1 Delictual action

The RAF's liability to pay claims is founded on principles of the law of delict,<sup>17</sup> and is partially governed by common law, statutory provisions and legal precedent. The delictual action recognises remedies (e.g. payment of compensation or a financial reward) to redress the consequences of the wrongdoer's negligent, blameworthy or unlawful conduct. In the absence of any legislation, road accident victims themselves or family members of deceased victims may seek compensation from the wrongdoer in the form of damages, usually the monetary value of the loss suffered as a result of the harm inflicted.

Effectively the common law delictual remedy enables a victim to "shift" the financial loss from the victim or his or her family to the wrongdoer by making financial restitution, i.e. restoring the victim in the same financial position as if the accident or loss did not occur.<sup>18</sup>

In practice the RAF "steps into the shoes of the wrongdoer" and assumes liability for the wrongful actions of another person in relation to the driving of a motor vehicle. The RAF is only obliged to pay compensation if an injury or death is due to the negligence or other wrongful act of the driver or owner of a motor vehicle or his or her employee acting in the course of his or her employment.<sup>19</sup> The damage must arise from bodily injury to the claimant personally or from the death of an earner. Negligence or wrongdoing and the RAF's corresponding liability, are ascertained by applying the common law rules of delict as developed by the courts. Legally, there must be a causal connection between the loss suffered and the conduct of the wrongdoer. The RAF is not liable for other damages such as loss to property (vehicles, buildings and construction, goods conveyed, etc).

#### 2.1.2 Challenges in the delictual action

The delictual action is not an appropriate remedy for victims of road accidents or claims against a social insurance scheme based on social security principles. Not only is the action in delict at common law complex, time-consuming, expensive and fraught with practical difficulties, but the outcome is unpredictable and unreliable. The RAFC summarised the practical difficulties facing an injured person attempting to claim damages: *"The practical and procedural problems such as access to legal advice, lack of evidence, uncertainty about whether the evidence proves fault, difficulties in the medical prognosis and delay in the settlement process all contribute to reducing both the chances of recovery of damages and the amount of damages recovered."*<sup>20</sup>

According to the RAFC, *"the delict liability insurance system is so unpredictable and unreliable in that no injured person can be sure of receiving compensation and plan his personal finances accordingly. Quite apart from the legal uncertainties associated with the concept of negligence and causation, there are very considerable practical difficulties to be overcome in proving a claim. Most accidents, particularly road accidents, occur so quickly and unexpectedly that to establish with any degree of certainty precisely what caused the accident is seldom easy. Even if there were witnesses present and they are prepared to come forward, the fallibility of the human brain in grasping accurate detail in a moment, and the time lapse between accident and trial, are such that the evidence is not often reliable."*<sup>21</sup>

<sup>17</sup> A delict is a civil wrong which causes harm or loss to another person and can be measured in financial terms.

<sup>18</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.9, p. 106.*

<sup>19</sup> Section 17(1) of the Road Accident Fund Act, 56 of 1996.

<sup>20</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.15, p.107.*

<sup>21</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.29, p.356.*

### 2.1.3 Who may claim?

A road user who sustained a loss due to bodily injury caused by the negligent driving of another person may submit a claim against the RAF. The negligence or wrongdoing must involve a motor vehicle.<sup>22</sup> Dependants of deceased victims may also claim damages. Victims include drivers, cyclists, passengers, pedestrians, and other road users. A parent or guardian may claim on behalf of a minor child and a curator may submit a claim on behalf of a person who is legally incompetent of conducting his or her own affairs.

### 2.1.4 Claims procedure

Claims must be lodged with the RAF within three years from the date upon which the cause of action arose.<sup>23</sup> Claims prescribe after 5 years, unless the claimant issues summons to interrupt prescription.<sup>24</sup> If the RAF repudiates the claim or fails to make an offer of settlement within 120 days, the claimant may issue summons to pursue the claim through the courts.

### 2.1.5 Categories of compensation

Successful claimants are able to recover damages classified according to a number of categories. These heads of damages are described in Table 2.1 below:

**Table 2.1 Categories of compensation paid by the RAF**

Past medical expenses	Expenses incurred for hospitalisation, surgery, therapy and treatment, rehabilitation, medication and pharmaceuticals, assistive devices, attendant care, etc. and incurred between date of accident and settlement of the claim
Future medical expenses	Expenses for on-going medical services, treatment, therapy, institutionalised care, assistive devices and attendant care required by a seriously injured person after settlement of the claim, or a medical intervention at some future date after settlement of the claim, e.g. follow-up or corrective surgery
Past loss of earnings	Income lost due to injury and temporary or permanent disability between the date of accident and date of settlement of the claim
Future loss of earnings	Income reasonably expected to be lost after settlement date due to ongoing disability, or future medical treatment or earlier retirement due to injury
Past loss of support	Appropriate portion of past loss of earnings of a deceased breadwinner that is awarded to a dependant. Claimant's right to claim loss of support arises upon the death of the breadwinner
Future loss of support	Appropriate portion of future loss of earnings of a deceased breadwinner, and to which the dependant would have been entitled to, if the breadwinner had not died in the accident.
Funeral expenses	Reasonable and necessary costs incurred by the claimant to bury, inter or cremate the deceased accident victim
General damages	Non-financial or non-economic loss suffered by victim; paid for pain and suffering, loss of amenities of life, shock, disfigurement, and curtailed life expectancy.

<sup>22</sup> Section 1(xi) of the RAF Act defines a "motor vehicle" as "any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, caravan, an agricultural or any other implement designed or adapted to be drawn by such motor vehicle".

<sup>23</sup> Sec 23 (1) of the RAF Act. This is date is usually the date of accident, or in the case of claims for loss of support, the date of death of the earner following a road accident.

<sup>24</sup> Claimants in so-called hit-and-run accidents (where the identity of neither the driver nor owner are known) have two years from date of accident or date of death of the deceased breadwinner within which to lodge a claim. (Regulation 2(1)(a) under the RAF Act, as amended with effect from 1 August 2008).



### 2.1.6 "Long-tail" nature of business

Given the nature of the common law based compensation system, claimants wait a long time to access compensation.

Patterns of compensation payments by the RAF reflect the typical "long-tail" nature of the business. In many instances there is a long time lag between the date of accident and date of settlement of the claim. Claimants have up to three years after the accident to submit a claim and the RAF requires time to validate, investigate and administer a claim before it is finalised. Claims settled or paid in a specific financial year may relate to accident dates and reporting dates of many years earlier.

The impact of the long delays are illustrated in Table 2.2 which shows the number of claims finalised during the 2008 financial year broken down into the accident years during which the claims occurred. Suppliers' claims by medical and healthcare providers for medical treatment rendered to accident victims are excluded from the analysis.

**Table 2.2 Non-supplier claims finalised during 2008 financial year, per accident year**

Accident year (ending 31 March)	Number of claims	% of number of claims	Cumulative %	Total amount paid <sup>25</sup> R Million	% of total amount paid	Cumulative %
1998	995	0.6%	0.6%	322	2.7%	2.7%
1999	1 672	1.0%	1.6%	464	3.9%	6.6%
2000	3 082	1.9%	3.5%	728	6.2%	12.8%
2001	5 570	3.4%	7.0%	1 010	8.5%	21.4%
2002	10 162	6.3%	13.2%	1 444	12.2%	33.6%
2003	14 112	8.7%	21.9%	1 701	14.4%	48.0%
2004	22 002	13.6%	35.5%	1 873	15.9%	63.8%
2005	26 881	16.6%	52.0%	1 644	13.9%	77.7%
2006	34 690	21.4%	73.4%	1 387	11.7%	89.5%
2007	35 384	21.8%	95.2%	1 027	8.7%	98.2%
2008	7 788	4.8%	100.0%	216	1.8%	100.0%
<b>Total</b>	<b>162 338</b>	<b>100.0%</b>	<b>100.0%</b>	<b>11 814</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Prepared from RAF claims data.

The long-tail distribution of the number of claims paid in 2008 is evident. Only approximately 5% of the number of claims paid in 2008 was in respect of accidents that occurred in 2008. The number of claims paid in 2008 included claims resulting from accidents going back to 1998 (i.e. 10 years ago) and earlier. Of the 162 338 claims finalised in 2008, only 21.8% related to accidents that happened in 2007. More than a third of the claims finalised in 2008 (35.5%) related to accidents which occurred 4 or more years earlier. Viewed alternatively, 63.8% of claims paid in 2008 related to accidents which occurred prior to 2005. This shows that there are a number of claimants that wait years before they receive compensation from the RAF.

<sup>25</sup> This is the total inflation adjusted amount paid in respect of the claims. Payments made during earlier financial years (in respect of claims where the last payment was made during the 2008 financial year) are included.

## 2.2 PROBLEM STATEMENT

For many years the compensation scheme for road users has been afflicted by significant challenges and shortcomings. Among these are:

- a. An inappropriate financing mechanism fails to link income to the scheme's liability to pay claims and expenditure incurred
- b. The total outstanding claims liability for claims incurred but not yet paid has grown to alarming proportions.
- c. Severe cash flow problems have adversely impacted operations and the RAF's deteriorating financial position.
- d. Increasing proportions of public funds are paid for non-economic loss instead of relieving real economic and financial loss suffered.
- e. The high and spiralling cost structure consume resources intended for the disabled and persons deprived of breadwinners as the result of road accidents.
- f. The scheme focuses on fault and the cause of an accident, rather than on the immediate medical and financial needs of road accident victims.
- g. Structural problems and complexity hamper timely access to compensation.
- h. Equity problems arise as the poor subsidise the rich and certain road user groups contribute less to the fuel levy, but qualify for the same benefits.
- i. Long administrative and settlement delays prolong hardship and suffering for claimants who can wait years for compensation to be paid.
- j. Legal complexity and the litigious environment in which the scheme operates drive disputes which results in escalating legal and transaction costs.
- k. Payment of compensation in lump sums and before future losses are suffered poses risks for the RAF and for claimants who enjoy no protection if their circumstances were to change from the assumptions made when future losses were projected.
- l. The system fails to achieve the objectives for which it was created.

## 2.3 FINANCING MECHANISM AND FUNDING METHOD

The present compensation system is financed by a dedicated levy on fuel sold. The funding method is theoretically on a pay-as-you-go (PAYG) basis whereby income is provided when the benefits are payable, rather than set aside when the accidents and liability to pay are incurred, as would be the case under a fully funded scheme.<sup>26</sup>

### 2.3.1 The fuel levy

The primary source of income for the RAF compensation scheme is the levy raised on petrol and diesel sold. It is a taxation imposed on the road using public to fund the benefit scheme for victims of road accidents.<sup>27</sup> This general fuel levy is a specific excise tax on fuel products imposed in terms of the Customs and Excise Act 91 of 1964.<sup>28</sup>

Two variables determine the income of the RAF: the volume of petrol and diesel sold per annum and the rate of the levy. Government determines the appropriation made to the RAF based on political and macro-economic considerations.<sup>29</sup> The RAF fuel levy can be viewed as a compulsory contribution to social security benefits which is used only for the

<sup>26</sup> Technically the compensation scheme is not really operating on a PAYG basis as contributions do not relate to payments required in law. Instead it is an unfunded system where ad hoc contributions are paid from time to time.

<sup>27</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.151, p. 132.

<sup>28</sup> <http://www.sars.gov.za/home.asp?pid=503>.

<sup>29</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.97, p.205; Chapter 11, par 11.132, p. 258.

specific purposes as provided for in legislation.<sup>30</sup> The volume of fuel used seems to lag the overall growth in the gross domestic product (GDP).<sup>31</sup> Diesel rebates granted to certain economic sectors for off-road diesel consumption reduces the RAF's income.

Among the advantages of the fuel levy are administrative efficiencies, automatic cover, and the elimination of the risks of uninsured vehicles. The most important disadvantage is the absence of a relationship between the flat rate tax charged and the benefits payable. Other disadvantages are that pedestrians contribute proportionately less, but qualify for the same benefits. Important risk factors are not taken into account, e.g. alcohol consumption and the incidence of accidents, injuries and deaths on the roads. The higher risks posed by certain types of vehicles (trucks, buses, light delivery vehicles, minibus taxis) are also not reflected in the income allocated to the RAF. The poor pay the same levy as the rich, but the rich claim and are paid more because their earnings are higher, they pursue luxury pastimes and access more costly medical care and rehabilitation.<sup>32</sup> Where benefits are dependent on income, it could be argued that the required contribution by wealthier road users should be higher than that of poorer road users.

### 2.3.2 Inadequacy of current financing mechanism

The primary criterion for a successful financing mechanism is that expected income must be related to claims incurred. The current fuel levy system does not meet this criterion because the level of the fuel levy is determined by political and economic considerations, instead of the Fund's statutory and financial liability in terms of the compensation scheme.

Another desirable feature of a financing mechanism is that contributions made by individuals should to some extent reflect their individual risk characteristics (affecting probability of a claim as well as the expected claim size). The current fuel levy reflects the individual risk factors to some extent in that those who drive more, pay more. However, some important risk characteristics are not taken into account. This has in the past lead to unreasonable cross-subsidisation, e.g. between low income earners and high income earners, drivers and pedestrians, and multi-passenger and single passenger vehicles.

For many years the compensation scheme has been contained within an inflexible structure wherein the RAF can neither determine its liability to pay claims nor the income needed to meet that liability. There is no relationship between the fuel tax levied to pay compensation, the RAF's overall risk exposure to liabilities incurred, and the ultimate compensation to be paid in terms of the law.

As the result of this mismatch between income and the liability to pay, the RAF finds itself between the proverbial "rock and a hard place" – the compensation scheme is defined and inflexible in respect of both the income and expenditure components. On the one hand, the level of the fuel levy is determined by political and economic considerations without reference to the cost of the benefits and the risk exposure of the RAF. On the other hand, compensation is determined by statutory provisions, the common law as developed by the Courts, and an adversarial claims process where attorneys are expected to secure as much compensation as possible for their clients.

The RAFC found that *"the absence of any relationship between the fuel levy and the compensation to which a victim may be entitled is not economical and is therefore unaffordable ... The absence of any congruence between the fuel levy, risk and cover is inequitable, unaffordable, unreasonable and unsustainable."*<sup>33</sup>

<sup>30</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 9, par 9.7, p. 182.

<sup>31</sup> RAF Annual Report 2008; Calculations from statistics provided by the Road Traffic Management Corporation (RTMC).

<sup>32</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 9, par 9.96, p. 204; Chapter 14, par 14.56, p. 360.

<sup>33</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Executive Summary, par 38, p. XVIII.

### 2.3.3 Funding method

In the RAF compensation scheme, income or assets are not set aside to meet claims incurred in each financial year, and so an actuarial deficit develops. If the RAF's income were matched to expenditure incurred, i.e. the income in one year is sufficient to pay all claims arising from accidents occurring in that year, irrespective of when they are finally paid, the RAF would be fully funded.

A PAYG system is only viable if the sponsor, such as the Government in a state operated scheme, guarantees the ultimate payment of benefits. Past and current funding policies and practices have not enabled the RAF to build up assets to cover its accumulated liabilities. This means that no assets are set aside for claims arising in the financial year for which the fuel levy was paid. The RAFC found that a PAYG funding method is "*financially and actuarially unsound*" and that the "*potential problems are serious*" because it can "*obscure the real financial condition*" and provide "*a false sense of security*".<sup>34</sup> The situation deteriorates as future claims increase in the absence of a link between the claims and the fuel levy charged.

### 2.3.4 Inadequacy of current funding method

Good housekeeping and sound budgetary and fiscal policy require that Government meet current expenditure out of current income, and current expenditure includes setting aside sufficient funds to meet claims arising in a year, even if they are not yet due and payable.<sup>35</sup> The underlying argument is that it is unfair to permit the current generation of taxpayers to fund the liabilities incurred by a past generation, because "*financing liabilities on a pay-as-you-go basis is an exercise in 'rolling' taxpayers' money*"; it amounts to "*mortgaging the future to pay for the past*".<sup>36</sup> Although a funding method is not a measure of the underlying cost of the benefits provided by a scheme, it has an effect on the cash flow.

## 2.4 FINANCIAL POSITION OF THE RAF

### 2.4.1 Income and expenditure

Table 2.3 below compares the income and expenditure of the RAF from 2003 to 2008.

**Table 2.3 Income, expenditure and cash flow of the RAF: 2003 – 2008**

	2003	2004	2005	2006	2007	2008
Total income	2 823	3 600	4 624	8 142	7 277	8 405*
Expenditure	3 613	4 430	4 383	5 344	6 625	9 588
Net cash flow	(790)	(830)	241	2 798	652	(1 183)
Less increase in provision for outstanding claims	(3 516)	(2 305)	(1 541)	(1 301)	(2 511)	(6 404)
<b>Operating surplus / (loss) for year</b>	<b>(4 306)</b>	<b>(3 135)</b>	<b>(1 300)</b>	<b>1 497</b>	<b>(1 859)</b>	<b>(7 587)</b>
<b>Accumulated deficit</b>	<b>23 026</b>	<b>19 333</b>	<b>21 573</b>	<b>22 728</b>	<b>24 448</b>	<b>31 125</b>

Source: RAF Annual Report 2008.

\* Fuel levy income before diesel rebate. Income net of diesel rebate was R8 222 million in 2008.

Combined expenditure on claims payments and administrative costs has outstripped the RAF's income over a number of years<sup>37</sup>. Negative cash-flows were recorded in 2003,

<sup>34</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 11, par 11.154, p. 263.

<sup>35</sup> Department of Transport. 1996. Draft White Paper on the Multilateral Motor Vehicle Accidents Fund, p. 40.

<sup>36</sup> Department of Transport. 1996. Draft White Paper on the Multilateral Motor Vehicle Accidents Fund, p.40.

<sup>37</sup> This indicates that the RAF has been funded on an ad hoc, rather than on a PAYG basis.

2004, and again in 2008. The fuel levy was insufficient to cover the funds required to pay claims and continue operations. Positive cash-flows were recorded from 2005 to 2007 as the result of additional cash transfers by National Treasury of R2.7 billion in 2005/2006. In 2008, negative cash-flow was almost R1.2 billion.

Two main factors determine the RAF's expenditure: the number of claims lodged and the amount of compensation paid. The Fund can neither control the number of claims it has to pay, nor adjust the benefit levels as those are determined by legislation and judicial precedent. Table 2.4 shows the increase in the RAF's expenditure for the financial years ended 31 March 2003 to 2008.

**Table 2.4 Progression of RAF expenditure: 2003-2008<sup>38</sup>**

	R Million					
Claims paid (including compensation & legal costs)	3 118	3 983	3 884	4 850	6 119	9 000
Increase in provision for outstanding claims	3 516	2 305	1 541	1 301	2 521	6 404
Administration, overhead & staff	413	459	456	476	501	561
Reinsurance	32	38	43	18	5	27
Road safety project	50	-50	-	-	-	-

Source: RAF Annual Reports, 2007 and 2008.

Out of total expenditure of R9.588 billion (net of the increase in provision for outstanding claims) in 2008, almost 70% was appropriated towards compensation paid, 22 % was paid for legal costs, while administration costs represented 6%. Another 2% was appropriated towards structured settlements and accruals.<sup>39</sup>

#### 2.4.2 Cash flow problems

The RAFC found that there is a misalignment between the RAF's income and expenditure: *"the relationship between the fuel levy and RAF claims expenditure is non-existent: neither is dependent upon nor determined by the other."*<sup>40</sup> This creates a dilemma for the Fund because legislation requires the RAF to pay compensation to injured road users while *"such expenditure is not a function of income accruing from the fuel levy or investment return. The RAF is obliged to make payment irrespective of its ability to do so."*<sup>41</sup>

In recent years the RAF often had insufficient cash to pay benefits. This constrained the operations of the Fund. In particular:

- a. Settlement offers could not be made promptly and claimants' attorneys resorted to legal proceedings to force payment from the RAF. As a result the number of summonses issued against the RAF increased dramatically.
- b. A smaller proportion of claims on which summons had been issued could be settled prior to trial. The number of claims proceeding on trial, or settled less than one week before the trial date, increased significantly.

<sup>38</sup> The RAF Annual reports until 2003 showed the undiscounted provision for outstanding claims. From 2004 onwards the discounted provision for outstanding claims were shown. The 2007 Annual report restated the 2003 figures to allow for changes in accounting principles from undiscounted to discounted provisions. The "increase in provision for outstanding claims" is included in the total expenditure to reflect whether the RAF achieved an operating surplus or loss for the financial year.

<sup>39</sup> Calculated from information provided in the *RAF Annual Report 2008*.

<sup>40</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 11, par 11.130, p.258.

<sup>41</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 11, par 11.131, p.258.

- c. Payments ordered by the courts could not be made. The number of writs of execution to attach the RAF's assets increased alarmingly.
- d. Financial instability makes it difficult for the RAF to appoint and retain competent claims handling staff.

The above directly results in settlement delays with further administrative pressures, increased settlement amounts and significantly increased costs.

#### 2.4.3 Outstanding claims liability and solvency

Table 2.5 shows the extent by which the liabilities of the RAF have exceeded the assets. Deficits are expected if funding is on a PAYG or ad hoc basis. As at 31 March 2008 the estimated liabilities of R31 125 million exceeded the assets of R3 297 million by R27 828 million. This exceeds the estimated accumulated net deficit of R20 241 million as at 31 March 2007 by R7 587 million. In 1997 the RAF's net deficit was R7 233 million.<sup>42</sup> This constitutes a four-fold increase over 11 years.

**Table 2.5 Assets, liabilities and deficit of the RAF: 2004 – 2008**

	R Million				
Total assets	768	1 708	4 360	4 207	3 297
Total liabilities	-19 333	-21 573	-22 728	-24 448	-31 125
Net deficit	-18 565	-19 865	-18 368	-20 241	-27 828

Source: RAF Annual Report 2008.

The liability for outstanding claims refers to claims which have arisen from accidents that occurred, but those claims have either not been submitted to the Fund or are not yet settled or paid. In essence, the liability for outstanding claims represents the value of "the promise" made in terms of the RAF legislation to pay compensation to injured persons or dependants of those killed on the roads.<sup>43</sup> The RAF's liability to pay arises when the accident occurs (and a road user is injured or killed), but payment of the claim may be outstanding for many years because the claim has not been reported, or if reported, the claim may take long to be finalised.

Internationally it is standard accounting practice to create a provision for outstanding claims in the insurance and pension fund industries. Financial statements which ignore such liabilities for outstanding claims would be "*misleading in the extreme*" and "*create a false sense of security*".<sup>44</sup>

The annual financial statements of the RAF reflect a provision for outstanding claims liability as the total expected future payments on all claims that arose before the financial year-end, whether or not such claims were reported to the RAF, discounted to allow for interest from the valuation date until the expected time of settlement. The outstanding claims liability is determined by actuarial valuation based on analysis and informed assumptions.

In the absence of sufficient assets or a Government guarantee to cover the outstanding liability, the RAF is technically insolvent.

#### 2.4.4 Liquidity

The RAF's ability to meet its short-term obligations from current resources remains under strain. Liquidity constraints hamper the RAF in continuing with its operations as a going concern. This is despite a cash injection by the National Treasury of R2.7 billion in 2006

<sup>42</sup> Department of Transport. 1998. *White Paper on the Road Accident Fund*. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998, p. 7.

<sup>43</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 11, par 11.22, p. 239.

<sup>44</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 11, par 11.33, p.241.

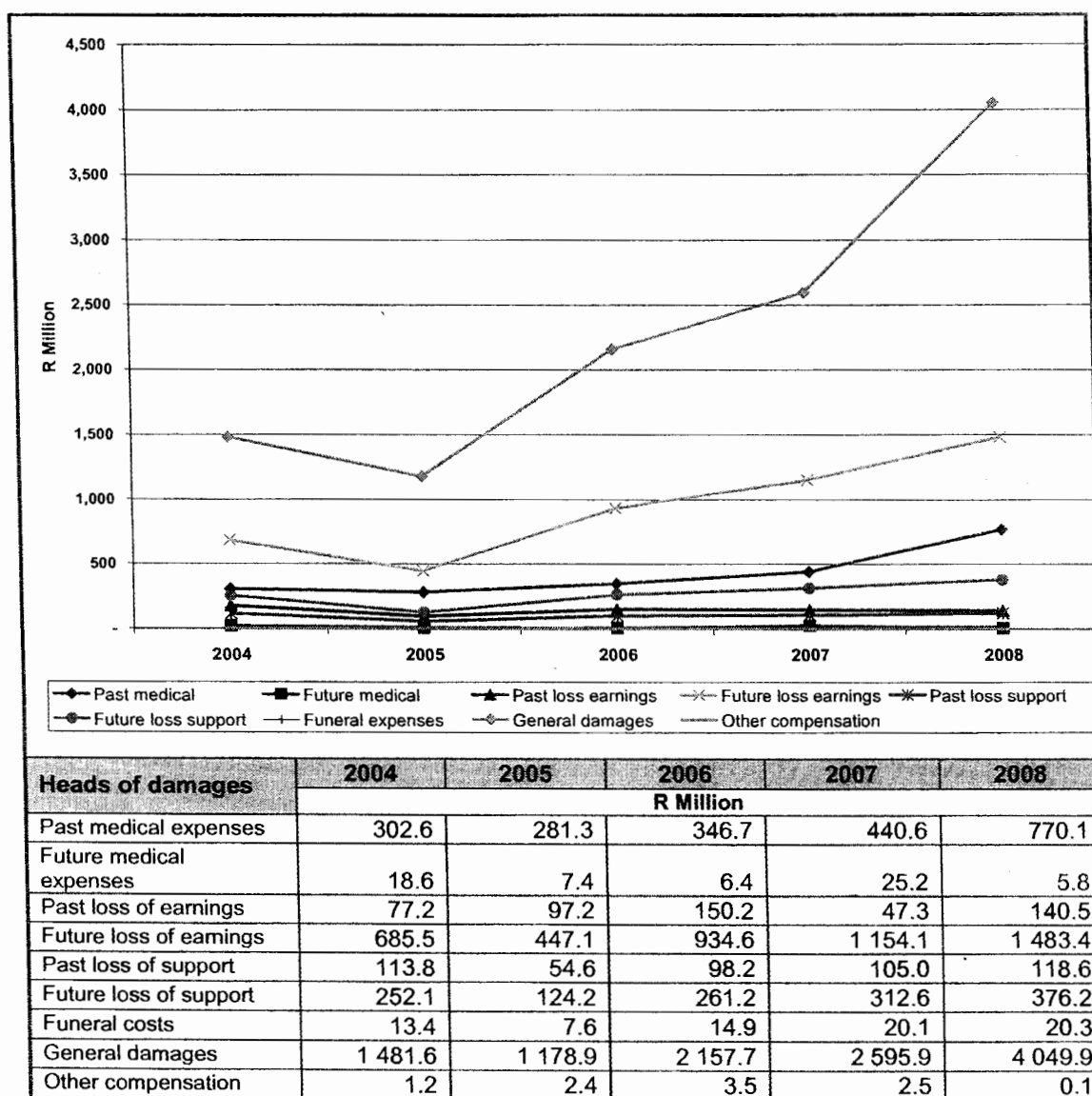
which was earmarked for debt (R1.2 billion for diesel rebates due to the South African Revenue Service (SARS)) and outstanding structured settlements totalling R1.3 billion. At 31 March 2008, current liabilities of the RAF exceeded current assets by R6.7 billion (in the previous year it was R1.6 billion)<sup>45</sup>.

## 2.5 TRENDS IN CLAIM PAYMENTS

### 2.5.1 Escalation in claims categories

Total compensation paid on claims increased more than five-fold from R1.1 billion in 1998 to R6.9 billion in 2008. The graph below shows trends in compensation paid over 5 years.

Figure 2.1 Trends in compensation paid per heads of damages: 2004-2008



Source: Prepared from RAF claims data.

Trends in compensation paid over the period 2004 to 2008 show significant increases in payments towards general damages which expanded almost three-fold from R1.482 billion in 2004 to R4.050 billion in 2008. Compensation for general damages escalated out of proportion in relation to the other heads of damages paid towards real financial loss.

<sup>45</sup> RAF Annual Report, 2008.



In 2008 general damages constituted 59% of total compensation paid compared with 38% in 1999.<sup>46</sup>

Payments towards future loss of earnings increased from R685.5 million in 2004 to R1.483 billion in 2008 (or by 116% over five years). The higher than expected increase is directly related to the escalation in practice to compensate injured road users for their entire projected career path which industrial psychologists estimate that claimants could have developed, had the accident not intervened.

The RAF's claims data should be interpreted carefully. Several factors may have influenced developments in the payment of compensation and legal costs. Among those are:

- a. The "mix" of claims paid per financial year changes all the time, and this distorts trends seen in payments per heads of damages.
- b. Changes in administrative practices and claims management, e.g. different operational "drives" to speed up claims settlement and bulk settlement of claims.
- c. Significant cash-flow problems in 2004 and 2005 hampered settlement and payment of claims so that claims were held over and only paid in later financial years. Backlogs increased which had to be dealt with later. As a result, litigation increased when claimants pressurised the RAF to pay, and in turn, this increased legal costs and often resulted in higher compensation paid.
- d. Changes in the development patterns of claims which include loss of income or loss of support – these claims are taking longer to finalise. This impacts the ultimate settlement amount, the costs and the liability for outstanding claims.
- e. More of the smaller claims may be settled and paid in a shorter timeframe, but many of the larger claims are taking much longer to settle, so that it may appear that average amount paid is declining, but it is not. Larger and more complex claims are remaining outstanding for longer periods.

### 2.5.2 Escalation of non financial loss

An increasing proportion of public money was expended on non-pecuniary loss (as general damages) in relation to actual and real financial loss incurred. General damages comprise a common law based award for pain, suffering, shock, disfigurement and loss of enjoyment of life. Such factors cannot be quantified on the same basis as loss occasioned by the costs of medical treatment or reduced income due to injury, and therefore, cannot be measured in financial terms.

The RAFC referred to general damages as "sorry money" and a form of consolation.<sup>47</sup> Compensation for a non-financial loss cannot restore physical functionality lost due to injury. A disproportionately large amount of compensation is paid on non-financial loss. As a result, "money is not available or is less generously applied to those who have sustained catastrophic or life-changing injuries and disablement and for whom rehabilitative intervention and life care are vital".<sup>48</sup>

## 2.6 TRENDS IN CLAIMS PORTFOLIO

The majority of claims lodged were in respect of compensation where only general damages and costs are payable, without any loss of earnings. A substantial proportion of the fuel levy is spent on claimants with only slight injuries and on high income earners.

<sup>46</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 35, par 35.59, p. 1115.

<sup>47</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 35, par 35.59, p. 1115, p. 1104.

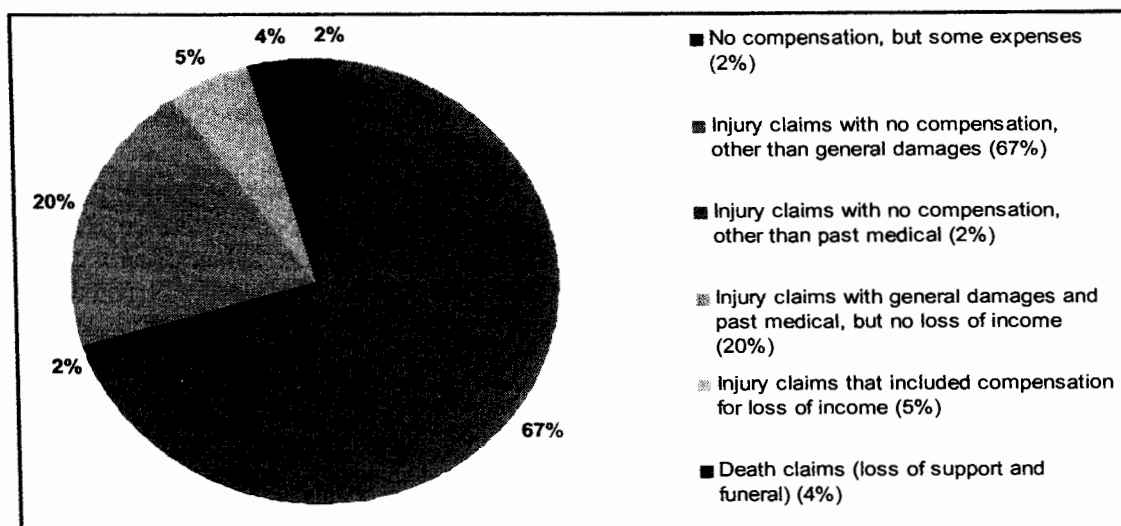
<sup>48</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.99, p. 370.



### 2.6.1 Composition of payments

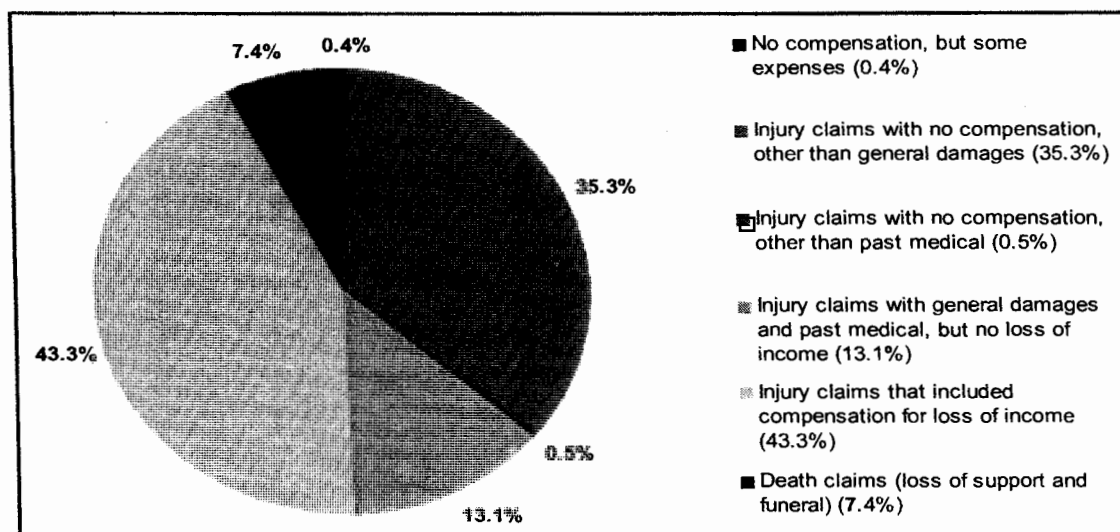
The two graphs below show the number of claims and amounts paid per category of personal injury and loss of support claims in the 2008 financial year.

**Figure 2.2 The number of non-supplier claims paid in 2008 divided into groups**



Source: Prepared from RAF claims data.

**Figure 2.3 The amounts paid in 2008 in respect of different groups of non-supplier claims**



Source: Prepared from RAF claims data.

Analysis of personal injury and loss of support claims finalised in 2008 shows that for:

- 3 002 (2%) claims no compensation was paid but only some expenses for legal costs. The average amount<sup>49</sup> paid per claim was R17 586.

<sup>49</sup> These average amounts were calculated by considering all payments made on a claim. Some of these payments were made during previous financial years. Payments were adjusted to allow for - inflation (of CPIX+2%) to express the averages in monetary terms as at 31 March 2008. The averages will be understated because some claims will be reopened and further payments, mainly in respect of costs, are expected. The average amounts were significantly higher than in previous financial years.

- b. 108 496 (67%) injury claims no compensation other than general damages was paid. The average amount paid per claim was R 38 416 (R28 268 compensation and R10 148 costs).
- c. 2 602 (2%) injury claims no compensation other than past medical expenses was paid. The average amount paid per claim was R24 230 (R15 521 compensation and R8 709 costs).
- d. 32 402 (20%) injury claims only general damages and past medical expenses, but no loss of earnings were paid. The average amount paid per claim was R47 605 (R36 443 compensation and R11 162 costs).
- e. 8 917 (5%) injury claims included compensation for loss of earnings. The average amount paid per claim was R573 814 (R458 191 compensation and R115 623 costs and so legal costs comprised 25% of the compensation paid). This 5% of claims constituted 43% of total payments.
- f. 6 919 (4%) death claims (claims with loss of support and/or funeral costs). The average amount paid per claim was R125 860 (R107 116 compensation and R18 744 costs).

It is evident that a small proportion of claims result in the highest payouts.

### 2.6.2 Settlement delays

Claims for personal injury and loss of support take on average about one year from the date of accident to date of lodgement with the RAF. More serious cases which include claims for loss of earnings are taking longer to be paid when measured from the date of accident to the date of finalisation:

- a. In respect of accidents occurring in 1998, 7.8% of loss of earnings claims were paid within 2 years of the accident, compared to only 4.3% for the 2006 accident year.<sup>50</sup>
- b. In respect of accidents occurring in 1998, 24.9% of loss of earnings claims were paid within 3 years of the accident, compared to only 11.3% for the 2005 accident year.<sup>51</sup>
- c. In respect of accidents occurring in 1998, 43.8% of loss of earnings claims were paid within 4 years of the accident, compared to only 23.0% for the 2004 accident year.
- d. In respect of accidents occurring in 1998, 58.7% of loss of earnings claims were paid within 5 years of the accident, compared to only 33.2% for the 2003 accident year.
- e. In respect of accidents occurring in 1998, 69.2% of loss of earnings claims were paid within 6 years of the accident, compared to only 44.9% for the 2002 accident year.

### 2.6.3 Distribution of claims by size

Table 2.6 below illustrates the typically skew distribution by size of individual (i.e. personal injury and dependants') claims in the RAF's portfolio. The table summarises the number of claims and amounts paid in respect of nine value categories (expressed in terms of the

<sup>50</sup> Only 4.3% of loss of earnings claims were paid within 2 years of the accident for accidents occurring in 2006.

<sup>51</sup> Only 11.3% of loss of earnings claims were paid within 2 years of the accident for accidents occurring in 2005. The comparisons in points c-e above follow a similar pattern as described in this and the previous footnote.

size of the individual claim).<sup>52</sup> The amount paid in each of the categories includes compensation for losses and legal costs (for claimants and RAF).

**Table 2.6 Distribution of claims size by number and total amounts finalised over a 30 month period (excluding undertakings payments, supplier claims and claims with no payments)**

Claim size	Number of claims	% of number of claims	Cumulative %	Total amount paid R Million	% of total amount paid	Cumulative %	Average paid Rand	Legal costs as % of total paid
1 - 4999	9,545	3.4%	3.4%	29.73	0.2%	0.2%	3,115	52.0%
5000 - 9999	29,139	10.2%	13.6%	226.91	1.3%	1.5%	7,787	37.5%
10000 - 24999	120,064	42.2%	55.8%	2,106.67	12.1%	13.6%	17,546	22.6%
25000 - 49999	80,329	28.3%	84.1%	2,710.62	15.6%	29.2%	33,744	23.9%
50000 - 99999	22,757	8.0%	92.1%	1,527.44	8.8%	38.0%	67,119	27.9%
100000 - 249999	10,899	3.8%	95.9%	1,698.64	9.8%	47.8%	155,853	30.7%
250000 - 499999	5,466	1.9%	97.8%	1,942.16	11.2%	59.0%	355,317	31.4%
500000 - 999999	3,594	1.3%	99.1%	2,518.50	14.5%	73.5%	700,752	24.5%
1000000 +	2,524	0.9%	100.0%	4,645.70	26.7%	100.0%	1,840,610	18.0%
	284,317	100%		17,406.38	100%			24.35%

Source: Prepared from RAF claims data.

The analysis reveals that:

- The greatest proportion of claims (55.8%) have a value of less than R25 000, including the legal costs paid
- Claims under R25 000 accounted for only 13.6% of monies paid out
- 84.1% of the total number of claims are smaller than R50 000 and account for 29.2% of the total amount paid
- 92.1% of the total number of claims are smaller than R100 000 and account for 38% of the RAF's claims expenditure (including legal costs)
- Only 8% of the claims exceed R100 000 per individual claim, but these account for almost two-thirds (62%) of the total amount paid
- Just over 2% of the RAF's claims exceed R500 000 per individual claim, but account for 41% of the claims payments
- Claims above R1 million accounted for less than 1% of the total number of claims and accounted for almost 27% of total compensation and legal costs paid
- 52% of the monies paid in the smallest claims category (below R5 000) is consumed by legal costs; of the monies paid on claims between R 5 000 to R9 999, almost 38% is allocated for legal costs

<sup>52</sup> For purposes of the analysis, all claims (excluding claims with no payment, supplier claims and undertaking claims) finalised between 1 March 2005 and 30 September 2007, were included. To allow for the effects of inflation, the amounts have been adjusted with CPIX+2% to 30 September 2007.

Further analysis of payments per claims size under various heads of damages show the trends as summarised in Table 2.7 below.

**Table 2.7 Distribution of compensation and legal costs per loss category and claims size**

Total amount paid for all heads	R 1 - R4 999	R5 000- R9 999	R10 000- R24 999	R25 000- R49 999	R50 000- R99 999	R100 000- R249 999	R250 000- R499 999	R500 000- R999 999	R1 Mill+
Loss of earnings	2%	0%	0%	1%	1%	6%	18%	34%	54%
Loss of support	0%	0%	0%	1%	6%	14%	14%	11%	5%
General damages	23%	54%	75%	71%	60%	44%	32%	26%	18%
Medical expenses	8%	2%	2%	4%	5%	6%	4%	4%	5%
RAF legal costs	16%	5%	4%	8%	12%	14%	14%	11%	8%
Claimant legal costs	36%	33%	18%	15%	16%	17%	17%	13%	10%
Other (mainly funeral & COIDA) claims	15%	6%	1%	0%	0%	-1%	1%	1%	0%

Source: Prepared from RAF claims data.

Claims below R5 000 mainly comprise legal costs (52% of total paid). General damages represent 75% of the monies paid on smaller claims between R10 000 and R25 000, while payments for financial loss only make up 2% of compensation in that category. In the next category (claims up to R49 999), 71% of the amounts paid are allocated to general damages.

Across all the size categories, medical costs do not account for more than 8% of the total monies paid. Even in medium-sized claims between R100 000 and R249 999, medical costs still only account for 6% of the total payments.

Claims for real financial loss, i.e. loss of support and earnings comprise a low percentage of monies paid in the claim categories between R1 and R100 000. The largest component of compensation in those claims is general damages. As the size category increases, so does the relative importance of loss of earnings and support. In the size category between R100 000 to R249 999, claims for loss of support and loss of earnings jointly represent only 20% of monies paid, and general damages account for 44%.

The compensation paid in large claims of R1 million and above, was mainly for loss of earnings (54%), and to a lesser extent, general damages (18%). A further 5% was allocated for loss of support following the death of a breadwinner. The relative importance of general damages decreases as the claim size increases.

Since low proportions of compensation were paid for medical expenses and income losses in the small claims categories, the comparison shows that claimants with smaller claims took little or no time off work due to injury and incurred very little expense for medical treatment.

After a similar analysis by the RAFC, the Commission remarked that claimants in smaller claims and less serious cases "are better able to motivate for the more nebulous and less exact 'general damages' than for the more precisely calculated loss of earnings and medical expenses which require proof of employment, proof earnings, proof of time off work, proof of hospitalisation or medical treatment and proof of payment therefor."<sup>53</sup> This conclusion is appropriate for the overwhelming majority of claims paid up to some R100 000 (92% of claims finalised were below R100 000, inclusive of compensation and legal costs).

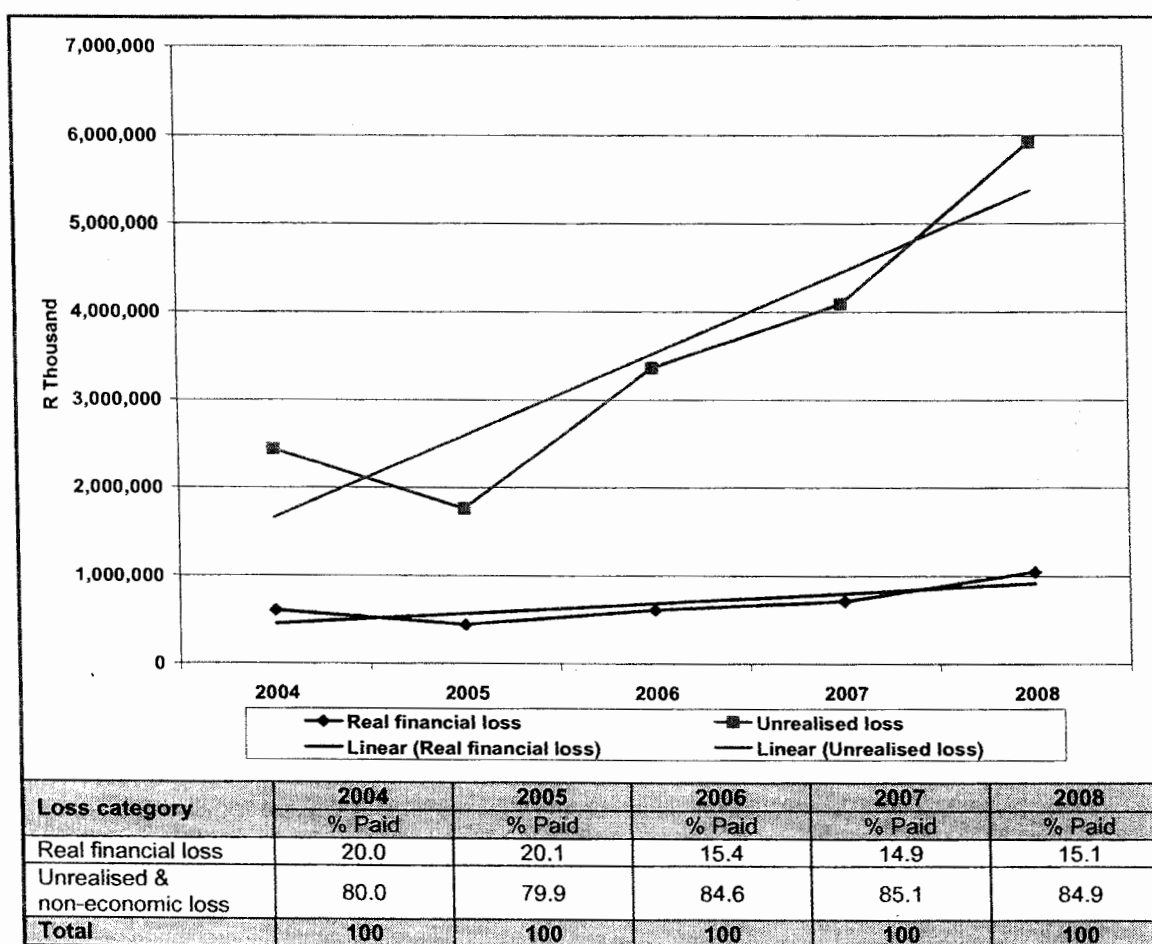
<sup>53</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 8, par 8.29, p.169.

The RAFC concluded that "smaller claims are submitted in respect of less serious injuries or where claimants' income is low or non-existent."<sup>54</sup>

## 2.7 LUMP SUM PAYMENTS

Under the current compensation system claims are paid in a single once-and-for-all lump-sum. This payment regime is linked to the common law based arrangement where a claimant must claim all the damages in a single action and once-and-for-all. As a result a significant proportion of the compensation is paid in advance before the loss is actually suffered.<sup>55</sup> Figure 2.4 compares payments made for real financial loss already suffered at date of payment (bottom line of graph), with money paid for unrealised future and non-economic losses at date of payment (top line of graph).

Figure 2.4 Comparison of real economic and unrealised losses paid by RAF: 2004-2008



Source: Prepared from RAF claims data.

Over the last three financial years from 2006 to 2008, 85% of claims compensation was paid in a lump sum for non-financial losses and for anticipated prospective losses before those losses were actually suffered.

Once-and-for-all lump sum payments for future needs and anticipated losses are "guesstimates" and may lead to under- or over-compensation because actual experience usually differs from the assumptions made years earlier.<sup>56</sup> In addition, current legislation

<sup>54</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 8, par 8.56, p.176.

<sup>55</sup> The RAF does not pay future medical expenses in a lump sum, but issues statutory undertakings to pay for future accident-related medical expenses after the costs have been incurred.

<sup>56</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.104, p. 371.

does not permit the RAF to re-assess injured beneficiaries to review and adjust benefits to meet their real needs. As a result, the lump sum may not meet the claimant's changed medical needs, and may be insufficient to cover life care and inflationary costs of living. Victims may descend into poverty or stretch the state's limited resources even further. Compensation paid as lump sums offers no security to injured persons or bereaved dependants. Once the claim is settled, the payment is final and no adjustments can be made.

Lump sum payments are often not utilised for the purpose for which the compensation was paid, and may be reduced by human failing, ignorance or unwise investments. Further, the impact of the HIV/AIDS pandemic may reduce the life expectancy of many successful claimants who received lump sums. If such claimants die earlier than anticipated due to causes unrelated to the accident, their heirs, and not the injured road users for whom the compensation was intended, will benefit. On the other hand, a seriously injured person may live longer than medical experts had anticipated when the claim was settled, and be under-compensated as a result.

## 2.8 TRANSACTION AND DELIVERY COSTS

High delivery and transaction costs to prove entitlement to compensation consume resources intended for accident victims. Claimants incur costs to access the benefit scheme and to pursue their claims. Successful claimants are entitled to recover legal costs from the Fund. It also costs the RAF money to deliver benefits to claimants. Such costs can be described as "transaction costs"<sup>57</sup> and include fees payable to attorneys, advocates, actuaries, medical experts who assess claimants to determine disability and loss of earning capacity, as well as accident investigation costs and administration costs.

Table 2.8 summarises payments towards claimants' legal costs and the RAF's own legal costs over a period of 11 years.

**Table 2.8 Comparative trends in legal costs paid by the RAF: 1998 – 2008**

	R Million										
Claimant	171	221	256	301	390	462	587	546	796	986	1 280
RAF	110	120	128	133	155	229	346	391	510	674	811

Source: Prepared from RAF claims data.

The RAF's own legal costs escalated by an average of 28% per annum over the last five years. In 2008 the RAF's own legal costs comprised 39% of the total legal costs paid. Total expenditure on legal costs increased from R933 million in 2004 to R2.091 billion in 2008. Legal costs escalated on average by 30% per annum between 2006 and 2008.

<sup>57</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 12, par 12.5, p. 279.

Table 2.9 contrasts the costs incurred by the RAF to administer and pay claims (i.e. the delivery costs) with the total compensation paid out per annum. Total delivery costs include the RAF's administration costs and overheads, as well as total legal costs (inclusive of legal costs paid to claimants). When viewed over a five year period from 2004 to 2008, the delivery costs represented 44.8% of total compensation paid.

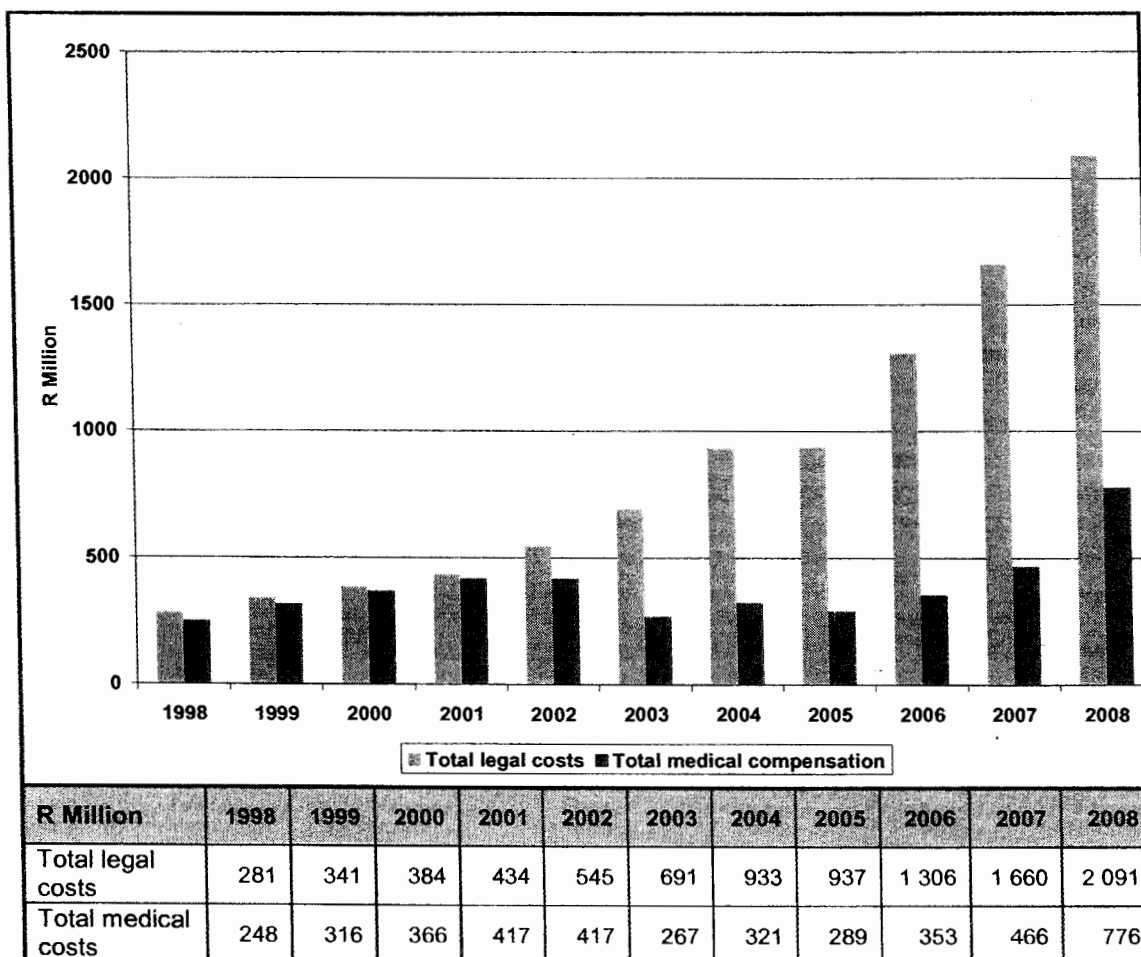
**Table 2.9 Comparison of total delivery cost and compensation paid: 1998 – 2008**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	R Million										
Delivery costs	381	466	543	602	781	1 081	1 360	1 393	1 782	2 161	2 652
Compensation paid	1 101	1 407	1 713	2 006	2 170	2 389	3 024	2 191	3 949	4 771	6 915
Delivery costs as % of compensation	34.6	33.1	31.7	30.0	36.0	45.3	45.0	63.6	45.1	45.3	38.4

Source: Prepared from RAF claims data and *Annual Reports* 2004, 2008.

The graph below compares trends in the payment of total legal costs (RAF and claimant legal costs) and compensation paid for medical treatment provided to injured road users.

**Figure 2.5 Analysis of legal costs v medical compensation paid: 1998-2008**



Source: Prepared from RAF claims data.

Legal expenses exceeded medical compensation paid by the RAF over the last 11 years. This clearly shows that scarce resources are consumed in complex, time-consuming and costly legal processes, rather than appropriated to assist the injured to recover, rehabilitate, heal and re-assume their economic activities.



In addition to the total costs incurred to deliver benefits (RAF administration and overheads, claimant and RAF legal costs), claimants pay further costs to attorneys, usually from the proceeds of the compensation intended for healthcare, rehabilitation and reduced earning capacity.

The RAFC concluded that *"there is no doubt that it is completely unacceptable that such a significant proportion of fuel levy income is currently expended on transaction costs rather than on compensation or benefits and that a further portion of compensation or benefits paid out is utilised to meet outstanding transaction costs."*<sup>58</sup> The RAFC estimated that *"approximately 30%-55% of fuel levy income does not go to the victims of road accidents as compensation for loss incurred by them, but is expended on remuneration for professionals and on RAF infrastructure and employees"*.<sup>59</sup>

## 2.9 OUTCOMES OF THE SCHEME

### 2.9.1 Focus of the scheme

In the current system, the focus is on fault and the claimant's possible contributory negligence, rather than on ameliorating the consequences of road accidents.<sup>60</sup> In essence, *"fault, rather than need, is the focus of the system."*<sup>61</sup> Fault and blame take precedence over the need to access appropriate medical treatment and rehabilitation. During the time that fault remains in dispute, the victim is not entitled to any compensation. As a result *"the denial of access to compensation is frequently denial of the only possibility of rehabilitative intervention."*<sup>62</sup> The purpose of a public compensation scheme is to support people in need when injured or destitute, and not to enquire about the wrongdoer's actions or the percentage of guilt.<sup>63</sup>

### 2.9.2 Lack of support

Injured road users or dependants of earners killed in collisions, receive no assistance from the compensation system from the date of accident to the date of settlement and payment of the claim. The scheme does not provide funds to enable injured road users to access hospitals and medical care. Those unable to work, receive no immediate assistance, and they and their families face hardship on no or diminished income.<sup>64</sup> The compensation scheme fails to support persons injured in road accidents at the time when they most need it, and claimants are largely left to their own resources.

The RAFC concluded that: *"Road accident victims are currently not assisted by the scheme of road accident compensation at the time when such support is most needed, which is usually immediately after the accident. This is also the most critical period for effective healthcare and rehabilitation. The system itself is predicated upon delays and its structural flaws are compounded by ignorance, inefficiency, incompetence, infrastructural pressures, disadvantage and ability to access resources that affect claimants, their representatives, the RAF, government departments and the legal system."*<sup>65</sup>

### 2.9.3 Complexity

Legislation pertaining to the RAF compensation scheme is very complex, *"with the result that the whole system has become extremely legalistic and virtually incomprehensible to*

<sup>58</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 12, par 12.127, p. 307.

<sup>59</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Executive Summary, par 27, p. XVI.

<sup>60</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.94, p. 369.

<sup>61</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.36, p. 357.

<sup>62</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.95, p. 369.

<sup>63</sup> Department of Transport. 1996. Draft White Paper on the Multilateral Motor Vehicle Accidents Fund, p.76.

<sup>64</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.18, p.354.

<sup>65</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 7, par 7.86, p. 157.



*the average member of public*”.<sup>66</sup> The claims procedure is cumbersome, time consuming and expensive, and often results in expensive litigation.<sup>67</sup>

Due to the adversarial and complex nature of the current system, the overwhelming majority of claimants do not pursue their claims directly, but do so via attorneys. The administrative authority is thus distanced from the people whom it is supposed to serve. By reason of the litigious nature of the system, the RAF is engulfed in legal disagreements with claimants, rather than endeavouring to accommodate their needs.

#### 2.9.4 Equity challenges

Road users pay the fuel levy either directly (e.g. drivers) or indirectly (e.g. pedestrians when they are passengers or drivers), but all contributors to the scheme are not covered for all circumstances. Contributions to the scheme are compulsory via the fuel levy, but benefits are discretionary, i.e. based on assessment of fault and legal interpretation of the scope of damages suffered. Many contributors to the scheme are excluded from compensation or receive limited benefits because they were negligent. Other contributors are excluded because they are unable to prove negligence or because the accident was caused by other factors than the negligence of the owner or driver of a vehicle.

*“Exclusion...perpetuate(s) disparities between urban and rural sectors, the employed and the unemployed, the rich and the poor, which is not conducive to concepts of social security. Not only is such a system inequitable, it is also inefficient, unsustainable and unreasonable.”*<sup>68</sup>

The structure of the compensation scheme leads to unreasonable cross-subsidisation, for example between low income earners and high income earners, drivers and pedestrians, multi-passenger vehicles and single passenger vehicles, intoxicated and sober road users.

#### 2.9.5 Ineffective benefit structure

Small claims below R50 000 consume 29.2% of the fuel levy income, but constitute 84.1% of the claims portfolio, and therefore add significantly to the administrative burden in the RAF. These small claims mostly pertain to minor injuries in respect of which little or no money was expended on medical treatment. Compensation awards are channelled to general damages, and not towards earnings lost due to time off work. Public money must rather be appropriated to prevent loss of functionality or reduce its impact, than to pay for a loss which cannot be corrected by money.

Further, the current system pays earnings-related benefits without collecting earnings-related premiums.<sup>69</sup> This leads to sustainability problems because the level of benefits offered is not linked to the level of income.

#### 2.9.6 Skewed incentives

*“Entitlement to and payment of compensation is currently predicated upon achieving the impossible – restoration of the position of the victim of a road accident as if such accident had not occurred. Since the system is based upon the premise of injury and disablement it seeks to pursue the chimera of equating the pain and suffering of injury, the absence of health and lost opportunities with the illusion of monetary restitution.”*<sup>70</sup>

<sup>66</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 109.

<sup>67</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 109.

<sup>68</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 14.95-14.96, p. 369.

<sup>69</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.1415, p. 431.

<sup>70</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 14, par 100, p. 370.

The existing compensation system "rewards" disability, instead of enabling injured persons to have speedy access to medical care and rehabilitation.<sup>71</sup> A major driving force under the current system is to present the claimant as a disabled and maimed person whose capacities for earning income and living a quality life have been irretrievably harmed, and thereby to secure the highest possible monetary reward from public funds. Such a focus is wrong and morally objectionable.

Compensation that covers the total loss of earnings and projected future potential earnings in a single payment, contributes to over-compensation for minor injuries and under-compensation for serious injuries.<sup>72</sup> It also discourages injured road users from rehabilitation and return to work. Such practices are not in keeping with other social insurance schemes where there are minimum loss or injury requirements to access benefits (thresholds) and limits on compensation (ceilings).

### 2.9.7 Abuse

The compensation system is open to abuse due to fraud, opportunistic, nuisance and over-inflated claims, mismanagement, professional malpractice and human failing. Fraud is presented in separate classes, namely opportunistic and systemic fraud. Systemic fraud flows from the inadequate legislative framework (long lodgement periods, perverse incentives caused by lump sums, exaggeration of slight injuries, over-servicing) and opportunistic fraud is a result of weak systems and controls. There is concern that *"public funds may be expended in a manner that does not enhance or support the principles upon which a system of social security is or should be based"*<sup>73</sup>. The RAFC found that the *"principles and practices of the current scheme of road accident compensation themselves contain the seeds of abuse"*.<sup>74</sup>

### 2.10 CONCLUSION

It is recognised that a state-funded social security scheme cannot *"redeem every insult, remedy each affliction, restore full well-being and return the road accident victim to the position...prior to the accident and the injury or fatality. Such responsibility is not consonant with the obligations of the State to other members of society in times of trouble or distress. Full compensation for all loss suffered in road accidents is compatible neither with Government's responsibility towards road users nor with the resources available to Government."*<sup>75</sup>

It is evident that the income channelled to the RAF has been inadequate to meet the statutory and financial obligations of the scheme. Government cannot permit the scheme to continue on its present course. Measures are needed to either increase income or curtail expenditure, or a combination of both. Public resources are limited and it is *"neither socially, nor economically desirable to increase the tax burden on road users merely to ensure that road users with the highest earned and unearned income are restored to their full income status"*.<sup>76</sup>

The current RAF compensation system achieves unintended outcomes which undermine the purpose for which it was created. Fundamental reforms are required to address the structural problems inherent in the system and to direct limited public funds to support persons injured and deprived of income at the time of their greatest need. Government will introduce measures to advance timely access to adequate healthcare, provide care for the injured and disabled, and to ensure that benefits are provided within a reasonable, affordable and sustainable financial framework.

<sup>71</sup> The greater the disability, the larger is the potential financial pay-out.

<sup>72</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.7, p. 430.

<sup>73</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 13, par 13.137, p. 347.

<sup>74</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 13, par 13.138, p. 347.

<sup>75</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.29, p. 434.

<sup>76</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 16, par 16.61 p. 416.

### **3 STATUS QUO: ROAD ACCIDENT CASUALTIES AND HEALTHCARE**

#### **3.1 ROAD USE AND ROAD SAFETY IN SOUTH AFRICA**

##### **3.1.1 Accidents, deaths and injuries**

Challenges pertaining to road use and sub-optimal road safety remain and continue to impact on the liability of the RAF to compensate persons who are affected by road accidents, either as injured road users or as dependants of earning breadwinners killed in crashes.

An estimated 947 357 accidents occurred in 2007, up from 881 617 in 2006. For the period 2003 to 2007 an annual average of 858 152 accidents were recorded. Each year an estimated 220 000 people are injured in traffic accidents in South Africa, of whom about 60 875 sustain serious injuries. A further estimated 14 920 road users are killed as the result of collisions.<sup>77</sup> This means that, on average, more than 40 persons die on South African roads and 167 are seriously injured each day. The Road Traffic Management Corporation (RTMC) estimates that more than 20 people per day are permanently disabled in traffic crashes.<sup>78</sup>

##### **3.1.2 Vehicle population and distances travelled**

There are almost 8.3 million licensed drivers and 9.2 million registered vehicles using South Africa's roads.<sup>79</sup> Out of the total vehicles registered, 8.3 million are motorised vehicles and 940 000 are towed vehicles. Motorcars account for 5.2 million of the motorised vehicles (63%) and light delivery vehicles for 1.9 million (23%) of the total. The average annual growth rate of motorised vehicles was 3.6% over the fifteen years since 1992. During the five years between 2002 and 2007, the motorised vehicle population increased by 5.4% per annum. As the vehicle numbers on the country's roads increase, so do the potential risks associated with accidents and bodily injuries or death. This exposes the RAF to a greater liability to pay claims.

Vehicles involved in the transportation of goods and passengers, on average, travel the longest distances each year and in particular trucks, buses and minibuses. These vehicles pose higher risks but pay the same fuel levy which is expected to meet the cost of providing road accident benefits to a greater number of vehicle occupants.<sup>80</sup> Vehicles transporting goods are more likely to inflict greater damages due to their size, mass and velocity.

##### **3.1.3 High accident and fatality rate**

In 2002 South Africa ranked 33rd highest out of 192 countries in the world on death rate from road accidents (with 30.3 per 100 000 population) compared to the world average of 19.14.<sup>81</sup> The fatality rate in 2006 of 32.7 per 100 000 population (and 31.3 in 2007) compares poorly with other developing and middle income countries. The accident rate, and therefore also the RAF's exposure to liability changes in relation to the number of vehicles on the road, distances covered per annum and the total population count.

In South Africa the total number of accidents as well as the number of incidents expressed as a rate of the registered vehicle population and distances travelled are increasing. Road users are travelling longer distances per annum and are involved in more accidents per 100 million kilometres covered. Roads are becoming more congested, increasing the

<sup>77</sup> Casualty statistics for 2007 of the Road Traffic Management Corporation.

<sup>78</sup> See road safety at [www.arrivealive.co.za/pages.aspx?i=1033/](http://www.arrivealive.co.za/pages.aspx?i=1033/).

<sup>79</sup> Figures as at 30 June 2008, per Road Traffic Management Corporation (RTMC) database.

<sup>80</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.135, p. 211.

<sup>81</sup> Drawn from the World Health Organisation database.

risks of accidents and injuries. Trends show a significant increase in the rate of fatalities and casualties per 100 000 population over the last decade. The severity of crashes is also increasing as more persons are killed per fatal crash and more are injured per casualty crash.

More than one-third (39.1%) of fatal injuries are sustained by pedestrians, either with vehicles whose drivers are identified, or in so-called hit-and-run collisions. Single-vehicle accidents in which the vehicles overturn and occupants are killed, account for 22.1% of road fatalities.

In South Africa, children are a particularly vulnerable road user group, with 26 child deaths recorded per 100 000 population, in comparison with 1.7 child deaths per 100 000 population in European countries.<sup>82</sup>

#### 3.1.4 Cost of accidents

A study by the Council for Scientific and Industrial Research (CSIR) for the Department of Transport (DoT) estimated the total costs of road accidents for South African society in 2002 at R42.5 billion. Human casualty costs comprised an estimated R23.8 billion (or 56%) of the total, while the balance of R18.7 billion was attributed to total vehicle damage and incident costs.<sup>83</sup>

#### 3.1.5 Injury risk factors in road accidents

Road accidents are caused by a broader range of factors than mere human error. The RAFC found that "*environmental, socio-political and economic factors all have their influence on road use and accidents in South Africa*".<sup>84</sup> Economic and demographic factors determine the extent to which road users are exposed to the risk of accidents, e.g. the level of mobilisation of road users, modes of travel used, volume of unnecessary trips, etc.<sup>85</sup> Among the risk factors affecting involvement in a road accident are unsafe road behaviour, drinking and driving, being a vulnerable road user, vehicle conditions and road lay-out.

Many risk factors influence the severity of an accident, including natural limitations of road users such as their night vision, ability to estimate speed and distance, the processing of information by the brain and features such as their age and general state of health, and the non-use of restraints such as seatbelts and helmets. External factors such as road design and maintenance, regulation of road use and law enforcement also have a bearing on crash risks and the severity of accidents.<sup>86</sup> Several risk factors affect the severity of injuries, such as delays in detecting collisions, presence of alcohol and drugs, delays in rescuing injured road users, lack of pre-hospital care and the quality of trauma care and rehabilitation.<sup>87</sup>

<sup>82</sup> Commission for Global Road Safety, *Make Roads Safe Report*, 2006, p. 8 at [www.makeroadssafe.org](http://www.makeroadssafe.org).

<sup>83</sup> De Beer, EJH & Van Niekerk, EC. 2004. *The estimation of unit costs of road traffic accidents in South Africa*. Report by CSIR, Transportek, p. 10. "Incident costs" include attendance at the accident scene by the SAPS, traffic authorities and emergency services (fire brigade), towing costs, insurance administration costs, damage to roads and road infrastructure, costs associated accident data management (reporting, recording, capturing, etc), and traffic delay costs form part of incident costs. (p. 52-53 of CSIR report).

<sup>84</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Executive summary, p. XII.

<sup>85</sup> World Health Organisation, 2004. *World Report on Road Traffic Injury Prevention*, p. 71, 157-158.

<sup>86</sup> World Health Organisation, 2004. *World Report on Road Traffic Injury Prevention*, p. 71, 157-158.

<sup>87</sup> World Health Organisation, 2004. *World Report on Road Traffic Injury Prevention*, p. 71; *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 3

In view of these considerations, it is necessary to review the basis on which the State intervenes to manage the risks of road accidents, and structure a social insurance scheme for road users to deliver appropriate and relevant benefits and services.

### 3.1.6 Road safety challenges

In comparison with international experience, South Africa has a very high accident and fatality rate. The socio-economic costs associated with road carnage are extremely high. Internationally, road traffic injuries are presenting huge challenges to public health systems and drain resources intended for development.

Socio-economic and historic developmental factors influence the modes of transportation and increase the risks associated with road use. Pedestrians are the most vulnerable road user group with nearly 40% of fatalities suffered by pedestrians each year. Single vehicle accidents account for 26.8% of fatalities, and in view of the RAF's existing liability for such incidents, many dependants may be excluded from compensation or receive only limited benefits.

### 3.1.7 Alcohol consumption and road use in South Africa

Drinking and driving is regarded almost universally as a major risk factor for road accidents. According to the World Health Organisation (WHO), impairment by alcohol is an important factor influencing both the risk of road accidents as well as the severity of the injuries resulting from them. Drivers who have taken alcohol are at a much higher risk of being involved in accidents than those with no alcohol in their blood. This risk increases rapidly as blood alcohol content rises, and as this increases, the severity of injury incurred in a road accident also increases. Studies have found that an alcohol-impaired driver has 17 times the risk of being involved in a fatal crash than an unimpaired driver.<sup>88</sup>

Alcohol consumption per capita in South Africa is high, and the WHO estimates that South Africa ranks 6<sup>th</sup> highest out of 46 African countries.<sup>89</sup> Nearly one-half of accidents and almost 60% of pedestrian fatalities can be linked to excessive use of alcohol.<sup>90</sup> Research studies in South Africa have shown that alcohol is a factor in 29% of non-fatal injured drivers and more than 47% of fatally-injured drivers. Another study found excess levels of alcohol in 52% of trauma patients involved in accidents.<sup>91</sup>

Table 3.1 below sets out the blood alcohol concentration (BAC) by category of transport user in a study on fatal injuries by the National Injury Mortality Surveillance System (NIMSS) of the Medical Research Council.

**Table 3.1 Blood alcohol level by transport user**

Transport user	Number in sample	BAC done		BAC positive		Mean BAC
		Number	%	Number	%	
Driver	951	482	50.68	258	53.53	0.16
Passenger	1 020	365	35.78	145	39.73	0.15
Pedestrian	2 747	1 195	43.50	702	58.74	0.20
Railway	337	139	41.25	47	33.81	0.20
Cyclist	236	109	46.19	49	44.95	0.16
Unspecified	1 480	343	23.18	164	47.81	0.16

Source: Medical Research Council, NIMSS 2005. *A profile of fatal injuries in South Africa*, p. 9.

### 3.1.8 A need for prevention

Worryingly, the high incidence of collisions, fatalities and injuries drive the RAF's liability to pay compensation. Undoubtedly, there is a need to employ effective measures to enforce

<sup>88</sup> World Health Organisation. Leaflet: Facts – Road safety –Alcohol.

<sup>89</sup> Drawn from WHO interactive database.

<sup>90</sup> Department of Transport, 2006. *National Road Safety Strategy*, p.26

<sup>91</sup> World Health Organisation, 2004. *World Report on Road Traffic Injury Prevention*, p. 82.

road safety and nurture a culture of responsible road use. In addition, it is necessary for Government to establish firm links between a benefit scheme for road users and road safety. Such links will be created at different levels:

- a. Between the entities responsible for road safety and the RAF to reduce risks and manage challenges in a coordinated manner
- b. Through the capture and exchange of data on the incidence and causes of accidents, and impact of injuries
- c. By linking unsafe and unacceptable road behaviour to the benefit scheme for injured road users – unsafe road use and vehicle transgressions must be deterred with additional surcharges, and a further surcharge will be placed on the sale of alcohol to strengthen the income of the scheme.

### 3.2 THE RAF AND HEALTHCARE

Over the five financial years 2004 to 2008, the RAF paid 6.9% of its income on medical costs to treat injured road accident victims. Despite an increase of 56.6% in medical compensation paid between 2007 and 2008, payments towards medical expenses only comprised 11.4 % of compensation paid by the RAF in 2008.<sup>92</sup>

The RAF deals with healthcare funding and provision in a limited number of areas. At present the RAF:

- a. Reimburses claimants for their medical expenses incurred to receive treatment for the bodily injuries sustained in road accidents<sup>93</sup>
- b. Pays claims of medical service providers for treatment rendered or goods supplied to injured road accident victims<sup>94</sup>
- c. Issues undertakings for the costs of future hospitalisation of a claimant, or treatment required by, or the provision of goods and services to a claimant, and reimburses the claimant after the costs have been incurred and on proof thereof<sup>95</sup>
- d. Uses its patient outreach programme to assist claimants with statutory undertakings for their future and ongoing medical care, to use the undertakings and to access the required treatment and services.

Currently the RAF mainly reimburses medical costs already incurred, without being in a position to influence the quality of healthcare. However, if and when sub-standard or poor healthcare is delivered, this results in "preventable" deaths or increased disability with significant financial consequences to the individuals, their families, the RAF and society. The social insurance scheme bears the added risk of poor healthcare in the form of higher compensation for loss of earnings, death benefits and general damages.

The RAFC found that the *"current scheme of road accident compensation neither assumes responsibility for nor contributes to the provision of the necessary healthcare facilities for the victims of road accidents. This is done by medical aid schemes, health insurance policies, employers, family members or the patients themselves."*<sup>96</sup> The RAFC concluded that, despite being a social insurance fund, it *"provides virtually no medical benefits"*.<sup>97</sup> While it could potentially be a major role-player in the provision and funding of

<sup>92</sup> RAF Annual Report 2008.

<sup>93</sup> Section 17(1) of the RAF Act.

<sup>94</sup> Section 17(5) of the RAF Act.

<sup>95</sup> Section 17(4) of the RAF Act.

<sup>96</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.101, p. 904.

<sup>97</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.102, p. 904.

actual care, it compensates the minority of persons who can document their medical expenses which have already been paid.<sup>98</sup>

According to the RAFC, this approach is *"inefficient because it results in very high service payments to intermediaries and is subject to over-servicing and possible abuse"* by providers.<sup>99</sup> The Commission cautioned that over-servicing creates structural inefficiencies within the broader healthcare system as private and exclusive services are expanded, while public sector services are not adequately protected.<sup>100</sup>

The RAFC concluded that *"the current system is inequitable because it only reimburses those who are already insured. Consequently, the majority of road accident victims, although they pay the fuel levy, receive no medical benefits from the Fund. The public health sector, which bears the greatest financial burden of costs of road accidents, receives no compensation."*<sup>101</sup> A further concern related to the potential for revenue retention by the public sector facilities that treat injured road users.<sup>102</sup>

### 3.3 THE PUBLIC-PRIVATE PROVIDER MIX

The present public-private mix poses challenges in the delivery of healthcare services for victims of road accidents. South Africa's population is estimated at around 48 million persons in 2008. An estimated 7 million people (15% of the population) have access to private healthcare through medical scheme membership.<sup>103</sup> The balance use the public health system which provides services to an estimated 41 million people (2008) at a total cost of around R68 billion.<sup>104</sup>

Evidence placed before the RAFC indicated that the South African health system is *"dividing more and more explicitly into a public sector covering the indigent, low-income and high-income poor risks with a declining real budget, and private sector that provides exclusive healthcare services to the high-income good risks at higher and higher costs"*.<sup>105</sup> The public sector is under increasing pressure due to loss of medical and nursing staff to the private sector when it is also required to care for a poorer and sicker population.<sup>106</sup>

The Taylor Committee<sup>107</sup> found that structural problems in the healthcare sector perpetuated inequities and a skewed distribution of resources. Firstly, the public sector serves a growing population (mostly low-income and indigent people) while the sector of the population accessing private medical care has stagnated or declined.<sup>108</sup> Secondly, the public sector is burdened by the HIV/AIDS pandemic and diseases associated with poverty, while the private sector uses risk selection to shift those patients to the public sector. Thirdly, financial allocation is declining in real terms in the public sector, while the private sector has been increasing expenditure at almost double the annual inflation rate

<sup>98</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.102, p. 904.

<sup>99</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.103, p. 904.

<sup>100</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.103, p. 904.

<sup>101</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.110, p. 905.

Since the RAFC made this finding, several provincial hospitals commenced with the submission of supplier claims in terms of sec 17(5) of the RAF Act.

<sup>102</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.110, p. 905.

<sup>103</sup> National Treasury. 2008. *Estimates of National Expenditure 2008*. Vote 14 Health, p. 275; *Business Day*, 15 July 2008, "National health cover edges closer" on [www.businessday.co.za](http://www.businessday.co.za).

<sup>104</sup> National Treasury. 2008. *Estimates of National Expenditure 2008*. Vote 14 Health, p. 275.

<sup>105</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.32, p. 888-889.

<sup>106</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.33, p. 889.

<sup>107</sup> Prof Vivienne Taylor was the Chairperson of a committee of experts, appointed by Cabinet to inquire into and make recommendations to Government on a comprehensive social security system. It reported to Government in 2002.

<sup>108</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 85; *Business Day*, 15 July 2008, "National health cover edges closer" on [www.businessday.co.za](http://www.businessday.co.za).



on a per capita basis.<sup>109</sup> Fourthly, the public sector experienced a brain-drain to the private sector and so effectively, public resources were tapped to provide healthcare to a younger and healthier population in the private sector. Substantial tax subsidies for private health cover of around R8 billion were viewed as exacerbating factors.<sup>110</sup>

The RAFC also recorded that less than 50% of all professional nurses and fewer than 25% of general practitioners work in the public sector<sup>111</sup>, even though that sector serves an estimated 85% of the population. According to the RAFC injured road accident victims who need to access emergency and acute care, are affected by the fact that the vast majority of surgery-related specialists and radiologists only work in the private sector.

### 3.4 RESOURCES IN THE PUBLIC SECTOR

Public hospitals have limited opportunities to recover the costs for treatment given. Patients who earn R72 000 and less are subsidised by Government and only pay a nominal fee.<sup>112</sup>

Although a few public sector hospitals charge higher income patients earning above R72 000 per annum fees for their services<sup>113</sup>, in many instances it is not an effective source of revenue for the specific hospital. This is due to a number of reasons:

- a. Revenue earned by public hospitals is often not retained by the hospital, but paid to the provincial treasury department, and only a number of provinces have introduced limited revenue retention strategies.
- b. Income status is assessed at point of service when the patient is in need of care and it is difficult to verify the information
- c. Public hospitals may not turn patients away
- d. Bills are produced at point-of-service and due to cost considerations and the administrative burden, it is difficult to follow up on unpaid accounts.
- e. Fees are subsidised and charged at point-of-service.

The RAFC considered the challenges faced by the public sector referred to in par 3.3 above. It made a number of recommendations to utilise the fuel levy income to improve facilities in public sector hospitals and to stem the flow of skills and fee-paying patients to the private sector.

The RAFC recommended that the social security benefit scheme for road users should assist the public sector to deliver quality healthcare at an appropriate and affordable cost.<sup>114</sup> It specifically recommended that *"a portion of the fuel levy which funds the road accident benefits scheme should be used to contribute to improvement of the healthcare provided generally in the public sector and particularly in the fields of emergency medical services, trauma care, rehabilitation and life care."*<sup>115</sup>

In its recommendations to Government the Taylor Committee said *"the public sector must remain the backbone of the overall health system and be protected from chronic under-funding"*.<sup>116</sup>

<sup>109</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 86; *Business Day*, 15 July 2008, "National health cover edges closer" on [www.businessday.co.za](http://www.businessday.co.za).

<sup>110</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 86.

<sup>111</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.34, p. 889.

<sup>112</sup> Department of Health, Meeting on 28 August 2008.

<sup>113</sup> Department of Health, Meeting on 28 August 2008.

<sup>114</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.240, p. 878.

<sup>115</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.243, p. 879.

<sup>116</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 86.



It is Government's view that the social security benefit scheme for injured road users has a greater obligation towards the public sector than the private sector. Such a scheme must contribute to the cost of care provided to the majority of the population in the public sector. However, the role and contribution of the private sector in providing trauma care and rehabilitation to injured road users must also be recognised.

### 3.5 CURRENT CHALLENGES

When considering how resources must be allocated to treat injured road accident victims, Government has to reflect on the current realities and many complex challenges regarding healthcare provision and financing. These challenges are grouped in respect of:

- a. Access to healthcare
- b. Data on injuries, disablement and cost of treatment
- c. Medical funding risks in the current scheme
- d. Structural problems in the current scheme
- e. Skew distribution of resources
- f. Fees and payment
- g. Socio-economic realities.

#### 3.5.1 Access to healthcare

Under the current RAF compensation scheme injured road users without financial means or private medical insurance find it difficult to access appropriate medical care quickly and speedily. To gain access to treatment, many injured road users are left out-of-pocket. Injured persons are required to pay for the medical care, or use their medical insurance schemes, and claim the expenses from the RAF when they submit their personal injury claims. As a result, many road accident victims receive no medical benefits from the RAF, even though they pay the fuel levy. The RAFC recommended that the new benefit scheme be founded upon five basic principles of entitlement, independence, flexibility, high quality, rapid decision-making and speedy provision of benefits.<sup>117</sup>

#### 3.5.2 Data on injuries, disablement and cost of treatment

Data on the incidence of serious injury and the number of persons injured in road accidents who sustain long-term and life-changing disablement and loss of functioning are neither reliable nor sufficient to make assumptions on the cost of life care.<sup>118</sup>

Currently the RAF's expenditure on medical care is around 10% of total claims expenditure. Proposals on the allocation of resources for medical care in a no-fault system are hampered by the absence of reliable national information to make informed estimates on the costs of treating injured road accident victims in the public sector.

#### 3.5.3 Medical funding risks in the current scheme

In the present RAF scheme cross-subsidisation is distorted and bottom-up. The poor subsidise the wealthy to access exclusive healthcare services, and yet the low, middle and high income groups all pay the same fuel levy. Such a situation is inequitable and contrary to the objectives of a social security scheme.

The RAFC found that the RAF expends less medical compensation in respect of the poorer and needier sector of the population. It was concerned that this may affect the

<sup>117</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 41, par 41.116, p. 1338.

<sup>118</sup> The RAFC also encountered this challenge. *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 30, par 30.141, p. 980.

quality of care afforded to them and the viability of the public services upon which they depend.<sup>119</sup>

Delays in the payment by the RAF of claimants' medical expenses or the accounts of healthcare service providers may be several months or even a few years. To compensate for the risks that claims may be refused or paid long after the service has been rendered, there is an incentive on the part of healthcare providers to inflate healthcare accounts.

Because payment depends on the merits of the case (i.e. the absence of fault or the degree of the patient's contributory fault), access to medical care is often delayed or denied. The RAFC found that the current system which reimburses claimants for their medical expenses "*delays settlement, leads to loss of management opportunity (of the injury) and effectively withholds treatment altogether from some claimants*".<sup>120</sup>

The RAF lacks capacity to review medical bills and so it is exposed to the risks of over-servicing and over-charging.<sup>121</sup>

Medical claims are administered one-by-one after the expense has been incurred and after the service is delivered. The RAF has no agreements with healthcare providers regarding the quality or frequency of service or desired outcomes of treatment. Administration of medical claims on an individual basis after-the-fact is labour intensive and expensive.

Problems regarding double compensation arise if patients are members of medical insurance schemes and also claim for reimbursement from the RAF. According to the RAFC, patients who are covered by a medical scheme or medical insurance may be compensated twice – first by the scheme who pays the service provider directly, and again by the RAF if the claimant claims the medical expenses. Should the RAF also pay, the money is received and retained by the patients who never made any payment to the service provider in the first place.<sup>122</sup> In addition, compensation paid by the RAF to claimants in respect of medical costs, may not necessarily be spent on healthcare,<sup>123</sup> e.g. if a claimant is also covered by a medical scheme, and payments made to provincial hospitals in respect of supplier claims are channelled to the provincial treasury and not necessarily retained by that hospital for healthcare.

Given that the majority of road accident fatalities and a significant proportion of survivors have blood alcohol levels above the legal limit, it is feared that the RAF currently pays if the injury or loss was caused by negligence, and mostly disregards or under-estimates the aggravating contributory effect of alcohol. It is envisaged that policy changes will enhance the medical care of inebriated persons, but measures will also be introduced to prevent unsafe road use.

### 3.5.4 Structural problems in the current scheme

As was discussed in Chapter 2, a benefit scheme cannot sustain defined inflexible benefits (such as those offered by the RAF) unless a sponsor (e.g. Government) guarantees financing of the scheme and is committed to meet the balance of the cost in the case of adverse experience. Considering the uncertain actual costs of the benefits, it is difficult for Government to provide such an explicit guarantee. As a result, the Fund is required to pay medical expenses over which it has no control with fuel levy income over which it also has no control. It is untenable that the RAF spends R776 million on medical costs in the 2008 financial year, while it is not in a position to influence the quality and cost of care.

<sup>119</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.160, p. 862.

<sup>120</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.171, p. 864.

<sup>121</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.172, p. 864.

<sup>122</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.160, p. 861.

<sup>123</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.52, p. 894.

### 3.5.5 Skew distribution of resources

The majority of road accident victims (as high as 80% to 85%) are treated in the public sector within constraints of national and provincial budgets, but the public healthcare facilities receive no or limited payment for the services rendered. Even if some public facilities are reimbursed for services rendered to road accident victims, the payment is often received by the provincial treasury and not by the treating hospital or provincial department of health.

The RAFC found that trauma care in South Africa is inadequate and there is an unequal distribution of care among public and private sector providers and between rich and poor road accident victims.<sup>124</sup> The RAF's contribution towards healthcare is directed towards private hospitals so that funds are "*diverted from the hospitals, clinics and healthcare practitioners who serve the bulk of the population*".<sup>125</sup>

The public sector has very limited, if any, rehabilitation services, while such services in the private sector may be limited to two or three of the larger cities in South Africa.

### 3.5.6 Fees and payment

Medical and healthcare service providers are mostly paid on a fee-for-service basis, and the RAF is often regarded as the guarantor of payment if the merits of the accident favour the patient. Regarding RAF patients, the Fund is a retrospective funder of healthcare (i.e. it pays after the services have been rendered), while there are no checks and balances in place in respect of quality, frequency of service or treatment outcomes. In the private sector, healthcare is delivered to injured road accident victims by providers in an uncontrolled and unmanaged environment where a third-party payer (the RAF) is expected to pay on a fee-for-services-and-no-questions-asked basis. This state of affairs neither provides value to the patient, nor security to the taxpayer.

### 3.5.7 Socio-economic realities

Even if benefits are awarded on a no-fault basis which may enhance access to medical care, a risk remains that injured victims may "*receive differential treatment on the basis of socio-economic status and the ability to access private medical insurance*".<sup>126</sup> More expensive treatment for individuals who can afford it should not be available at the expense of others who cannot afford it.

## 3.6 CONCLUSION

It is acknowledged that socio-economic, demographic and historic developmental factors influence the modes of transportation and increase the risks associated with road use and accidents. It is also recognised that accidents are caused by a broader range of factors than mere human error. Therefore a social insurance system that provides a compensation or benefit scheme for persons affected by injury or death in road accidents must accommodate injury and loss caused by factors other than human failure.

The socio-economic costs associated with road carnage in South Africa are extremely high. Although the fuel levy is charged to redress the impact of injury and death in road accidents and to lessen their effect on individuals, families and society, it does not achieve this objective successfully. Less than 9% of the fuel is directed towards medical costs incurred to treat people injured in road accidents.

Government will introduce policies to ensure that a greater portion of the fuel levy income is available for timely emergency medical and trauma care as well as rehabilitative care to reduce the impact of injuries. While the current RAF primarily reimburses medical expenses or pays the accounts of service providers after the treatment was rendered, and

<sup>124</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 28, par 28.1, p. 881.

<sup>125</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.160, p. 862.

<sup>126</sup> Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.242, p. 879.

does not influence the quality or appropriateness of care, the new benefit scheme will assume an entirely different role.

The new benefit scheme for road users will facilitate access to and finance healthcare in a pro-active manner to enable seamless access to appropriate medical care. In order to overcome the risks of delays, inefficiencies and limited access to medical care, a different basis for funding healthcare provision to road accident victims will be introduced.

## 4 LEGISLATIVE AND POLICY CONTEXT FOR REFORM

### 4.1 FIRST STEPS TOWARDS TRANSFORMATION

#### 4.1.1 The draft White Papers on the RAF

Between 1995 and 1998 the Ministry of Transport and the RAF published several policy documents to address structural problems in the compensation system and to steer the RAF towards improved financial health. A draft White Paper on the Multilateral Motor Vehicle Accidents Fund was published in June 1996 and stated that “*despite the implementation of recommendations of various commissions of inquiry and regular amendments of the governing acts, the financial condition of the system has progressively deteriorated*”.<sup>127</sup> Government sought a system that would be “*economically viable, stable and sustainable in the long term*”. The aim was to channel “*available resources primarily to the more seriously injured and the poorer section of the population*”.<sup>128</sup> Policy proposals entailed the removal of restrictions on passenger claims, payment of limited benefits on a no-fault basis, abolition of general damages, speeding up of claims settlement and measures to reduce legal and other settlement expenses.<sup>129</sup>

A second draft White Paper proposed a revised benefit framework with no-fault and fault-based elements.<sup>130</sup> Government’s objectives were to achieve an affordable and stable compensation system that operated more efficiently in terms of time, cost and expenses incurred to deliver the benefits, as well as a more effective system which avoided shortcomings, inequities and anomalies.<sup>131</sup>

#### 4.1.2 The 1998 White Paper on the RAF

In 1998 the Department of Transport published a *White Paper on the Road Accident Fund*<sup>132</sup> in which it proposed interim solutions to stem growing financial losses and to create a more viable financial system for claims that arose from 1 May 1998.<sup>133</sup> A fault-based system with structured state benefits which introduced thresholds to access benefits and ceilings to cap liability was proposed. Risk cover would protect negligent drivers against claims by persons injured and dependants of breadwinners killed as a result of collisions. The objectives were to channel resources towards real economic loss suffered, attain a more even distribution of limited resources, and to make more funds available for seriously injured people. At the same time access to the benefit system had to be improved, and benefits paid more rapidly and effectively. Further aims were to contain settlement and administration costs so that scarce resources reached victims, and to contribute to the reduction of road accidents.<sup>134</sup>

#### 4.1.3 The Road Accident Fund Commission

In an effort to accommodate the concerns of many interest groups about the White Papers and to find answers to multifaceted challenges, the Government recommended that an

<sup>127</sup> Department of Transport. 1996. *Draft White Paper on the Multilateral Motor Vehicle Accidents Fund*, Preface, p. 1.

<sup>128</sup> Department of Transport. 1996. *Draft White Paper on the Multilateral Motor Vehicle Accidents Fund*, p. 70.

<sup>129</sup> Department of Transport. 1996. *Draft White Paper on the Multilateral Motor Vehicle Accidents Fund*, p. 70.

<sup>130</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 1, par 1.26, p. 6.

<sup>131</sup> Department of Transport. 1997. *Second draft White Paper on the Road Accident Fund*, p. 17.

<sup>132</sup> Department of Transport. 1998. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998.

<sup>133</sup> Interim solutions were proposed as Government opted to appoint a judicial commission of inquiry at the same time.

<sup>134</sup> Department of Transport. 1998. *White Paper on the Road Accident Fund*. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998, p.17.

independent Road Accident Fund Commission be set up. The Commission was appointed "to find long term and sustainable solutions to complex problems"... and "to reconsider in its entirety the system of benefits and/or compensation for victims of road accidents".<sup>135</sup>

The Road Accident Fund Commission (RAFC) was appointed on 1 June 1999 "to enquire into and make recommendations regarding a reasonable, equitable, affordable and sustainable system, for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents".<sup>136</sup> The work, findings and recommendations of the RAFC are considered in par 4.3 below.

#### 4.1.4 The Inter-departmental Committee for Road Accident Victims

In 2003 Cabinet accepted, in principle, the recommendations of the RAFC.<sup>137</sup> The DoT conducted further work on the implications of some of the recommendations. Further work was undertaken by the Department of Transport through an Inter-departmental Committee for Road Accident Victims, which worked closely with Government's Social Security Cluster. This work culminated in a document, *Strategy for the restructuring of the Road Accident Fund as compulsory social insurance in relation to the comprehensive social security system*, published on 8 September 2006.<sup>138</sup> The strategy document proposed a no-fault benefit system with limited benefits that focused on the poor and most vulnerable sectors of the population, and which formed part of the comprehensive social security system.

#### 4.1.5 Public consultation

The debate over the restructuring of the compensation system administered by the RAF commenced with public hearings in Parliament in March 1996. Further public hearings were held in Parliament in July 1996. This was followed by bilateral meetings with stakeholders, a two-day conference with stakeholders in November 1996 and a conference held by the Parliamentary Portfolio Committee on Transport in January 1997. A second draft White Paper was released in July 1997, where after meetings were held with stakeholder task teams during August 1997. Further consultations on a revised draft White Paper were held in October 1997 and December 1997. During its three year lifespan between 1999 and 2002 the RAFC engaged in consultations and discussions with many individuals, organisations and stakeholders of the compensation system. It undertook primary and secondary research, and sought advice from experts, both nationally and internationally. Following the publication of the strategy document in September 2006, Government received comments and inputs from several respondents.

### 4.2 CHANGES TO RAF LEGISLATION

Between 2005 and 2007 Government introduced specific policy and legislative changes to the current RAF compensation system. The Road Accident Fund Amendment Act of 2005 was promulgated with effect from 1 August 2008 to improve the future financial position and sustainability of the Fund.<sup>139</sup> The Amendment Act increased the RAF's liability to pay compensation in some areas and introduced new limitations in others. The long-standing

<sup>135</sup> Department of Transport. 1998. *White Paper on the Road Accident Fund*. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998, p.12.

<sup>136</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Executive Summary, p. XI.

<sup>137</sup> Department of Transport. Circa 2005. *Incorporation of the Road Accident Fund in the Comprehensive Social Security System – Presentation of proposed policy change to the Social Cluster*.

<sup>138</sup> Department of Transport. Notice 1315 of 2006, *Government Gazette* No 29017, 8 September 2006.

<sup>139</sup> [www.raf.co.za](http://www.raf.co.za): Notes on the RAF Amendment Act, par 1.

cap on the claims of certain passengers was removed and the RAF's liability to pay other categories of claimants was expanded.

The RAF Act, as amended, excludes any liability on the part of the RAF to pay compensation in respect of emotional shock suffered by secondary victims.<sup>140</sup> The claimant's common law right to claim damages against the wrongdoer is abolished, except in instances where the Fund is unable to pay compensation and in respect of the emotional shock claims by secondary victims. In addition, the amended Act revokes a claimant's entitlement to legal costs when the RAF's offer of settlement for a claim is accepted.<sup>141</sup>

These amendments are regarded as interim solutions to improve the RAF's financial position, contain its liability and ensure its ability to pay claims into the future. More comprehensive and long term solutions are needed to enhance access to medical care by injured road users, and to address the sustainability, effective service delivery and affordability of the benefit scheme.

#### 4.3 THE WORK OF THE ROAD ACCIDENT FUND COMMISSION

In formulating policies for a revised benefit scheme for road users, consideration was given to the extensive findings and comprehensive recommendations presented by the RAFC. The report identified major structural and systemic problems in the current compensation system. It discussed the unsatisfactory, ineffective and expensive approach to provide compensation based on indemnity and liability insurance principles.

The Commission emphasised failures in the system to facilitate access to healthcare and to contribute to the provision of medical care when injured road users most require it. Among the other problems analysed and named were the high cost structure which consumes resources, over-spending on minor and negligible injuries and the disproportionate spending on non-financial loss compared with actual loss suffered. The RAFC singled out a major flaw in the financing basis which fails to connect revenue and the scheme's liability to pay claims.

The RAFC found that the shortcomings and problems of the current system are of such a fundamental nature that the scheme is inequitable, inefficient, unsustainable, unreasonable and unaffordable.

Comprehensive and far-reaching reforms for the restructuring of the road accident compensation scheme were proposed, and which are consistent with the constitutional right to social security, healthcare and dignity, as well as Government's obligation to utilise resources optimally. Among the recommendations are:

- a. A shift from legal liability insurance to a social security scheme on a no-fault basis
- b. Comprehensive changes from the present statutory liability and common law basis of paying compensation to the provision of structured social security benefits which are aligned to the broader social security system
- c. A focus on timely and adequate trauma and acute care
- d. Access to rehabilitation to reduce the impact of injury and disability, to enable functionality and independent living, and to enhance social interaction and the capacity to earn

<sup>140</sup> A secondary victim is a person who does not sustain any other physical injuries in a collision, and may not even be involved in or be in the immediate vicinity of an accident, but suffers psychiatric or psychological illness or disorder caused by emotional shock when observing, hearing or learning about the death or injury of another person in a road accident.

<sup>141</sup> The Amendment Act repealed the provisions of sec 17(2) of the RAF Act which provided that a claimant was entitled to agreed party and party costs or taxed party and party costs upon acceptance of an offer of settlement for compensation.

- e. Stated and defined benefits which are payable periodically rather than as lump sums and which include thresholds to enter the claims system, ceilings to keep benefits reasonable and affordable, and waiting periods before being entitled to claim (to avoid frivolous claims)
- f. Review of disability assessments and entitlement to benefits in response to changed circumstances and needs
- g. Long-term and life care for the very seriously injured
- h. Moderate benefit objectives and practices which should reflect South Africa's broad based needs and limited resources
- i. The creation of a new parastatal body to administer the new scheme separately from the current system administered by the road accident fund
- j. Measures to ensure that risks are managed, and services are delivered speedily and effectively
- k. Recommendations for a social responsibility role to develop skills and fund educational programmes in areas relevant to the scheme's risks and service delivery.

It is recognised that the structure and principles of the indemnity compensation system *"has been to the disadvantage of the poor and disabled, and has led to rising costs and administrative delays"*.<sup>142</sup> Government has accepted the recommendations of the RAFC in principle and it is proposed that a no-fault benefit scheme be introduced for persons injured or affected by the death of an earner as the result of a road accident.<sup>143</sup>

#### 4.4 SOCIAL SECURITY

##### 4.4.1 Purpose of social security

South African society is characterised by great disproportions in income, economic capability and lifestyle. Government's social security measures endeavour to protect people from misfortune, distress and significant risks of life caused by unemployment, illness, injury and disability, death of a breadwinner, old age and retirement. Such benefits provide security to individuals, families and communities, promote social inclusion and preserve human dignity.

It is believed that the core aim of social security is to achieve social solidarity so that the risk of misfortune becomes the comprehensive or collective responsibility of the whole society. Essentially social solidarity aims to protect people against facing serious reversals in their social participation through sharing of risks (risk-pooling) and limited cross-subsidies. Effective social security provisions recognise people's interdependence and the value of individual dignity, equality of opportunity and social justice. Social security measures provide the means for people to participate in social and economic development.<sup>144</sup>

Benefits should largely depend on criteria that are unrelated to socio-economic status and be high enough to enable recipients to participate fully in society. These objectives stretch beyond mere poverty relief.<sup>145</sup>

<sup>142</sup> National Treasury. 2007 *Budget Review*, Chapter 6, Social Security, p. 109.

<sup>143</sup> National Treasury. 2007 *Budget Review*, Chapter 6, Social Security, p. 109.

<sup>144</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 41.

<sup>145</sup> National Department of Social Development. 2007. *Gaps in the system of comprehensive social security and an assessment of the policy options*, draft for comment, April 2007.



#### 4.4.2 Obligations of the state and Government

The Constitution of South Africa imposes a duty on the state to assist, support and protect its citizens. Section 27 (1) of the Constitution recognises people's right to have access to health care services, including reproductive health care; sufficient food and water; and "social security, including, if they are unable to support themselves and their dependants, appropriate social assistance." Section 27 (2) compels the state to "take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of each of these rights".

More specifically, the Constitution recognises socio-economic rights as basic human rights, based on the values of dignity, equality and freedom. Positive action is required from Government to develop a coherent and comprehensive social security system via policy, statutory and other measures, in order to meet the needs of those living in extreme poverty and lacking access to socio-economic rights.<sup>146</sup>

#### 4.4.3 Structure of South Africa's social security system

Government believes that an effective and efficient social security system is of vital importance to support the country's socio-economic and development goals. A social security system does not only include public schemes or measures. Government regards social security arrangements as a range of collective and individual social, fiscal, occupational and welfare measures, of private, public and mixed origin aimed at providing social cover to members of society. Such an all-embracing approach is adopted to include and fully utilise all of the limited resources available to society.<sup>147</sup>

South Africa's comprehensive social security system incorporates a range of social welfare schemes offering social welfare services aimed at

- a. Short term social relief (financed from general taxation)
- b. Social assistance for minimum basic livelihood protection (financed from general taxation)
- c. Social insurance for income support and compensation for specific at-risk groups, e.g. Road users and workers (financed from earmarked taxes or levies)
- d. Voluntary arrangements for protection against specific contingencies and disruption of lifestyles (financed by private and employment arrangements and regulated by the state).

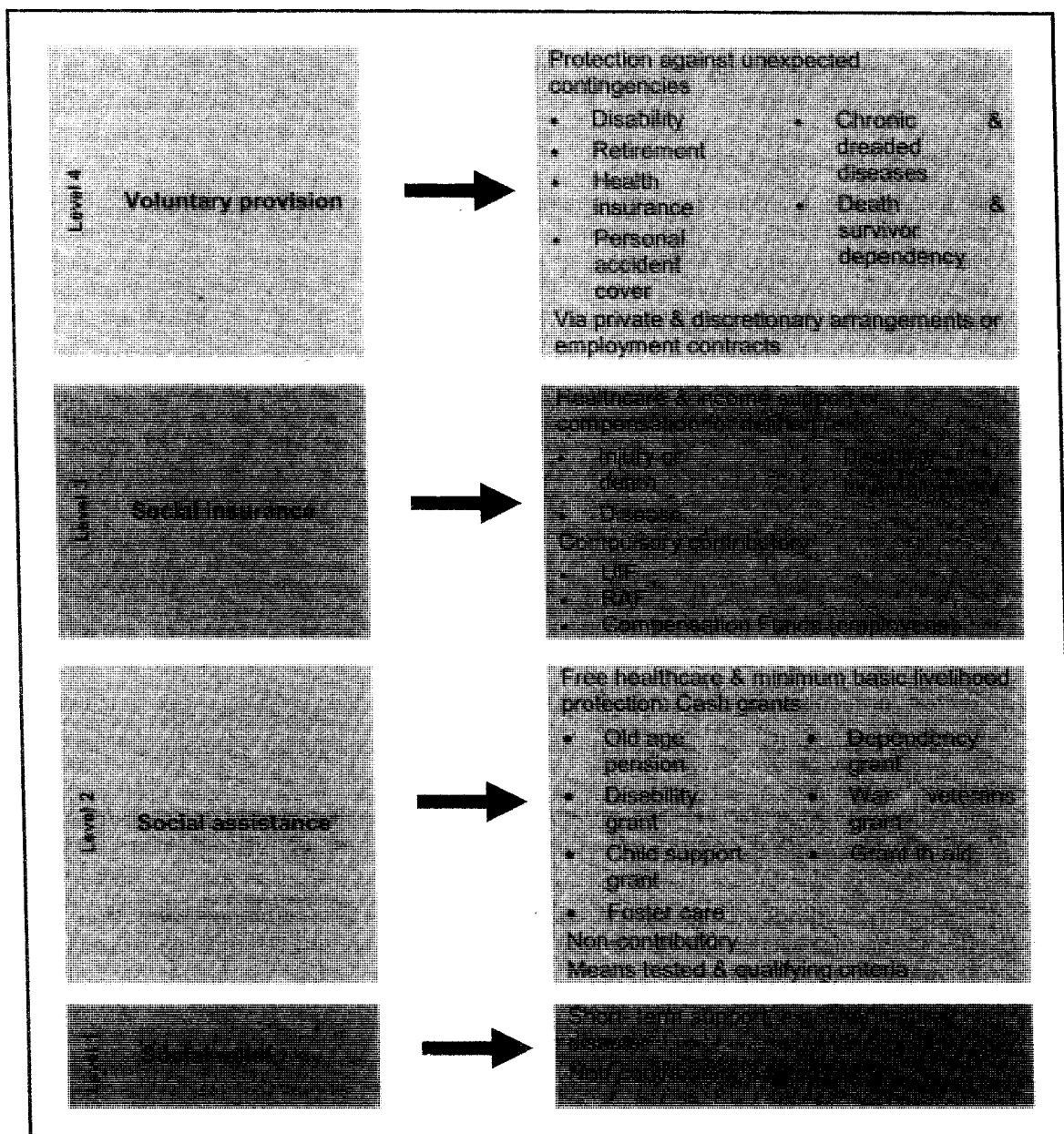
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<sup>146</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 43.

<sup>147</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 50.

The components of South Africa's social security system are illustrated below.

**Figure 4.1 Levels of the social security system in South Africa**



However, Government provides social and service delivery programmes on a much wider scale than the schemes referred to above. The social budget includes other critical areas of social security such as the provision of access to water, electricity, sanitation, healthcare, education, school nutrition programmes, housing, land and productive resources, and transportation (via transport subsidies).

#### 4.4.4 Expanding the social security net

Since 1994 Government has adopted a variety of policy, statutory and other measures to develop a more equitable, coherent and comprehensive social security system. Within limited resources, it has gradually expanded the scope and reach of social security benefits and services to support those in need. As a result it has extended cover to employed and unemployed persons, the poor, vulnerable and elderly, as well as to those in need of healthcare.

In addition, Government continues to review its social security programmes, re-allocate resources so that socio-economic rights currently not available or fully available, may be delivered. The restructuring of the social insurance benefits for road accident victims is part of this ongoing process.

#### 4.4.5 Social insurance and level of state involvement

The state may be involved at different levels to provide protection against the risks of injury, disability and other misfortune. Table 4.1 sets out the different options available to the state to either recognise or enable the provision of social insurance to its citizens. The implications of each option are outlined.

**Table 4.1 Levels of state involvement in social insurance provision**

Level		Implications
1	No direct involvement	A <i>laissez faire</i> approach with no regulation of insurance industry
		State provides a framework for the legal & court system
		Legal system provides common law remedies for injury & misfortune
		Citizens deal with own loss & fate via common law legal rules & courts
2	Limited regulation	Limited, if any social protection financed from taxation
		In addition to option 1, state makes limited socio economic intervention to enable people to take care of themselves
		State provides a statutory framework for private insurance provision
		Citizens make own arrangements to insure against risks of personal accident and liability for harm caused to others
3	Regulated compensation system	Many remain uninsured & deal with loss via common law rules
		In addition to options 1 & 2, state makes coercive socio-economic intervention to protect citizens
		State compels motorists to take out liability insurance against the risk of injuring and causing loss to another, e.g. motorists buy liability insurance from private companies
		Insured person is the motorist and injured party claims from the motorist's insurance company
4	State-operated social insurance schemes	Approach similar to the first MVA legislation in 1942
		Instead of option 3, state finances and operates social insurance schemes
4a	State-operated liability insurance	May operate either liability insurance or personal insurance scheme
		Mandatory cover to ensure that injured persons can claim compensation for injury or death caused by the wrongdoing of another
		State assumes liability to make good loss caused by another party, e.g. the motorist who knocks over a cyclist, or an employer who does not maintain a safe workplace and employees are injured
		Insured person is the wrongdoer or negligent party (motorist or employer)
4b	State-operated personal accident or personal risk insurance	Injured person is the third party and claims from the state scheme
		Entitlement may be based on fault or no-fault
		Mandatory state-provided personal accident insurance to enable people to access benefits in case of injury or other misfortune, e.g. no-fault cover for persons injured in road accidents
4b	State-operated personal accident or personal risk insurance	Entitlement to benefits usually based on no-fault approach on grounds of socio-economic and equity considerations, rather than legal principles

South Africa's social insurance system includes three state-operated schemes, namely the compensation funds for workers (with the main fund regulated by the Compensation for Occupational Injuries and Diseases Act (COIDA), 130 of 1993), the Unemployment Insurance Fund (UIF) and the Road Accident Fund (RAF), as well as the private social insurance market which offers a range of life, disability, trauma, health, emergency medical, personal accident, income protection, retirement and property products.

#### 4.4.6 Priorities and limited resources

In a developing country with limited resources and competing demands for socio-economic relief, it is not possible to meet every need. Government has to set priorities for social support and target the most vulnerable groups first. In the process it is necessary to consider the long-term sustainability and affordability of social security schemes, both from its perspective as the allocator of public resources, and the perspective of the taxpayer. When setting priorities and policies for social security, Government will ensure that it promotes the efficient, economic and effective use of resources.<sup>148</sup>

Although an increasingly larger portion of public spending is being allocated to social services, there are limits to what can be afforded. When financing an individual social insurance scheme, benefits will be designed which are reasonable, equitable and sustainable in relation to other socio-economic priorities, and what the taxpayer can afford.

#### 4.4.7 Principles in social insurance arrangements

Social insurance aims to protect people from risks and contingencies of life and in the workplace. The state intervenes in the area of social insurance as many people are unable to protect themselves (due to affordability), or have other spending priorities. Government believes that the following principles underpin social insurance arrangements:

- a. Financing should primarily be contributory, but the scheme may be partly subsidised via the tax system
- b. Mandatory participation is needed to prevent non-coverage, anti-selection and the failure to provide for earnings loss and survivor support
- c. Pooling of risks for earmarked target groups (e.g. road users who may be injured in collisions) must be appropriate
- d. Sound financial arrangements must be made to secure and manage the income; which must be linked to the insurance cover provided and liabilities incurred by the scheme
- e. Principles of social solidarity and cohesion should be advanced
- f. Cross-subsidies (by higher income groups) may be used to assist lower-income groups to access the system
- g. For considerations of equity and sustainability, cross-subsidies should not be made available to high-income groups (as is the case under the RAF's dispensation where the fuel levy paid by the poor subsidise the large awards for loss of income by high-income earners)
- h. Death and disability benefits should be earnings-related (as social insurance covers a defined at-risk group and is not intended to offer benefits on par with social assistance)
- i. The social insurance scheme should share common principles, objectives, and linkages with other social insurance schemes (e.g. the basis for entitlement is no-fault, access to healthcare and rehabilitation, administrative dispute resolution mechanisms, etc.)
- j. Double-dipping (i.e. claiming benefits for the same injury or incident from separate social insurance funds) should be avoided.

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<sup>148</sup> Section 195(1) of the Constitution, 1996.

#### 4.4.8 Legal base for social insurance

The legal base for and nature of claims in delict and social security benefits differ completely. The table below compares the differences and summarises key components of Government's policy reforms to be introduced to a benefit scheme for road users.

**Table 4.2 Comparison of the nature of delictual and social security claims**

Comparison	Delictual claim	Social security
Legal base	Fault, negligence or wrongdoing Exclusions for own negligence	Fault not relevant; Entitlement based on need and meeting criteria to access benefits Universal access with social policy exclusions
Purpose	Protect driver from liability claims Compensate injured party for loss and expenses incurred	Protect against misfortune and specific risks for persons injured and those causing accidental injury
Aim	Restitution to condition before injury (impossible); financial reward	Curative and supportive to enable person to live with dignity and participate in economy and society
Focus	Individualistic approach	Social solidarity and risk pooling
Benefit structure	Open to dispute and determined by Courts	Defined benefits and rules
Mode	Money and financial award	Assistance, facilitation to access services and limited monetary benefit
Pain and suffering	Compensation paid	No benefits paid
Frequency	Once-off lump sum payments	Periodic payments
Financing	Liability insurance premiums	Taxation with the option of some risk-based financing through additional surcharges

#### 4.4.9 Social security for road users

An estimated 3% of South Africans are disabled or live in a household with a person who is disabled. Disability touches the lives of family members, dependent children, friends, employers and colleagues, caregivers and members of the community. Disabled people are often excluded from the mainstream of society and are challenged in accessing fundamental rights. Therefore a core focus of the new benefit scheme for road users will be to facilitate timely access to appropriate healthcare to alleviate the impact of disability on economic and social participation.

The restructured benefit scheme for road users will form part of the compulsory social insurance schemes, be based on social security values and the benefits offered will be related to those offered within the broader social security system.

#### 4.5 RATIONALE FOR INTERVENTION

In response to the proliferation of accidents resulting from the arrival of the motor vehicle, governments worldwide have increasingly intervened in the common law of delict and liability insurance cover through the introduction of compulsory third party insurance or publicly funded benefit schemes for road users.<sup>149</sup>

Injuries resulting from road accidents may lead to long-term disability and impact on a person's ability to work and interact in society. According to the Taylor Committee the impact of disability stretches beyond the injured or disabled person. Disability touches the lives of family members, dependent children, friends, employers and colleagues,

<sup>149</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 6, par 6.142, p. 129.



caregivers and members of the community.<sup>150</sup> Disabled people are often excluded from the mainstream of society and are challenged in accessing fundamental rights.<sup>151</sup>

*"Government has an interest in the welfare of all road users because it is their very participation in society and their use of public roads that renders them vulnerable to injury, with consequences that are distressing and burdensome for road users, their families and society as a whole".*<sup>152</sup>

Many valid reasons exist for the state to intervene and protect road users against the impact of injury and to support dependants of earners killed on the roads.<sup>153</sup> Among those considerations are:

- a. The importance of road transport to the whole economy to sustain development and enable growth.
- b. Road transport is important in the everyday life of all South Africans. In order to participate in society and earn a living, people need to walk or drive or be transported on public roads. People from all demographic and socio-economic groups, the wealthy and poor, the employed and unemployed, are all exposed to risks on the road as they try to participate in society. Such risks may arise from injury, death of a breadwinner or liability for damage and loss caused to another person.
- c. A responsible state provides road and transport infrastructure and manages the risks associated with road transportation.
- d. Bodily injuries caused by road carnage can limit or terminate the ability of South Africans to earn and support themselves and their families; likewise, family members and dependants are vulnerable and left without support when earners are killed in road accidents. State intervention alleviates the physical and socio-economic impact of injury, disability and loss of support given by an earner.
- e. In a developing country such as South Africa, a significant proportion of road users will neither have the financial means to access appropriate healthcare and rehabilitation, nor to commence legal action to recover their loss. Further, the majority of drivers may not have assets or liability insurance cover to meet the claims for damages from persons whom they accidentally injure on the roads.
- f. In view of the extent of road carnage and the costs of road accidents to the economy, society, families and individuals, the state provides a safety net to support and protect road users against the risks of road transportation.
- g. A social security scheme for injured road users and dependants of persons killed in road accidents distributes the risks more evenly across the disparate socio-economic bands of society. Such an arrangement recognises that all road users from all socio-economic and demographic groups are at risk of injury, bereavement or of incurring liability for damage caused to another, and that a large proportion of the people cannot afford personal accident and/or liability insurance.

Essentially, the state intervenes in the risks of road use to protect people from failing to provide sufficient cover for themselves, and thereby aims to alleviate disability and prevent impoverishment.

<sup>150</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 101.

<sup>151</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 16, par 16.17 p. 408.

<sup>152</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 15, par 15.135 p. 401.

<sup>153</sup> This is more fully discussed in Chapter 6.

#### 4.6 INTERNATIONAL EXPERIENCE

Comparison between different motor accident compensation schemes of different countries is difficult because of different benefits, legislative environments, road behaviour, injury and fatality rates, exclusions, taxes, currencies and social security systems.

Compulsory motor vehicle accident insurance is not common in developing countries, mainly because of the difficulty of enforcing such legislation.

Where compensation is determined by common law, compulsory third party insurance typically leads to an increase in claims liability. Costs of such systems are also much higher, firstly because negligence must be proved and secondly because benefits are not well defined by statute and disputes may arise in determining the quantum of the loss.

European premiums typically include provision for third party liability property damage in addition to liability cover for bodily injury, while Australian systems do not. European long-term care costs often exceed loss of income benefits by a substantial margin.

Since 2005 Namibia and Botswana initiated legislative changes to address a number of structural problems in the fault-based compensation systems. Both schemes identified similar problems as the RAF regarding liability, increasing costs, failure to meet real needs, and an escalation in awards for general damages. Both Namibia and Botswana have exclusions or reduction in benefits in place to encourage responsible road behaviour should drivers exceed the legal alcohol limit or not wear a seatbelt.

The approximate amount of fuel levy paid by an average South African travelling 18 000 km per year at 10 litres per 100 km amounts to R837 per year. Premium income levied through the fuel levy system on South African drivers is substantially lower than in 19 European countries and the seven Australian states. Our low premiums together with very high injury rates and increasing fatality rates leads to a system that is both unaffordable and unsustainable.

## SECTION 2

*"A country's own social security system needs to address its own particular set of risks and challenges in a manner that best reflects its societal values and resource base."*<sup>154</sup>

### 5 A NEW POLICY DIRECTION

#### 5.1 THE ROAD ACCIDENT FUND BENEFIT SCHEME

##### 5.1.1 Overview

It is proposed that the State will provide a scheme of benefits for road users which will form part of the comprehensive social security system in South Africa, and in particular the social insurance tier. This will be known as the Road Accident Benefit Scheme (RABS) and will be administered by the Road Accident Benefit Scheme Administrator (RABSA).<sup>155</sup>

The objectives, structure, financing and benefits of the scheme will be aligned to social insurance provisions within the broader social security system. Thereby the RABS will *"contribute towards social solidarity in the system of social security, rather than exacerbate disparities between the rich and the poor, the abled and disabled, the advantaged and disadvantaged"*.<sup>156</sup>

The RABS will be universal and accessible to all victims of road accidents, whether they are injured or deprived of financial support due to the death of a family member. The RABS will be based on principles of social solidarity in order to assist and support those in need, rather than focusing on blameworthy conduct and expecting persons who made mistakes to be self-reliant. Thereby the social security safety net will be expanded and the State will *"respect, protect, promote and fulfil"* the universal right to social security recognised in the Constitution of South Africa.<sup>157</sup>

The standard to determine contributions to and benefits payable by the scheme will be *"that of 'living with dignity' and not the standard of the rich in any society. If everyone were rich there would be no need for social security."*<sup>158</sup>

A more holistic approach to social security and social insurance for road users will be adopted, by focusing on protection against misfortune, enabling rehabilitation and encouraging risk prevention.

By adopting a social insurance instead of a liability insurance model for road accident benefits, services and cash payments will be directed to actual needs, rather than to predominantly high-income earners and persons with minor injuries. A social insurance model will also enable periodic payments of structured benefits which increases the incentive for the injured person to work and earn, and so reduce a culture of dependency.<sup>159</sup>

Financing of the social security scheme will be via earmarked taxes and risk-related surcharges to create a more direct relationship and equitable link between the risks and benefits.

<sup>154</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 37.

<sup>155</sup> Another option would be for the RAF to administer the RABS.

<sup>156</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 16, par 16.66 p. 417.

<sup>157</sup> Section 7(2) and 27 of the Constitution of South Africa.

<sup>158</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 17, Introduction, p. 429.

<sup>159</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 17, par 17.43-17.49 p. 436-437.



### 5.1.2 Purpose of RABS

The purpose of the Road Accident Benefit Scheme is to address the physical and socio-economic risks of road use in the event of injury, disability, death and potential impoverishment as the result of road accidents. The risks created by vehicular traffic will be shared equally between members of society who participate in and benefit from the risk creating activity.<sup>160</sup>

### 5.1.3 Vision

The State will make available a reasonable, equitable, relevant, effective, affordable and sustainable benefit scheme that meets real needs of road accident victims when and where it matters most. At the same time the new dispensation for road users will accommodate and compensate for human vulnerability and fallibility.

### 5.1.4 Mission

The RABS will provide social security benefits to persons injured in road accidents and to defined family members and dependants of earners killed on the roads. It will offer simultaneous protection to all road users, who may either be:

- a. Persons who are unable to look after themselves following an injury or a death in a road accident, or
- b. Eligible drivers and vehicle owners in respect of claims against them arising out of their negligence or other unlawful conduct on the road.

Additionally, the scheme will apply measures to prevent road accidents, deter precarious behaviour and reduce the impact of injury and disability.

### 5.1.5 Mandate

The RABS will introduce measures to alleviate the impact of injuries, disability and death of earners resulting from road accidents. The scheme will offer services and pay defined and structured benefits to eligible claimants.

Access to medical services will be enabled with a view to restore, improve and maintain the health of injured road users, while also enabling their ability to work and attending to their personal needs. Rehabilitation will be facilitated and encouraged to enable injured road users to reintegrate into social and economic life. Long-term and life care will be provided where required.

Financial benefits will be paid to alleviate hardship as the result of income lost, or expenditure incurred due to injury or death. Limited income support benefits will be available to persons who are disabled as the result of bodily injuries sustained in road accidents, and limited dependant support benefits will be offered to bereaved spouses, partners and children of breadwinners who are fatally injured in road accidents.

### 5.1.6 Strategic objectives

The strategic objectives of the RABS will be to:

- a. Facilitate access to timely and appropriate healthcare for persons injured in road accidents
- b. Enable and encourage rehabilitation to prevent or reduce permanent disability and to advance the independence, earning capacity and social participation of persons injured in road accidents
- c. Provide long-term and life care for the seriously injured

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<sup>160</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 15, par 15.61, p. 388.

- d. Relieve (not necessarily restore) loss of income and financial support by alleviating financial hardship of persons injured in road accidents and of defined dependants or family members due to the death of an earner in a road accident
- e. Be accessible and be efficiently administered, with less resources spend on transaction costs, and more resources allocated to healthcare and to relieve financial losses
- f. Be accountable to road users, assist victims of road accidents and provide relevant and timely service to claimants

## 5.2 CORE CRITERIA FOR RABS

A system of state-funded and state-run social security benefits for road accident victims must meet four core criteria. As a minimum, the scheme will have to be reasonable, affordable, equitable and sustainable. These four criteria are interpreted as follows:<sup>161</sup>

- a. A reasonable system
  - i. is aligned to the objectives and principles of the broader social security system
  - ii. maintains a balance between the needs and resources of society
  - iii. provides certainty for claimants on the benefits and services available in their time of need; and certainty for service providers on service standards, tariffs and payment
  - iv. is balanced and moderate, and benefits are neither too harsh nor too lenient
  - v. provides value and reduces the impact of road accidents on individuals and families
  - vi. has a definite intention or purpose, e.g. to focus on medical care and channel more resources to people who suffer life-altering injuries.
- b. An affordable system
  - i. is within the financial means of road users and the entire South African society
  - ii. is efficient and effective to ensure that resources reach beneficiaries in need, and are not consumed by intermediaries or administration costs
  - iii. links revenue appropriated and value provided to beneficiaries
  - iv. contains measures to reduce the risks of abuse and misappropriation of funds.
- c. An equitable system
  - i. provides broad-based access to road users in need and limits the scope of non-coverage
  - ii. treats road accident victims and their families with dignity, and fairly and impartially
  - iii. maintains a relationship between the funding of the system and the demands made thereon (to prevent risk transfers to future generations)
  - iv. creates some correlation between the benefits available for road users and those offered to other South Africans in need.

<sup>161</sup> With reference to *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Executive Summary, par 2, p. XI-XII.

- d. A sustainable system
  - i. is accessible and provides effective benefits
  - ii. responds to the needs of its customers, and monitors and manages its risks
  - iii. meets benefits offered with adequate financing
  - iv. facilitates healthcare and rehabilitation and alleviates financial hardship
  - v. is administered efficiently and effectively.

### 5.3 KEY POLICY PRINCIPLES

Resources are finite and therefore some prioritisation of needs and targeting of beneficiaries must take place. These policy proposals are aligned to two fundamental considerations. First, the State seeks to "*respect, protect promote and fulfil*" the social security and human rights framework contained in the Constitution which recognises the right of people to access healthcare services and social security, and obligates it to expand the reach of social security.<sup>162</sup> Second, the policy proposals seek to promote the "*efficient, economic and effective use of resources*".<sup>163</sup>

In the context of these Constitutional imperatives, the key policy principles for the RABS are as follows:

- a. The RABS will have moderate objectives and practices, aim to have sensible ambitions and reflect the needs and resources of South Africa.<sup>164</sup>
- b. Benefits will be as inclusive as possible, based on need and not on fault.<sup>165</sup> The RABS will assist all persons injured in road accidents or who are defined family members of earners who die in road accidents.<sup>166</sup>
- c. Scarce resources will be directed to provide timely and appropriate trauma and acute care after injury, rehabilitation when required and life care when and to the extent appropriate. Income and dependant support will assist those unable to earn or who have lost support through the death of a partner or parent.<sup>167</sup>
- d. Expenditure towards minor injuries with negligible impact on health and no lasting effect will be reduced or eliminated. Resources will be conserved for the benefit of persons who sustained serious injuries with life-changing consequences for themselves and their families.<sup>168</sup> Revenue will not profit the administrative authority, or ancillary facilitators, or support professions engaged in submitting or pursuing of claims on behalf of eligible claimants.<sup>169</sup>
- e. The RABSA will aim to promote entitlement to benefits, be independent and flexible, deliver quality and make decisions on the provision of benefits as speedily as possible.<sup>170</sup>

<sup>162</sup> Section 7(2) and section 27 of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>163</sup> Section 195 (1)(b) of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>164</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 14, par 14.107, p. 372.

<sup>165</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 14, par 14.108, p. 372.

<sup>166</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 5, par 5.71, p. 99.

<sup>167</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 8, par 8.59, p. 177.

<sup>168</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 8, par 8.57, p. 176; Vol. 2, Chapter 26, par 26.182, p. 821.

<sup>169</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 6, par 6.146 p. 129.

<sup>170</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 41, par 41.116 p. 1338.

## 5.4 MEDICAL CARE POLICY

### 5.4.1 Focus on healthcare

The state provides a social insurance scheme to address the hazards of road use and the damages arising from the bodily injuries sustained in road accidents. In future the scheme will focus on healthcare. Firstly, the state has a constitutional obligation to provide emergency medical and health care.<sup>171</sup> Secondly, it is the responsible approach to adopt in a social security scheme, namely to be curative and preventative so that victims may resume their economic and social roles, rather than to "reward" them for a higher degree of disability. Thirdly, productive rehabilitated individuals may contribute to society whereas un-rehabilitated road accident victims place a burden on the state and society.<sup>172</sup> Fourthly, trauma is a systemic and time dependent disease, where there is a limited opportunity to get it right, before complications ensue. Complications tend to have an exponential as opposed to a linear impact on outcome, and cost.

### 5.4.2 Guiding principles for healthcare

Several important principles have been considered which shaped the policy objectives on the medical component of the RABS, including:

- a. The need for seamless access to pre-hospital and emergency medical care.
- b. Injured road users should not be required to pay up-front to access treatment or be out-of pocket.
- c. The fuel levy is charged to deal with damages caused by road accidents; it is fair and reasonable that the healthcare system should be financed to meet the demand that injured road users place on it.
- d. More resources should be channelled to the public health sector for treating road accident patients and to improve emergency medical services, trauma care and rehabilitation
- e. Alternative healthcare management and funding arrangements are needed to counter current challenges and replace ineffective and expensive fee-for-service and reimbursement practices.
- f. The healthcare component of the new scheme should primarily be structured in the form of accessible services to injured road users, rather than cash benefits.
- g. Low income groups should not cross-subsidise high and middle income groups to access more exclusive and expensive healthcare.
- h. Effective measures should be established to enhance the quality of care provided to road accident victims, control the costs and provide value for money
- i. The uncertain and variable cost of medical care as the medical treatment provided and the duration of treatment differ from case to case for the same injury.

<sup>171</sup> Section 27 of the Constitution of South Africa, 1996.

<sup>172</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.98, p. 853.

## SECTION 3

### 6 BENEFIT FRAMEWORK

#### 6.1 LEGAL BASIS

RABS services and benefits will be made available to eligible claimants on a no-fault basis, with no deductions or penalties applied for the road user's own negligence. Such an approach recognises that multiple factors affect the risk of injury or death on the roads, and not only human error. A no-fault approach will offer protection to all road users, facilitate more timely access to healthcare and meet basic financial needs. However, perpetrators of grossly anti-social and reprehensible behaviour which is deemed unworthy of social protection will be excluded from some of the benefits.

#### 6.2 COVERAGE

The RABS will be inclusive and provide universal cover to all categories of road users, i.e. drivers, pedestrians, motorcyclists, cyclists and passengers. Bodily injury or death caused by or arising out of a road accident from whatsoever cause and which involves a motorised vehicle at any place anywhere in South Africa will be covered. Bodily injury is defined to include the physical and psychological injury of a person directly involved in a road accident, as well as pre-natal injuries and damage to artificial limbs, eyes, teeth, crutches, spectacles, other aids. Motorised vehicles are defined as vehicles designed or adapted for propulsion or haulage on a road by means of fuel, gas, or electricity, including a trailer, caravan, agricultural or other implement designed to be drawn by such a vehicle.

#### 6.3 FINANCING AND FUNDING

##### 6.3.1 Sources of financing

The primary source of financing of the RABS will be a fuel levy imposed on fuel sold for use on land, less the diesel-fuel rebate scheme. It is a compulsory contributory payment to pool risks and enable road users to participate in and enjoy protection under the social insurance scheme.

Because the fuel levy alone does not take into account all the risk factors relevant in the benefit scheme, Government will introduce secondary sources of funding to enhance equity:

- a. A surcharge will be payable on registration fees of light delivery vans, panel vans, trucks, buses and minibus taxis to recognise the greater risks posed by these vehicles<sup>173</sup>
- b. A surcharge on all fines paid by road users in respect of offences relating to motor vehicles and driving contraventions<sup>174</sup>
- c. A surcharge on the sale of alcohol, in view of the large number of road injuries and fatalities which can be directly linked to raised blood alcohol levels.

The purpose of imposing these surcharges is not punitive, but rather preventative. It will link unsafe road use with the costs to provide benefits and simultaneously serve as a

<sup>173</sup> The risks involve longer distances travelled as shown in statistics of the Road Traffic Management Corporation, increased risk of injury to road users as carriers of passengers and goods, and likelihood of inflicting greater damages due to size, mass and velocity. *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.134-9.136, p. 211.

<sup>174</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 9, par 9.93-9.94, p. 204; par 9.152, p. 213.

financial deterrent to high risk behaviour on the road.<sup>175</sup> However, the income from these surcharges in relation to the fuel levy is not expected to be significant.

### 6.3.2 Funding method

The RABS will be financed on the basis that the compulsory contributions are sufficient to meet liabilities as they accrue. Assets will be set aside to meet the cost of claims and services relating to injuries and deaths resulting from accidents in a particular financial year. The funding model will link income to expenditure, liability and risk, and enable the scheme to build up reasonable reserves to cover contingencies. Revenue and expenditure will be monitored to ensure that a balance is maintained between costs and revenue.

Therefore the aim is to fully fund the scheme so that the RABSA sets aside assets to pay claims in the year within which they arise, even if the claims are only settled and paid two or more years later. If no provision is made annually for the payment of claims which have already arisen, but remain unsettled or unpaid, future income streams will be required to pay for liabilities incurred in previous years. In this way the RABSA will build up a deficit, and be in a similar untenable position as the RAF at present. Fuel levy income will be reviewed every six months to provide for changing risks due to changing human behaviour, inflation, socio-economic conditions, unforeseen contingencies and other cost driving factors.

The RABSA and the responsible oversight bodies will monitor income, expenditure and benefit levels on an ongoing basis to ensure liquidity of the scheme and achieve full funding of liabilities.

### 6.3.3 Oversight over financing and funding

Oversight over the financing mechanism and funding model will be exercised by a Joint Ministerial Committee (JMC), comprising of the Ministers of Transport, Health and the National Treasury. The RABSA will be required to deliver regular reports and make submissions to the JMC and be empowered to participate in the discussion of matters brought before the JMC.

The future financing strategies for the RABS will take into account annual actuarial valuation of the scheme. The JMC will also review the equity, reasonableness and affordability of benefit levels with reference to the annual actuarial valuation of the RABS.

The financing mechanism and funding model will be flexible to take into account changing road user behaviour, claims patterns and changes in the utilisation of healthcare services, while also recognising other social security needs and priorities.

### 6.3.4 Investment of assets

Investments of assets will be managed by the Public Investment Corporation (PIC), with oversight by the RABSA board and the Joint Ministerial Committee (JMC).<sup>176</sup>

### 6.3.5 Ring-fence and run-off

The compensation schemes administered by the RAF will be ring-fenced to separate sources of income and expenditure, as well as the reporting on financial results for distinct compensation systems. This will enable Government and the taxpayer to distinguish

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<sup>175</sup> Such an approach will enhance the objectives of a holistic social insurance scheme, viz. to provide protection and to promote risk prevention.

<sup>176</sup> The Public Investment Corporation Limited is wholly owned by Government and manages assets on behalf of public sector entities, most of which are pension, provident, social security or guardian funds. Funds are invested in accordance with investment mandates set by each public sector entity and approved by the Financial Services Board (FSB). (See [www.pic.gov.za](http://www.pic.gov.za)).

financial experience under the new RABS from that of the current dispensations. Such practices will add to transparency and aid effective management.

Government will commit parallel supplementary funds towards the run-off of the existing RAF compensation schemes, and liabilities incurred in terms thereof, in addition to providing financing for the new RABS system.

## **6.4 BENEFIT STRUCTURE**

### **6.4.1 Flexibility**

The benefit structure, the benefits themselves and the obligations to fund them will be flexible to enable Government and the RABSA to adjust the income from the fuel levy and other sources, re-allocate funds within the RABS itself (e.g. allocate more resources to income support and simultaneously reduce the funeral benefits), and adjust the levels of benefits themselves.

### **6.4.2 Nature of benefits**

The RABS will offer benefits in the form of

- a. access to appropriate medical services
- b. flat-rated benefits which will be stated and structured
- c. limited earnings-related benefits for injured road users and defined family members of fatally injured road users which will be determined by clearly defined rules.

No benefits will be payable for non-financial loss, e.g. for pain and suffering.

Although Government will aim to provide annual increases to the benefits to recognise the effects of inflation, such increases cannot be guaranteed, and are subject to affordability in the event of adverse experience.

### **6.4.3 Recognition of earnings**

The RABS will distinguish between earners and non-earners to recognise socio-economic realities. By providing limited earnings-related benefits, Government will retain some individualistic approach in the calculation of benefits and recognise, to some degree, the different financial positions of claimants.<sup>177</sup>

### **6.4.4 Thresholds and ceilings**

Limits in the form of thresholds or ceilings will be placed on benefits to be made available to eligible claimants. Such limits include waiting periods, age and proof of income as prescribed. Ceilings on benefits payable will be determined with reference to a maximum percentage of pre-accident income, an income factor (e.g. 75% of pre-accident income), degree of disability and monetary maximums to be placed on benefits payable.

### **6.4.5 Classification of benefits**

- a. Medical and healthcare services available in South Africa will be funded by contributions by the RABSA to healthcare service providers. This will enable access to emergency care, acute care (including hospitalisation), rehabilitation, provision of goods and services (e.g. assistive devices and pharmaceuticals) and life care for seriously injured persons.
- b. An income support benefit (for lost income and loss of earning capacity) will be payable to injured road users, subject to thresholds and ceilings, and maximum caps, and be paid periodically. The benefit will be formula-based and related to

<sup>177</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 17, par 17.222, p. 466.*

pre-accident earnings. If the injured road user was unemployed, a child or learner at the time of the collision, the level of benefit to be paid will be determined by defined benefit rules. The benefit will be reviewable in terms of a re-assessment of disability and employment opportunities.

- c. A family support benefit will be payable to the spouse or life partner and dependent children of a breadwinner killed in a road accident, subject to thresholds and ceilings, and maximum caps, and be payable periodically. The benefit will be related to the deceased road user's pre-accident earnings, and if the deceased was unemployed or a learner at the time of the collision, the level of benefit to be paid will be determined by defined benefit rules. The benefit will be reviewable.
- d. A flat-rate funeral benefit will be paid as a lump sum.

## 6.5 PROVISION OF HEALTHCARE

### 6.5.1 Financing healthcare

Since the fuel levy is charged to deal with the damage caused by road accidents, it is appropriate that the healthcare system should be financed to meet the demand that injured road users place on that system.<sup>178</sup> The RABSA will cooperate with public and private sector providers to enable the delivery of quality healthcare to road accident victims across South Africa at affordable cost. It will:

- a. primarily adopt a capitation model<sup>179</sup> to finance healthcare provision to persons injured in road accidents
- b. reduce the risk to over-claim by paying the provider directly and partially upfront or in advance, where the advance payment is based on expected capitation-based cost of treatment.
- c. pay preferred medical and healthcare providers directly to care for injured road accident victims in accordance with appropriate contractual arrangements, including minimum standards and protocols for treatment and care.
- d. pay further performance based fees, depending on deviation of actual capitation from that expected, as well as relative measured outcomes
- e. pay contingency (catastrophe) fees, if the number of patients is significantly more than anticipated (e.g. a serious bus accident in an area where few patients were expected).
- f. contribute to strategies to prevent road crashes and their effects at primary, secondary and tertiary levels of prevention.<sup>180</sup>

The geographical areas in which preferred providers will be contracted will cover South Africa, but not overlap and will differ in respect of services, e.g. an area for trauma care may be smaller than the area covering rehabilitation. The contracted providers will treat all road accident cases in their respective specified geographical areas, having regard to protocols of inclusive trauma care.<sup>181</sup>

<sup>178</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.100, p. 853; par 28.111, p. 905.

<sup>179</sup> Capitation arrangements enable a defined population (road accident victims) to access a specific menu of healthcare services against the payment by a third party funder (the RABSA) of a fixed monthly fee. The payment remains the same irrespective of the number of services provided.

<sup>180</sup> From a medical perspective, the primary level focuses on accident and injury prevention, the secondary level seeks to improve medical care once the injury has occurred and the tertiary level focuses on interventions such as rehabilitation to limit disability.

<sup>181</sup> The implication is that trauma patients may bypass the nearest hospital to receive treatment at the most appropriate hospital, even if it is in a different geographical area.



### 6.5.2 Phases of healthcare

The RABS will make available the following healthcare benefits through contracted medical service providers:

- a. Responsive and appropriate pre-hospital care and inter-facility transfer
- b. Timely and effective emergency and acute care
- c. Hospitalisation and outpatient services
- d. Rehabilitative care
- e. Long-term care for persons who require life-long or ongoing care due to the serious nature of their injuries and disability (including chronic care, pharmaceutical goods, institutionalisation and community-based care)
- f. Assisting devices such as wheelchairs and other mobility aids, appropriate devices to enable continued employment and independence in the home.
- g. Structural changes to the home and/or workplace
- h. Regular review of disabled patients to prevent complications and meet changing needs.

Access to rehabilitation will be determined by medical assessment and be based on appropriate healthcare and rehabilitation policies. By enabling rehabilitation, the scheme will support principles of prevention and encourage economic growth by facilitating access to the labour market, instead of encouraging dependency.

### 6.5.3 Contractual terms

The RABSA will specify standards of quality care containing the minimum treatment required to be delivered to injured road users. These standards will form the basis of the contractual arrangements between the funder (the benefit scheme) and the provider. It is envisaged that the contractual period should be at least three years, and be subject to performance and on-going review.

### 6.5.4 Role of the RABSA

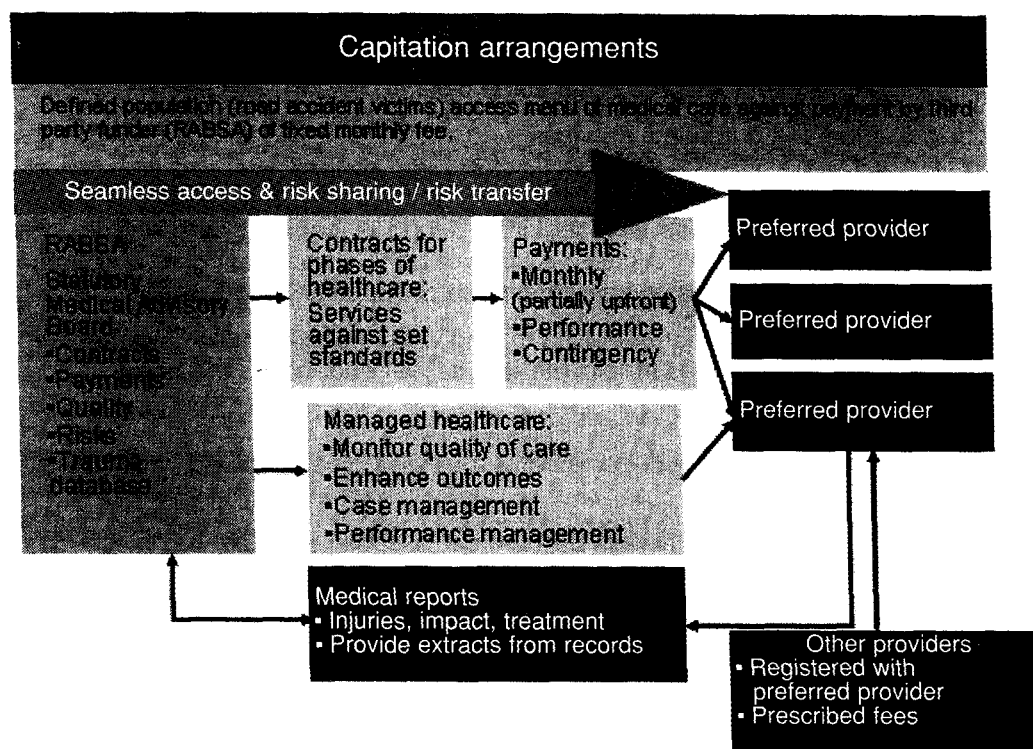
The RABSA will enable and facilitate quality healthcare by implementing managed healthcare practices, quality assurance measures, protocols of treatment which set minimum standards, case management interventions and appropriate cost control measures. Considering the required skills and expertise in managed healthcare, the scheme may well outsource its managed healthcare roles via a public tender process.

Cost control measures will be used to monitor the use, trends in service delivery and the public-private sector mix. Since the RABSA will assume the role as one of the major funders of healthcare in South Africa, there is a risk that the for-profit private sector may seek out the more "profitable" cases and shift the high-risk more costly cases to the public sector, where patients cannot be refused. Therefore the RABSA will take active measures to guard against risk-selection and cost shifting by monitoring the purpose and frequency of inter-facility transfers and linking this to the fee structure applicable to the preferred providers.

In addition, the RABSA will maintain a trauma register and medical database and record details of injuries of road accident victims based on the prescribed information provided by the medical service providers. In that way the RABSA can identify serious cases which may require case management. Such information can be used to assess the need for goods and services in the future, and to link up with claims for loss of income.

Figure 6.1 illustrates the role of the RABSA, medical service providers and the mechanisms to be used by the RABSA to manage risks in the capitation funding model.

Figure 6.1 Capitation model and risk management



#### 6.5.5 Role of preferred providers

Service providers will not be permitted to charge road accident patients any fees for the treatment rendered to them, or goods or services supplied, unless the treatment falls outside the minimum contractual service standards which are to be agreed to between the RABSA and service providers.

Healthcare professionals, therapists and hospitals involved in the treatment of injured road users will be obliged to furnish the scheme with extracts from a patient's medical and treatment records for purposes of treatment and rehabilitation review, disability assessment, and benefit review. Preferred providers must be able to classify injuries and provide the information to the RABSA at short notice (within 24 hours after the event) and at regular intervals thereafter. In addition, providers will need to conduct simple tests for alcohol consumption and substance abuse which may affect a claimant's entitlement to other benefits.

Provision will be made to accommodate non-contracted providers who care for injured road users. Any healthcare professional or provider who is not a preferred provider for a specific area and who requires payment for treatment given to a road accident patient, will have to register with the contracted preferred provider for the area. Non-contracted providers will be required to charge against a regulated fee structure and deliver an account to the regional contracted provider, who will settle that account from the capitation fee allocated. Non-contracted providers will be required to keep records of injuries and treatment rendered and furnish those to the RABSA.

#### 6.5.6 Public and private sector providers

Both public and private sector providers will be considered as preferred providers of the medical care services for road accident victims. Since more patients use public services, a larger portion of the fuel levy will be made available to assist the public health sector in

treating road accident patients and to improve the provision of emergency medical services, trauma care and rehabilitation.<sup>182</sup> Government will ensure that such resources will be earmarked for the benefit and service of injured road users, and not other, albeit necessary, Government spending.

Government recognises that public sector capacity and skills to provide rehabilitative care to injured road users will have to be developed. The RABSA will cooperate with the Department of Health to ensure that this is achieved.

#### **6.5.7 Institutional arrangements**

The RABSA board will be supported by a statutory medical advisory board which will be independent of Government, but have some Government representation. Members of the medical advisory board are required to have expertise in:

- a. Trauma care, and specifically analysis of trauma outcomes and quality improvement
- b. Rehabilitation and disability assessment
- c. Long-term care
- d. Healthcare financing
- e. Managed healthcare and medical risk management practices
- f. Health economics
- g. Actuarial assessment and forecasting of medical benefits and funding
- h. Law and the legal aspects of healthcare provision and financing.

#### **6.5.8 Role of medical advisory board**

The role of the medical advisory board will be to:

- a. Advise the RABSA on all aspects of the healthcare provision and financing under the scheme.
- b. Assess and make recommendations on the selection of preferred providers.
- c. Negotiate terms of service contracts and standards of service delivery with preferred providers, and recommend or institute the termination of service provider contracts.
- d. Ensure adherence to clinical standards of practice, training, and equipment, continuous quality improvement, and governance according to internationally established norms, appropriate to local conditions, and advise on futile care.
- e. Negotiate the terms and conditions for the provision of managed healthcare services to the scheme by managed healthcare companies.
- f. Resolve disputes around evolving clinical issues and should give medical direction to the scheme's case managers and managed healthcare providers.
- g. Conduct peer review sessions with healthcare service providers.
- h. Investigate and advise on cost-effective mechanisms to finance the services referred to in par 6.5.8 d to g above.
- i. Manage and oversee the medical databases and trauma registry to be established and maintained by the scheme, and use that as basis for research and the publication of relevant trauma and injury care studies, including injury prevention strategies.

<sup>182</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.243, p. 879; par 28.111, p. 905.

- j. Publish an annual report on its activities, including the provision and financing of the social insurance healthcare benefits for road accident victims.

This medical advisory board must comprise of experts. It will require financing from the RABSA to perform its tasks, be supported by a core secretariat and undertake the research which may be required to fulfil its duties. The medical advisory board will be authorised to contract in expertise and professional services to enable it to carry out its responsibilities. It may also be necessary to establish regional sub-committees of the medical advisory board to oversee healthcare in close proximity to events.

#### **6.5.9 Thresholds and conditions to access healthcare**

The only condition to access healthcare will be a report by a registered healthcare practitioner, outlining core injury characteristics (e.g. events, mechanism, vital signs, injuries sustained, resource utilization, etc) and whether the injuries are consistent with a road accident. This report is to be presented electronically to the RABSA within 24 hours of the event. The onus will be on the service provider to provide such a report. Such a requirement will enable the RABSA to minimise fraud and be alerted to patients with serious or high risk injuries where case management may be required.

At this stage, no other thresholds to access medical benefits are proposed. This is based on a number of considerations:

Firstly, the fundamental right to access emergency medical care, healthcare and social security is protected in the Constitution. A threshold for medical care would erode the basic values which underlie the social insurance scheme: It is recognised that many South Africans are unable to afford healthcare and use public sector services for that reason. If medical treatment were withheld until the first amount (threshold) was paid, persons injured in road accidents may not access medical care in time or at all.

Secondly, healthcare providers may refuse to treat injured road users rather than bear the risk of not receiving payment if the patient is unable to pay the threshold amount.

Thirdly, it is impractical to impose a threshold if capitation fees are paid to service providers as the latter will not be in a position to refuse treatment to patients.<sup>183</sup>

Fourthly, thresholds become goals and open up risks for over-servicing simply to reach the threshold.<sup>184</sup>

Fifthly, although a threshold may aim to remove the least seriously injured and minor injuries from a public benefit scheme, there may be little justification for such a stance.<sup>185</sup> Further, until an injured person is examined, it is not possible to know whether or not the threshold will be reached. A victim who has sustained a minor injury in a road accident must be entitled to receive treatment to prevent complications.

#### **6.5.10 Ceilings or caps on healthcare**

It is not proposed, at this stage, that a monetary ceiling or cap on healthcare for injured road users be introduced. However, since resources are finite, certain parameters will be set in terms of healthcare policy to ensure that the objectives of the scheme are met and that the provision of healthcare is prioritised in favour of the most seriously injured persons.

#### **6.5.11 Healthcare policies**

Healthcare benefits will be financed against healthcare policies which will have the effect of limits, caps or risk controls. The following broad healthcare policies will be implemented:

<sup>183</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.122 p. 856.*

<sup>184</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.123 p. 856.*

<sup>185</sup> *Report of the Road Accident Fund Commission. 2002. Vol. 2, Chapter 27, par 27.125 p. 857.*

- a. The scheme will only pay for medical services available in South Africa
- b. Standards of minimum care for injured road users in respect of pre-hospital, emergency treatment, in-hospital and out-of-hospital care and rehabilitation will be set
- c. Managed healthcare practices to influence the quality of care, enhance outcomes and reduce long-term cost risks will be introduced
- d. The treatment of seriously injured and higher risk patients will be overseen through case management and managed treatment plans
- e. Reasonable utilisation review policies should be developed which will require pre-authorisation for future medical care after the initial rehabilitation of the patient
- f. Ongoing review of outcomes, treatment practices and performance will be introduced.

A ceiling on healthcare, rehabilitation and life care benefits may be introduced when data is available under the no-fault system on the injuries sustained, treatment provided, costs of treatment and rehabilitation outcomes.<sup>186</sup>

## 6.6 EXCLUSIONS FROM BENEFITS

While a social insurance scheme must be as inclusive as possible to promote social solidarity and cast a wide safety net to those in need, it should also promote socially responsible behaviour and road use. Social policy considerations call for the exclusion of or limitation of access to benefits for perpetrators of self-harm, socially reprehensible and socially destructive behaviour. It is not reasonable and equitable to "reward" such categories of road users in a social insurance scheme which is financed by taxpayers.<sup>187</sup> Conduct of that nature is contrary to the principles of a social security scheme. Equally, it would not be reconcilable with the social security objectives to offer benefits for injury or death arising from organised motor sport.

The RABS will only provide benefits to persons who themselves are victims of road accidents, i.e. either as a party who sustains a direct physical injury, or as a family member who lost the support of an earner. Certain categories of loss or damage recognised in common law are too remote and have the potential to drain the resources of a social security scheme, to the detriment of persons for whose benefit the scheme is actually designed.

Total exclusion from the scheme will apply in respect of emotional shock of secondary victims, participants in and spectators of organised motor sport, and benefits for the duration of imprisonment, following conviction of a crime.<sup>188</sup>

<sup>186</sup> This is in accordance with a recommendation by the RAFC. *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 27, par 27.246 p. 879.

<sup>187</sup> These considerations are in accordance with the recommendations by the RAFC (See Chapter 16 of the *Report of the Road Accident Fund Commission*. 2002), although the RAFC did not recommend exclusions in respect of injury or death arising from organised motor sport.

<sup>188</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 16, par 16.121, p. 426. The rationale for this exclusion is that Government and the taxpayer should not "pay" twice. Resources from other sources are already allocated to meet the needs of prisoners.

Limited exclusions will apply in respect of:

- a. Intentionally self-inflicted injury or death.
- b. Injury or death sustained while:
  - i. driving or controlling a stolen or unregistered vehicle
  - ii. driving or controlling a vehicle without a valid driver's licence
  - iii. driving or being in control of a vehicle while under the influence of alcohol or dependence inducing substances, or while over the legal limit
  - iv. as a pedestrian or cyclist while under the influence of alcohol or dependence inducing substances or over the legal limit for alcohol consumption, and being involved in a road accident with a motor vehicle.
  - v. committing a violent act to gain control or possession of another person's vehicle, or in furtherance thereof, or in circumstances incidental thereto.

Perpetrators of such behaviour will be entitled to access reasonable emergency medical, trauma care and rehabilitative care, but not other benefits. Defined dependent family members of perpetrators of such anti-social and reprehensible behaviour who are killed in road accidents will also not receive any family support or funeral benefits otherwise available to dependants of persons killed in road accidents. The RABS will apply to all persons who are lawful residents of South Africa for the duration of their residence.<sup>189</sup> If a person who is entitled to benefits takes up residence outside of South Africa after the date of the road accident, no further benefits in respect of the injury or death will be payable to that person. Illegal foreigners will not be entitled to claim benefits from the RABS, but will be entitled to access emergency medical care provided by public sector healthcare facilities.<sup>190</sup> An eligible claimant will forfeit benefits if he/she refuses rehabilitation, or to undergo a medical or disability assessment or benefit review.

## 6.7 INJURY AND DISABILITY ASSESSMENT

### 6.7.1 Injury assessment

Medical service providers will be required to classify injuries and injury characteristics in accordance with a classification framework and forward the data to the RABSA database or trauma register. This will serve as an incident and injury report to enable RABSA to identify high risk cases and combat fraud.

### 6.7.2 Disability assessment

Disability can be defined as "*an alteration of an individual's capacity to meet personal, social or occupational demands or statutory or regulatory requirements because of an impairment.*"<sup>191</sup> Impairment may be defined as "*the loss, loss of use or derangement of*

<sup>189</sup> Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa. 2002. *Transforming the Present – Protecting the Future*, p. 107.

<sup>190</sup> This is in accordance with the universal right to access emergency medical care as provided for in sec 27(3) of the Constitution.

<sup>191</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 23, par 23.7, p. 671. (As per the American Medical Association Guides, 4<sup>th</sup> Edition).

*any body part, system or function*<sup>192</sup>; it is a *deviation from normal in a body part or organ system and their functioning*.<sup>193</sup>

The RABSA will be authorised to assess the short- or long-term or permanent incapacity or disability of injured road users who claim for income support benefits. Such assessments will assist claimants and the RABSA to determine a claimant's entitlement to and level of entitlement to income support benefits.

Trained and accredited medical practitioners will use an internationally-accepted assessment guideline or classification framework (e.g. the International Classification of Functioning (ICF) of the World Health Organisation or the American Medical Association Guides to assessment of impairment) to describe the injury and its impact on the claimant.

In order to calculate the RABS income support benefit, a disability assessment will revolve around assessment of the claimant's ability to meet the demands of his or her own occupation and alternative occupations for which the claimant may be qualified. Actual post-morbid income will also be taken into account.

Assessment will be conducted when the injury or impairment is stabilised and unlikely to improve with further medical care or intervention, which is expected to be about 18 to 24 months post injury for the more serious and complicated cases.

### 6.7.3 Assessment panels

The disability assessments will be performed by registered medical practitioners, occupational and other therapists as well as rehabilitation specialists who have been trained and accredited by the RABSA to use the prescribed assessment guidelines. The RABSA will cooperate with the organised medical profession to establish panels of doctors, therapists, occupational health specialists and rehabilitation practitioners to assess claimants and furnish independent professional opinion.

Medical assessors must be:

- a. Independent of the RABSA and injured party, and not previously have treated the claimant for the injuries and disability under assessment
- b. Legally registered medical or healthcare professionals in South Africa
- c. Willing to subject themselves to peer review
- d. Willing to accept a tariff-based fee structure for their professional services to conduct medical assessments
- e. Required to deliver quality work and submit assessment reports timely.

### 6.8 BENEFIT REVIEW

The RABSA will be empowered to review and revise the entitlement of any person to benefits (medical as well as income) and also to make a fresh disability assessment at any time after the initial assessment was performed. Any review may involve a health or disability assessment by a registered medical practitioner or therapist, and preferably also include:

- a. Inputs by the patient's treating practitioner or therapist
- b. An assessment of the patient's home environment, living conditions, care needs, presence of a spouse/partner, children, or community caregiver.

<sup>192</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 23, par 23.5, p. 670. (As per the American Medical Association Guides, 5<sup>th</sup> Edition).

<sup>193</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 23, par 23.5, p. 670. (As per the American Medical Association Guides, 4<sup>th</sup> Edition).

Such re-assessments will enable the RABSA to review levels of need and make adjustments to benefits.

#### **6.9 MEDICAL AND ASSESSMENT PEER REVIEW**

The RABSA will establish and maintain a system of peer review in partnership with the organised medical profession to:

- a. Facilitate objectivity in and consistency of medical and disability assessments
- b. Review cases where objections are lodged against disability assessments performed
- c. Resolve disputes relating to medical and disability assessments affecting entitlement to RABS benefits.

Peer review assessments will be conducted by a panel of two registered medical practitioners, occupational or other therapists, or rehabilitation specialists, depending on the nature of the objection or purpose of the review. The medical and healthcare practitioners who perform peer review must also have been trained to use the prescribed assessment guidelines. The RABSA will maintain a register of accredited practitioners.

#### **6.10 COLLATERAL BENEFITS**

Additional compensation or benefits paid from other sources for the same injury, condition or disability will not be deductible by the RABSA, unless those benefits are paid from other government or public sources. The aim is two-fold: firstly to encourage private insurance provision and individual savings to protect personal and family health, income and earning capacity, and secondly, to avoid "double-dipping" from limited public funds.

Contractual benefits payable to claimants in terms of their contracts of employment such as disability pensions, retirement pensions, holiday pay or sick pay will also not be deducted from benefits paid by the RABSA.

In addition, no person or entity should be entitled to recover from the RABSA:

- a. Social benefits paid from other Government or public funds to a person injured in a road accident, or to a dependant or family member of a person killed in a road accident.<sup>194</sup>
- b. Compensation or benefits paid by private insurance or medical schemes to or on behalf of an injured road user or dependant of a deceased road user for the same incident.

#### **6.11 DISPUTE RESOLUTION**

An internal administrative review function will be created to monitor decisions on benefits, perform reviews to rectify incorrect decisions, monitor claims practices against policies and to settle disputes in a constructive and facilitative manner. If the dispute relates to a medical or disability assessment, the internal review panel may refer the matter for peer review.

An aggrieved claimant may appeal to a review board (constituted by a few members of the RABSA and a majority of independent members not employed by the RABSA). The chairperson must hold a medical/healthcare or legal qualification. The review board may

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<sup>194</sup> The implications of sec 36 of the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) must be considered. Sec 36 permits the Compensation Fund or employer who is liable to pay damages for an occupational injury caused by a party other than the employer or employee, to recover the damages from the wrongdoing third party. At present, sec 36 of the COIDA read together with the Road Accident Fund Act, 1996 enables the Compensation Commissioner to recover from the RAF damages caused by a wrongdoing motorist and which it paid to an employee. Sec 36 of the COIDA may require amendment.



review cases, affirm or reverse decisions of the RABSA, substitute its own decisions, or refer the matter back to the RABSA with or without directions. If the dispute relates to a medical or disability assessment, the review board may refer the matter for peer review.

Appeals against decisions of the review panel may be brought to an appeal tribunal, with independent members appointed by the Minister. The chairperson should be appointed from among the ranks of retired magistrates, judges, attorneys and advocates and who will sit with two non-legal experts in healthcare, rehabilitation, life care, human resources or industrial relations, depending on the nature of the appeal. If the dispute relates to a medical or disability assessment, the appeal tribunal must consider the assessments and peer review processes already carried out by members of the medical assessment panel. The appeal tribunal will have the power to affirm, reverse, vary the decision under review, substitute its own decision or refer the matter back to the RABSA. A right of appeal to the Courts will be available.

Review procedures will be simple and easy to understand so that claimants may themselves pursue complaints or reviews, without the need of engaging professional assistance. The approach of the administrative review panel, the review board and appeal tribunal should be to resolve disputes in a facilitative, constructive, cost- and time-effective manner.

## **6.12 CLAIMS PROCESSES**

### **6.12.1 Claims procedure**

Claims procedure will be straightforward to understand and easy to access. Claim forms will be user-friendly and provide sufficient information to enable the RABSA to validate, assess and process a claim. The RABSA will

- a. Furnish information to road users on claims requirements, procedures and processes via its website, brochures, and government information centres
- b. Design and implement efficient, effective and streamlined claims systems to receive, assess, process, settle and pay claims speedily
- c. Use information technology and electronic transaction facilities to receive, assess, process and pay claims promptly

### **6.12.2 Timeframes**

Claims will be submitted in a shorter timeframe than statutory prescriptive periods.

The first claim for income support benefits and family support benefits will be submitted within 6 months of the date of accident or date of entitlement benefits to qualify for benefits retrospective to the date of accident or the first entitlement thereto. Claims submitted outside of the six month period will be payable, but not in arrears or retrospective to the date of accident or first entitlement.<sup>195</sup> All claims for income support and family support benefits must be submitted within 24 months of the date of accident. Claims for funeral costs must be submitted within 6 months of the road accident or date of death of the road user as a result of the injuries sustained in the road accident.

## **6.13 ASSISTANCE TO CLAIMANTS**

The RABSA will be authorised to appoint suitable agents to assist and enable potential claimants to access claims information and claims support services, e.g. via the proposed social security interface centres. Further, the RABSA itself will deploy suitably skilled staff members to assist potential claimants to access the benefit scheme.

The RABSA and its agents will be authorised to provide claimant interface services, and must assist claimants and their families to prepare claims, present supporting documents,

<sup>195</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Chapter 7, par 7.92, p. 158-159.

and maintain entitlement to benefits. These services will be accessible, user-friendly, informative and supportive to enable eligible claimants to pursue claims under the RABS. Support and advice services will also be available to claimants who use the internal review process and proceed to the review board.

Claimants will be supported and assisted to submit claims by themselves and without the need to procure the services of a legal or medical professional. The RABSA will not contribute towards a claimant's legal or other professional fees incurred to submit claims. Further, the RABSA will also not contribute towards a claimant's legal or other professional costs to bring matters before the internal review panel or the review board. However, if a claimant is assisted by a legal professional before the Appeal Tribunal, the RABSA will pay towards such costs in accordance with a prescribed tariff, if the review or appeal is successful.

The RABSA will prepare and publish a detailed claims process instruction manual for use by claimants, their families, NGOs, legal and healthcare professionals and other persons and entities involved in providing services relating to road accident benefits. The claims process instruction manual will cover all aspects of benefits entitlement under the scheme.

The RABSA must take proactive steps to ensure that eligible road users have smooth access to medical and healthcare services, and the cash benefits offered by the scheme.

#### **6.14 TRANSACTION COSTS**

The RABS must be as cheap to administer as possible. The RABSA must adopt effective measures to control its overhead and administration costs.

Fees charged by service providers such as healthcare professionals, investigators, lawyers and experts in claims assessment must be tariff-based, monitored and controlled.

#### **6.15 ROAD SAFETY**

Government intends that the RABS will be an integrated social security scheme by providing benefits and incorporating preventative measures. The RABSA will be expected to play a pro-active role in the prevention of road accidents. The organisation must cooperate with the Ministry of Transport and the RTMC to design and implement a road safety and prevention strategy. The RABSA will be empowered to sponsor public awareness campaigns and support measures to raise the levels of traffic law enforcement. Further, the RABSA will seek close cooperation between traffic law enforcement agencies, and conduct research into the causes of road injuries and deaths. The results of the research and data analysis must be provided to authorities and entities involved with the planning, designing and building of roads.<sup>196</sup>

The benefit scheme will link road safety and claims for benefits through:

- a. Awareness campaigns
- b. Using unsafe road behaviour, vehicular and traffic transgressions as an additional "penalty" (surcharges) to strengthen the income of the scheme
- c. Collecting additional surcharges on alcohol sold.

#### **6.16 RESEARCH AND ANALYSIS**

Government will require the RABSA to initiate and conduct research on the nature and extent of injuries and disability, and feed this information into policies and investment in road safety measures. The RABSA must commission and fund research into the incidence and nature of trauma, treatment and outcomes thereof and use the information

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<sup>196</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 1, Recommendations, par 3, p. XXXIII.

to fund programmes to reduce the severity of the impact of trauma, and to improving treatment outcomes.

Since a focal point of the scheme is timely and adequate healthcare, the RABSA will have to undertake research into the availability and cost of medical care, rehabilitation and life care, and enable injured persons to access the appropriate care.

Government requires that the RABSA undertakes ongoing research into its products, services and service delivery policies, while it also monitors trends and experiences to formulate timely policy changes.

#### **6.17 SOCIAL RESPONSIBILITY ROLE**

The RABSA will be authorised to assume a social responsibility role in areas relevant to the benefits and services it pays for. This area will include incidental matters, e.g. projects or programmes to:

- a. Make funds available to train and up-skill emergency medical staff
- b. Develop rehabilitation, life care and required therapeutic skills to treat seriously injured patients more effectively
- c. Sponsor education programmes aimed at improved healthcare, rehabilitation and life care management of injuries
- d. Fund measures to reduce the impact and severity of injuries resulting from road accidents
- e. Improve vocational training, independent living and social rehabilitation for injured road users.

The RABSA's role in social responsibility programmes will be determined by its board with reference to cost-benefit considerations, the financial position of the scheme, specific needs of injured road users and risks to the public entity.

## 7 INSTITUTIONAL ARRANGEMENTS AND GOVERNANCE

### 7.1 GOVERNANCE AND OVERSIGHT

Corporate governance “embodies processes and systems by which corporate enterprises are directed, controlled and held to account”<sup>197</sup>

Oversight entails “reviewing, monitoring and overseeing the affairs, practices, activities, behaviour and conduct”<sup>198</sup> of an administrative authority to ensure that it meets its objectives.

### 7.2 NATURE OF PUBLIC ENTITY

The RABSA will be a national public entity as defined in section 1 of the Public Finance Management Act, 1999 (PFMA) because the entity will be a fund “established in terms of national legislation, fully or substantially funded ... by way of a tax, levy or other money imposed in terms of national legislation and (be) accountable to Parliament”.<sup>199</sup> As is the case with the RAF at present, the RABSA will be regarded as a Schedule 3A national public entity under the PFMA.<sup>200</sup>

### 7.3 CORPORATE GOVERNANCE STRUCTURE

Government’s governance oversight over the RABSA will be structured to include:

- a. Parliament (National Assembly) through the relevant Portfolio Committee and the Standing Committee on Public Accounts (SCOPA)
- b. the Executive Authority
- c. the Board of the new entity.

#### 7.3.1 The National Assembly

The National Assembly has legislative powers<sup>201</sup> and will maintain oversight of the national executive authority and the RABSA as an organ of state<sup>202</sup>. In addition, Parliament will oversee the executive authority who will be required to provide Parliament with “full and regular reports concerning matters under its control”<sup>203</sup>.

#### 7.3.2 Parliamentary Portfolio Committee

Parliament will exercise oversight of the RABSA through the relevant Portfolio Committee linked to the executive authority and through the Standing Committee on Public Accounts (SCOPA). The Portfolio Committee must oversee service delivery and performance in accordance with the mandate of RABSA and its corporate plans. It will review non-financial information such as efficiency and effectiveness measures in delivering services against corporate goals. The oversight must focus on the actual delivery of benefits under the scheme, for example, time to access emergency care, number of injured persons

<sup>197</sup> Department of Public Enterprises. 2002. *Protocol on Corporate Governance in the Public Sector*, p. 3.

<sup>198</sup> National Treasury. 2005. Governance oversight role over state owned entities, p 5-6.

<sup>199</sup> Section 1 of the Public Finance Management Act, 1 of 1999.

<sup>200</sup> It will be most appropriate to categorise RABSA as a Schedule 3A entity. Schedule 1 relates to Constitutional institutions. Schedule 2 relates to major public entities operating as major public business enterprises with large capital structures and which are potentially capable of being privatised. Schedule 3B groups together other national business enterprises which operate for profit, but not on the scale as those in Schedule 2. Schedules 3C and 3D respectively relate to provincial public entities and provincial public enterprises.

<sup>201</sup> Section 55 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>202</sup> Section 55 (2) of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>203</sup> Section 92 (3) of the Constitution.

rehabilitated, time to access income support benefits, number of claims for family support benefits settled per annum, etc.

### 7.3.3 Standing Committee on Public Accounts

The SCOPA will review the annual financial statements and the audit reports of the Auditor-General on the RABSA, consider any financial and audit issues raised, and oversee compliance with the PFMA.

### 7.3.4 The executive authority

The Minister of Transport will act as the executive authority for the new RABSA. This policy principle is based on the following considerations:

- a. The Minister and the Department of Transport are tasked to provide transport infrastructure and transport operations aligned with Government strategies for economic and social development.<sup>204</sup>
- b. The Ministry manages the risks associated with transport through entities such as the Road Traffic Management Corporation.
- c. The key stakeholders in the RABS will be road users who pay the fuel levy, persons injured in road accidents and dependent family members of earners killed in road accidents.
- d. The Minister is the executive authority for a number of transport-related agencies and public entities.<sup>205</sup>
- e. The Minister is a member of the Cabinet Committee for the Social Cluster.<sup>206</sup>

The executive authority will concern itself with the financial viability and risks of the scheme<sup>207</sup>, as well as policy-making and monitoring of policy implementation to ensure that the RABSA effectively delivers social insurance services and benefits. The executive authority will maintain a productive and active role in the governance of the RABSA and in the realisation of its service delivery objectives. Therefore the executive authority will watch over financial and non-financial matters, but be independent from day to day involvement in the business activities of the RABSA.<sup>208</sup>

A major component of the executive authority will be the Joint Ministerial Committee (JMC) which will exercise oversight over the financing mechanism and funding model of the RABS. The JMC and executive authority will review and revise the funding strategies for the RABS against annual actuarial valuations and projections of the RABSA's future liability. At least once per annum, the executive authority and JMC will review the equity, reasonableness and affordability of the benefit levels against broader social security policies, experience under the scheme and availability of resources.

### 7.3.5 The board of the RABSA

The board of directors of the RABSA will act as accounting authority and be ultimately accountable to Government for the performance and affairs of the scheme and entity. In addition, the board will be responsible to the main stakeholders, i.e. the taxpayers and persons injured or affected by death in road accidents, regarding the use of resources to provide benefits and services.

<sup>204</sup> <http://www.dot.gov.za>.

<sup>205</sup> <http://www.dot.gov.za>.

<sup>206</sup> The Presidency 2001. Democratic Governance – restructured Presidency at Work; [www.info.gov.za/otherdocs/2001/presidency](http://www.info.gov.za/otherdocs/2001/presidency).

<sup>207</sup> Such risks include financial, political, reputation and operational

<sup>208</sup> Department of Public Enterprises. 2002. Protocol on Corporate Governance in the Public Sector, p.4.

The board must have effective control over the business and operations of the RABSA and provide strategic direction to executive management to fulfil the mandate of the scheme.

The board will exercise oversight and fiduciary duties in accordance with the provisions of the PFMA by employing the "*utmost care*" to protect the assets and records of the RABSA, "*act with fidelity, honesty, integrity and in the best interests of the public entity...*"<sup>209</sup> prevent prejudice to it, refrain from making personal gains by virtue of holding a position on the board, and by disclosing direct or indirect interests in all matters before the board.

The primary function of the RABSA board will be to exercise "*a collective responsibility to provide effective corporate governance*".<sup>210</sup> In this regard the role and responsibility of the RABSA board will be to<sup>211</sup>:

- a. Devise strategies to achieve the purpose of the organisation in accordance with Government's socio-political and economic policies
- b. "*exercise leadership, enterprise, integrity and judgment*" to achieve long-term sustainability for the RABSA
- c. Ensure that systems, practices and business processes are maintained for effective financial and risk management and internal controls, including internal audit systems and systems to evaluate capital projects
- d. Make sure that assets and liabilities, income and expenditure of the RABS are recorded, protected and managed effectively
- e. Ensure that appropriate, equitable, fair, cost-effective, competitive and transparent procurement systems are operated
- f. Monitor and evaluate the implementation of strategies to achieve organisational goals against corporate plans
- g. Ensure that policies are maintained and practiced to deliver benefits effectively and efficiently
- h. Check for adequate measures to correct or prevent "*irregular expenditure*" or "*fruitless and wasteful expenditure*"
- i. Ensure that adequate information and technology systems enable and support operations, financial controls, risk and performance management
- j. Ensure that effective human resource development practices and succession planning for executive and senior management are upheld
- k. Ensure that the RABSA develops and maintains professional, transparent and reciprocal relations with its stakeholders
- l. Advise the executive authority and the JMC on policy, financing and funding requirements and the liabilities of the entity.

Not only will the board concentrate on the performance of the RABSA, but it has to ensure that the organisation complies with relevant laws, regulations and other statutory requirements. The RABSA board must ensure that an actuarial valuation of the financial position and financing requirements of the RABS is performed annually, and that the results are peer-reviewed by another independent consulting actuary. In addition, the

<sup>209</sup> Section 50 of the Public Finance Management Act, 1 of 1999.

<sup>210</sup> *Report of the Road Accident Fund Commission*. 2002. Vol 2, Chapter 37, par 37.11, p. 1188 with reference to the King II Report on Corporate Governance.

<sup>211</sup> *Report of the Road Accident Fund Commission*. 2002. Vol 2, Chapter 37, par 37.11-37.16, p. 1188-1189 and sections 50 and 51 of the PFMA.

board will be obliged to cooperate constructively with and take guidance from the statutory medical advisory board referred to above.

Since the RABSA board must carry out a wide range of responsibilities, it should be assisted by the following committees: Audit Committee, Risk Management Committee, Remuneration Committee, and a Healthcare Committee.<sup>212</sup>

The RABSA board will be composed of independent, skilled persons with the highest integrity and expertise in financial management, healthcare funding, healthcare services, business management and social security to obtain a *"balance between enterprise and control"*.<sup>213</sup> The members of the board will be appointed by the Minister of Transport, following a public selection process conducted by the Parliamentary Portfolio Committee, and upon recommendation by that Committee.

### 7.3.6 Chief executive officer and executive management

Management of daily operations will vest in the chief executive officer (CEO) and executive management of the RABSA, who will be responsible for the efficient and effective running of the organisation in accordance with strategic decisions of the board and written delegations of authority.

The executive authority will appoint the CEO of the RABSA, upon recommendation of the board, and after the board has had adequate time to consider the candidates.<sup>214</sup>

### 7.3.7 Organisational & operational arrangements to deliver social security

The RABSA must design and maintain business processes, systems and practices to deliver benefits effectively and efficiently in accordance with policy, governance and statutory requirements. Management of the RABSA will be required to deliver benefits against policy standards and benchmarks, monitor claims practices against policies, and take corrective measures to fulfil its mandate. The RABSA will have to establish a network of service providers, agents and partners with appropriate skills, capabilities and capacity to deliver benefits and services timely and effectively. The scheme will link up with information systems across various agencies responsible for collecting information on accidents, injuries and the intensity and costs of treatment.

The RABSA will be required to develop and maintain sound professional and reciprocal relations with its stakeholders.

## 7.4 INDUSTRY STRUCTURE

The industry structure for the RABS incorporates the roles fulfilled and services offered by various role-players in the event of injury or death in a road accident. In terms of Government's policy for the RABS, external role-players and providers will perform functions to enable the RABSA to deliver on its mandate. Table 7.1 highlights some of the complementary roles.

<sup>212</sup> This is aligned to the recommendations of the Protocol on Corporate Governance, adopted by Cabinet in 2003.

<sup>213</sup> *Report of the Road Accident Fund Commission*. 2002. Vol. 2, Chapter 37, par 37.12-37.13, p. 1188 with reference to King II Report.

<sup>214</sup> This recommendation is aligned to Protocol on Corporate Governance, adopted by Cabinet in 2003, as set out in a 2005 report by National Treasury: Governance oversight role over state owned entities, p 16.

**Table 7.1 Industry structure for the RABSA**

RABSA	GOVERNMENT	SAPS	CLAIMS SERVICE PROVIDERS	PREFERRED PROVIDERS	LEGAL PROVIDERS
	<b>NATIONAL</b>				
<ul style="list-style-type: none"> <li>• Manage funds</li> <li>• Finance healthcare</li> <li>• Assist claimants</li> <li>• Receive &amp; process claims</li> <li>• Provide claims information</li> <li>• Manage healthcare providers: costs &amp; quality</li> <li>• Use managed healthcare tools</li> <li>• Call for medical peer review</li> <li>• Internal dispute review</li> <li>• Collect &amp; analyse injury data</li> <li>• Collect &amp; analyse claims data</li> <li>• Manage trauma &amp; injury databases</li> <li>• Manage service level contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Provide financing &amp; timely funding</li> <li>• Link income &amp; liabilities</li> <li>• Provide oversight</li> <li>• Address risks of road use</li> <li>• Provide road infrastructure</li> <li>• Ensure viability of RABS via JMC</li> <li>• Appoint persons for administrative review</li> <li>• Invest assets</li> </ul>	<ul style="list-style-type: none"> <li>• Manage traffic incidents</li> <li>• Collect accident data</li> <li>• Supply accident data to RABSA</li> </ul>	<ul style="list-style-type: none"> <li>• Assist claimants to access benefits</li> <li>• Provide information</li> <li>• Pay claims</li> </ul>	<ul style="list-style-type: none"> <li>• Provide emergency medical services</li> <li>• Provide trauma care</li> <li>• Provide rehabilitation</li> <li>• Provide long-term care</li> <li>• Apply treatment standards</li> <li>• Apply managed healthcare tools</li> <li>• Classify injury &amp; submit data to RABSA</li> <li>• Submit medical records</li> </ul>	<ul style="list-style-type: none"> <li>• Assess disability</li> <li>• Review disability assessed</li> <li>• Resolve disputes on disability</li> </ul>
	<b>LOCAL</b>				
	<ul style="list-style-type: none"> <li>• Enforce traffic laws</li> <li>• Collect surcharges on fines &amp; vehicle registration</li> <li>• Manage traffic incidents &amp; collate data</li> <li>• Maintain roads</li> </ul>				

**7.5 MECHANISMS TO DELIVER SERVICES AND BENEFITS**

The RABSA will be authorised to use several mechanisms to deliver the social security services and benefits. Among those are:

- Preferred medical service providers who agree to deliver goods and services against treatment standards and protocols, at agreed fee structures, and against specific measured outcomes
- Outsourcing of information services to Government information centres and the proposed social security information centres to enable a larger number of people to have access to the benefit scheme
- In-sourcing of appropriate managed healthcare capabilities
- Services via its own internal business processes and systems.



## 8 DETAILS OF BENEFITS AND COST OF SCHEME

### 8.1 INTRODUCTION

The benefit structure and allocation of resources in the RABS reflects Government's policy to target the greatest needs and to cast the social security net as widely as possible. The costs of the scheme reflect the focus on emergency medical care, rehabilitation and seriously injured road users within the realities of limited resources.

### 8.2 INCOME SUPPORT BENEFIT

The income support benefit (for loss of income and loss of earning capacity) will be a monthly benefit payable to persons injured in road accidents. The monthly amount will be determined as follows:

- a. The income of the injured person (as described in par 8.2.1 below)
- b. Multiplied by 75%<sup>215</sup>
- c. Multiplied by a factor reflecting the degree of the loss of income. This factor will depend on the degree of occupational disability and the actual income earned after the accident.
- d. Increasing annually (as described in par 8.2.3 below)

#### 8.2.1 Income used as basis for income support benefit

The income on which the income support benefit is based will be subject to a minimum threshold (to ensure that at least a minimum level of benefit is payable for a 100% disabled person) and a maximum ceiling (to prevent exposure to unlimited losses and comply with principles of social security and solidarity).

The income support benefit for a 100% occupationally disabled road accident victim will be limited to 75% of income. The income support benefit payable to a 100% occupationally disabled road accident victim will be at least equal to the state disability benefit, which is expected to be approximately R12 000 per year from April 2009. The minimum threshold on income is therefore taken as R16 000 per year (resulting in a benefit of R12 000 per year, i.e. 75% of R16 000).

The maximum ceiling on income will be R192 000 per year (before income tax), i.e. twelve times the minimum threshold. It is estimated that only approximately 4%<sup>216</sup> of the total population between age 15 and 65 will earn above this R192 000 per year ceiling in 2009.

**Table 8.1 Percentage of population earning above certain levels of income**

Annual income	Population between 15 and 65	Total population
R 12 000	36%	21%
R 24 000	22%	13%
R 48 000	14%	9%
R 96 000	8%	5%
R 192 000	4%	2%
R 384 000	1%	1%

Source: Calculated from StatsSA Labour Force – Community Survey 2007 interactive data as obtained from their website (<http://www.statssa.gov.za>).

The R16 000 and R192 000 per year are in 2009 monetary terms, and will be adjusted annually to allow for the effects of inflation.

<sup>215</sup> This is generally the maximum level provided by private income protection plans and occupational arrangements.

<sup>216</sup> Information from different sources indicate percentages ranging between 3.5% and 4.6%

If no proof of income is provided, the minimum level of R16 000 per year (in 2009 terms) will be used as the assumed income of the injured.

Income in excess of the income tax threshold (currently R46 000 for the tax year ending February 2009) will only be used for the purpose of calculating the income support benefit if the claimant provides one of the following as documentary evidence:

- a. IRP5 or IT3 documents issued by his/her employer
- b. Income tax returns
- c. Income tax assessments

Where such evidence is provided, income will be taken as the highest income during the three tax years prior to the accident.

For the self-employed, the share of profits in a business not included in personal income tax returns will also be taken into account if documentary proof is provided.

In respect of income between the minimum level of R16 000 per year and the income tax threshold, verifiable documentation in the form of payslips, employer certificates or affidavits (for the informal self-employed) would have to be submitted.

A young road accident victim, who has not yet entered a working environment, may suffer a future loss of income.

The income of scholars and students, who are younger than 25, will be based on average national income, taking their progression to the time of the benefit payment into account. This should be determined annually and be in line with the following:

- a. The national average income, including those not economically active and unemployed (if this is higher than the minimum threshold)
- b. Should an injured person younger than 25 have completed a qualification (e.g. Grade 12 or a degree), income will be based on a factor of the R16 000 threshold, broadly based on the national average of persons with the same highest level of qualification. For example, according to the Labour Force – Community Survey 2007, the average income (including those not economically active and unemployed) of a person who attained, but did not complete, Grade 12 was R2 050 per month in 2007. Allowing for inflationary increases, it should be approximately R2 563 per month in 2009. This is approximately twice the R16 000 annual threshold. To limit the number of groups, and to simplify administration, expected average income by highest level of education will be expressed as follows:

**Table 8.2 Average notional earnings expressed as a factor of R16 000 threshold**

Highest level of education	Factor of R16 000 threshold
Attained Grade 12, not completed	2 x
Grade 12 or 1 year certificate	4 x
Diploma	8 x
Degree	12 x

Source: Derived from the StatsSA Labour Force – Community Survey 2007 results

The loss of income will not be reduced by benefits from occupational schemes (such as income continuation benefits or pension) and the employer contributions to these benefits will therefore also not be included in the income on which benefits are based.

Other fringe benefits will only be considered as part of income if it is of benefit to the individual (e.g. non-taxable allowances for business purposes should be excluded).

RABS benefits will not be subject to further tax in the hands of the recipients. The income to be used to determine the income support benefit will be the income discussed above

minus income tax. It should be noted that, when applying the 2008/9 income tax rates, the R192 000 per year ceiling is equivalent to a R160 820 per year ceiling on after-tax income.

### 8.2.2 Period

The income support benefit is intended for persons with more lasting injuries and disabilities. Payment of the benefit will commence after a waiting period of three months in order for an injury to stabilise to some extent, to protect RABS against frivolous claims and to avoid the high administration costs associated with small claims. The income support benefit will continue until age 60.

The income support benefit payable in the case where an injured person is younger than 18 will only commence at age 18.

Continued entitlement to the income support benefit will be subject to participation in rehabilitation and vocational training programmes to encourage injured claimants to re-integrate into the labour market.

### 8.2.3 Annual inflationary increases

Although it is proposed that annual increases to the benefits will be made to recognise the effects of inflation, such increases cannot be guaranteed, and are subject to affordability in the event of adverse experience. The annual rate of increase will be the same for all beneficiaries entitled to the income support benefit.

### 8.2.4 Deductions

The monthly income support benefit will be reduced to allow for the payment of other state-created, state-funded and state-administered social security benefits, e.g. COIDA, UIF, state disability grants, etc. in order to prevent "double-dipping" from limited public resources.

### 8.2.5 Paying income protection benefits as lump sums

The majority of injured accident victims are expected to have a permanent disability of less than 20%. This may lead to a large number of very small benefits that may be impractical and expensive to pay out on a monthly basis. The RABSA will therefore offer a commutation of monthly benefits below a certain limit to reduce the administration burden and unnecessary costs.

### 8.2.6 Estimated cost of providing benefits

The estimated cost of providing an income support benefit is R3 930 million per year in 2009 monetary terms, or approximately 17.1 cents per litre of fuel sold.

## 8.3 FAMILY SUPPORT BENEFIT

A monthly family support benefit will be payable to the spouse or life partner and dependent children of a breadwinner killed in a road accident. The benefit will be based on the income of the deceased prior to the accident and will be determined as follows:<sup>217</sup>

- a. The spouse or life partner's monthly benefit will be equal to the income of the deceased multiplied by  $2/(4+Z)$ , where Z is the number of children entitled to a benefit. The spouse's benefit will further be reduced by half of the spouse's actual income.

<sup>217</sup> The family support benefit is defined to be broadly in line with current practice where the income of the deceased is apportioned two parts to each parent and one part to each child. It should be noted that the benefit payable to the remaining dependants will change ("be updated") when a child turns 18 years old.

- b. Each child's monthly benefit will be equal to the income of the deceased multiplied by  $1/(4+Z)$ . If there is no surviving spouse or life partner, each child's benefit will be equal to the income of the deceased multiplied by  $1/(2+Z)$ , where Z is the number of children entitled to a benefit.

The income of the deceased will be subject to the same threshold, ceiling and other criteria specified in par 8.2.1 above, except that the 75% multiplier will not be applied. Benefits will be based on income earned. Investment income and benefits received from retirement or disability funds will not be included (for example, if a person who retired early prior to the accident dies before age 60, no family support benefit will be payable.)

#### **8.3.1 Period**

Entitlement to the benefit will be from the date of death of the deceased. No waiting period will apply as the loss is immediate and irreversible. A family support benefit will be payable to the surviving spouse or life partner for a maximum period of 15 years, but not after age 60.

Benefits for children will be paid to the age of majority which is 18 years.

#### **8.3.2 Annual inflationary increases**

Although it is proposed that annual increases to the benefits be provided to recognise the effects of inflation, such increases cannot be guaranteed, and are subject to affordability in the event of adverse experience. The annual rate of increase will be the same for all beneficiaries entitled to the family support benefit.

#### **8.3.3 Deductions**

The monthly family support benefit will be reduced to allow for the payment of other state-created, state-funded and state-administered social security benefits, e.g. COIDA, UIF, state disability grants, etc. in order to prevent "double-dipping" from limited public resources.

#### **8.3.4 Estimated cost of providing benefits**

The estimated cost of providing a family support benefit is R1 000 million per year in 2009 monetary terms, or approximately 4.3 cents per litre of fuel sold.

### **8.4 FUNERAL BENEFIT**

A flat-rate funeral benefit of R10 000 (in 2009 terms) will be paid as a once-off lump sum to the dependants of the deceased. Although it is proposed to adjust this flat-rate benefit annually in order to recognise the effects of inflation, such increases cannot be guaranteed, and are subject to affordability in the event of adverse experience.

The estimated cost of providing a funeral benefit is R150 million per year in 2009 monetary terms, or approximately 0.7 cents per litre of fuel sold.

### **8.5 MEDICAL BENEFITS**

Medical benefits will be the largest component of the RABS benefits. The actual cost will be a fixed amount determined annually and be expressed in terms of cents per litre of fuel sold. The actual amount will depend on the contracts that could be negotiated with service providers. Government estimates that the costs will be approximately as follows (in 2009 monetary terms):

**Table 8.3 Average cost of stated medical benefits in 2009 terms**

Type of medical benefit	Estimated cost (R million)	Estimated cost (cents/litre)
Trauma and general hospital care	R6 000	26.1c
Rehabilitation	R 300	1.3c
Long-term care	R1 000	4.3c
<b>TOTAL</b>	<b>R7 300</b>	<b>31.7c</b>

Source: Based on data from various service providers

It should be noted that the cost of medical benefits estimated includes some services already rendered by the public healthcare sector and included in the budget allocation to the provincial hospitals.

## 8.6 TOTAL ESTIMATED COST

Allowing for the RABSA administration costs of 10% of benefit payments, the estimated total cost of the RABS will be approximately as follows (in 2009 monetary terms):

**Table 8.4 Estimate costs of RABS benefits in 2009 terms**

Benefit	Estimated cost (R million)	Estimated cost (cents/litre)
Income support benefit	R3 930	17.1c
Family support benefit	R1 000	4.3c
Funeral benefit	R 150	0.7c
Medical benefits	R7 300	31.7c
Administration	R1 240	5.4c
<b>TOTAL</b>	<b>R13 620</b>	<b>59.2c</b>

The estimated cost expressed as cents per litre of fuel sold allows for inflationary increases in the fuel levy at a rate equal to a mixture of medical, earnings and price inflation. The rate of increase in the fuel levy is expected to exceed price inflation.

Due to the nature of the timing of payments following an accident, approximately 65% of the payments to be made for the average claim is expected to be paid in the first year after the accident and the remaining balance spread over up to 60 years in the future.

## 9 COMMON LAW REMEDY

### 9.1 THE DILEMMA

Government's proposals on a new benefit scheme for road users continues with the approach adopted under 1996 Road Accident Fund Act, as amended with effect from 1 August 2008. Under the amended Act the common law right to sue for the balance of losses was abolished.

Damages for bodily injury or death sustained may well exceed the limited social security benefits to be made available by RABS. Consequently, the question arises on how losses in excess of benefits paid by RABS should be addressed.

Although the retention or abrogation of the common law right does not affect the financial or legal obligations of the RABS directly, it is of major socio-economic importance and has implications for everyone. Therefore, it is necessary to weigh up whether or not to reintroduce the common law right to enable the recovery of excess losses not paid by the scheme or to continue with the current position in which the common law right has been abolished.

Reintroduction of the common law right will have an impact on the objectives and purpose of the social security scheme. Accordingly, Government has to consider fundamental questions to ensure that objectives for social security, resource allocation, social solidarity and risk containment are achieved.

Questions about the retention or abrogation of the common law right are debatable and involve complex policy issues which may be open to many differences of opinion. In this debate Government is committed to "*respect, protect, promote and fulfil the rights*" and values enshrined in the Constitution.<sup>218</sup>

The argument for the continued abolition of the common law remedy is considered in the context of the state's constitutional obligations, the proposed new benefit scheme and the present challenges which the policy proposals are aiming to address.

### 9.2 THE RAF ACT AND COMMON LAW

Since its introduction in 1946 the MVA legislation has neither provided full cover for all risks of road usage, nor paid full compensation to all road users. The various schemes shared a common legal basis for liability (i.e. negligent driving or wrongdoing by a vehicle owner or driver), but only ever provided cover to some road users, and contained both exclusions from and limits on compensation. Over the years the legal basis for cover essentially remained the same, while the extent of cover, exclusions and limits changed from time to time.

Prior to the amendment of section 21 of the RAF Act (with effect from 1 August 2008), an eligible claimant could only claim compensation from the RAF for loss or damage resulting from bodily injury or death in a motor vehicle accident. The section barred a claim at common law against the wrongdoer driver, owner or employer of the driver, unless the RAF was unable to pay the compensation. However, the Courts recognised a claim at common law against the wrongdoer for losses excluded by the Act or in excess of the RAF's liability.<sup>219</sup> The amendment to section 21 abolishes claims at common law against the owner or driver and against the employer of the driver, except if the RAF is unable to pay or the claim relates to emotional shock sustained by a person other than the primary accident victim.<sup>220</sup>

<sup>218</sup> Section 7(2) of the Constitution of South Africa, 1996.

<sup>219</sup> *Da Silva and Another v Coutinho* 1971(3) SA 123 (A); *Dodd v MMF* 1997 (2) SA 763 (A).

<sup>220</sup> Section 21 of the RAF Act, 1996 was amended by the RAF Amendment Act of 2005.

The RAF Act also provides for the payment of compensation beyond the parameters of common law. Claims of injured road users and dependants of fatally injured breadwinners resulting from so-called "hit-and-run" cases are also compensated, even though the negligent driver or owner of the vehicle is unknown.<sup>221</sup> In "hit-and-run" cases, injured parties or dependants would not be able to exercise their common law rights because they would not know who to sue for their damages.

### 9.3 NATURE AND APPROPRIATENESS OF REMEDY

In order to exercise the common law right, a victim in delict must firstly, identify and find the perpetrator, and secondly, establish negligence on the part of the latter. Exercising the common law right may not bring about appropriate relief or equitable outcomes for a number of reasons, such as risks and complexity in litigation, the remedy is unrealistic for split-second events such as road accidents, multiple factors other than a driver's negligence cause accidents, etc.

### 9.4 SCOPE OF LIABILITY

The South African law of damages, in particular the standards of road behaviour, driving and motor vehicle safety, as well as the principles of calculating losses resulting from personal injury or death in road accidents are well developed by Court precedent. This situation is perhaps attributable to the existence of the RAF and its predecessors who were viewed as statutory institutions with "deep pockets" and therefore able to redress (in economic terms at least) the unfortunate position of a road accident victim. It is debatable whether or not the common law of damages and scope of the wrongdoer's liability would have been as well developed and extensive, had an individual driver and not a statutory fund been the liable party.

The type of damages payable by the RAF under common law differs from the type of market-related benefits usually available to injured parties or beneficiaries in terms of personal insurance cover. Arguably, the basis of the compensation system offered by the RAF and its predecessors has allowed injured road users to access benefits at levels which they would not have been able to do if they had to rely on market-related insurance products or drivers with smaller pockets. The nature of the RAF's liability is not an appropriate remedy for a social insurance scheme based on social security principles.

### 9.5 IMPLICATIONS IF THE REMEDY IS RETAINED

Retention of the common law right to claim the balance of damages attracts the right to sue (as victim) and the risk of being sued (as wrongdoer). Therefore it is imperative to balance this right against the risk. The purpose and objectives of the social security scheme will be undermined if the remedy is retained.

Road users will:

- a. Face the risk of unlimited liability in view of the well established and developed common law principles of the law of delict and damages
- b. Have to acquire liability and personal accident cover (as they may need to protect their own income and have insurance to meet the claims of high income earners)

Liability insurance is only available up to a limit as insurance companies are unwilling to assume unlimited risks. The economic impact of acquiring additional liability insurance will be significant for individual drivers and businesses, and the latter will pass on the expense to the consumer.

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<sup>221</sup> Section 17(1)(b).

## 9.6 IMPLICATIONS IF THE REMEDY IS REMOVED

The removal may be challenged in the Constitutional Court. Removal of the right will not preclude injured road users or dependants of victims killed in road accidents from accessing relief and compensation. Government's policy on the RABS aims to provide a more effective remedy than that available under common law. If the right is removed, some road users may require personal accident cover to protect their own income and lifestyles. Liability insurance to cover the balance of the social insurance benefits will not be required as road users will be protected against individual liability.

## 9.7 A PROPOSAL TO ABOLISH THE COMMON LAW RIGHT

Government has reflected upon complex issues and the implications of either retaining or abolishing the common law right. Careful consideration was given to the state's constitutional obligations. The nature, scope and appropriateness of the common law remedy in the context of road accident compensation were also considered. The undesirable outcomes of the present scheme and the proposals for the new benefit scheme to make available fair and reasonable benefits which will better meet the real needs of the majority of South Africans, were taken into account.

In contemplating the outcomes of policy changes and making difficult policy choices, Government has to balance the interests of society as a whole against the rights of the individual. From the perspective of the population as a whole, the balance is in favour of a proposal to abolish the common law right to claim excess damages from the negligent wrongdoer.

Given the context for the proposed policy changes and the objectives of the new scheme, it is believed that it is rational, sensible and compatible with the core constitutional rights and values to remove the common law right to sue the wrongdoer for full damages. Considering the nature of the right which Government seeks to limit, it is argued that the objectives of the new scheme and the purpose of the limitation are not inconsistent with the Bill of Rights as a whole.

## 9.8 JUSTIFICATION FOR ABOLITION

### 9.8.1 Purpose of the scheme

Government believes that it is a legitimate public objective to require drivers and owners of vehicles, and other road users indirectly (as passengers), to fund a scheme that alleviates the risks of road usage. The scheme is financed by road users for the benefit of road users. All road users pay, irrespective of whether they are exemplary drivers, to alleviate the risks associated with road use. On the one hand, the scheme provides benefits to persons injured and dependants of road users killed in accidents. On the other hand, the scheme removes the risk for road users of being sued for compensation if their conduct is blameworthy.

In devising policies on the funding and structuring of the RABS, there has been an endeavour to provide fair and reasonable statutory benefits. While it is necessary to limit entrenched rights to achieve the overall social security objectives, it is believed that the scheme will offer "*appropriate relief*"<sup>222</sup> and that road users who suffer bodily injury will be afforded an effective statutory remedy instead of the common law remedy. Because the scheme will focus on access to medical care and relief of real economic loss, it is argued that road users will benefit from a more meaningful economic remedy.

### 9.8.2 Re-allocation of resources

The state is not obliged to provide everyone with social security, but to "*take reasonable legislative and other measures, within its available resources, to achieve the progressive*

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<sup>222</sup> As required in Section 38 of the Constitution of South Africa, 1996.



*realisation of the right to social security*".<sup>223</sup> The proposed new benefits scheme aims to channel financial resources and support services to meet more real needs of a greater number of road users and dependants of breadwinners injured or killed in collisions. It is part of the State's strategy to achieve its constitutional obligations by expanding access to healthcare and social security.

The proposals in this policy document must be viewed against the performance and outcomes achieved by the current compensation scheme, as well as the social, economic and historical situation about the problems which the social security measures aim to address. Through its no-fault policy framework for the RABS Government is adopting reasonable measures to:

- a. Broaden the base for cover for road users (i.e. Include a larger number of persons in the safety net)
- b. Enable more poor and vulnerable persons to access benefits
- c. Cover more risks not covered in the past
- d. Ensure that scarce resources alleviate real, and not unspecific or vague needs so that basic human requirements are met first
- e. Prioritise spending on seriously injured persons
- f. Advance access to healthcare and rehabilitation
- g. Prevent claimants from being out-of-pocket by having to pay up-front for medical care and then claiming for expenses later
- h. Remove stumbling blocks to access timely and appropriate emergency and medical care.

The scheme is designed and resources are allocated for the benefit of all road users. It comprises a comprehensive system of benefits aimed at treating injury and enabling rehabilitation to resume economic and social activities. Provision is made for an administrative process to assess and adjudicate claims, with access to the courts. It reduces the need for litigation and the injured party's risks of incurring legal costs to access benefits. Further, it is intended to monitor the outcomes of the scheme, to conduct reviews and implement corrective measures to ensure that the main objectives of the benefit scheme are met.

#### **9.8.3 Expanded cover**

Cover is provided for broader risks associated with road usage than only the negligence or wrongdoing of drivers and owners of vehicles. The new scheme is more inclusive than the current scheme under the RAF Act, and important segments of the population will be entitled to benefits. The scheme affords benefits and/or compensation beyond what a claimant may have been able to claim and recover in common law. For example, it may be difficult to trace and sue the owner of a stray animal that caused an accident and injuries; it would require resources and effort to prove that negligent driving rather than severe weather conditions on a poorly maintained road, caused the collision.

#### **9.8.4 Fewer risks**

It is advantageous to claimants that a statutory claim replaces a common law claim because claimants no longer have to trace, find and sue the wrongdoer, all of which may involve considerable risks, and require both resources and effort. Success is uncertain. On the other hand, the RABSA will be a known defendant designated by statute and obliged to pay benefits and compensation in accordance with legislative provisions. Because the benefit scheme will be funded on an ongoing basis by a dedicated fuel tax, it is the proverbial "defendant with a deep pocket". A claimant does not run the risk of

<sup>223</sup> Section 27(1) and (2) of the Constitution of South Africa, 1996.

enforcing a claim against a debtor without the assets to meet it. Therefore the structure of the new scheme removes significant risks involved in enforcing and securing compensation in common law.

#### 9.8.5 Benefits of scheme

Other aspects of the scheme are also beneficial to claimants. Access to medical treatment will be enhanced. First, since benefits are available on a no-fault basis, delays to determine blame, liability and apportionment are eliminated, and so too the question of which party will be liable to pay for the treatment. Second, all road users, regardless of social standing or own contributing negligence, will benefit by having access to emergency medical care without the risk of having to pay up-front for the medical treatment. In common law the wronged party will have to first pay for the treatment and then recover out-of-pocket expenses and damages from the wrongdoer later. The RABSA will pay service providers directly, so that injured road users will not be liable to pay hospital bills and accounts for medical treatment. Third, providers will be less at risk of not receiving payment for medical services rendered, and this should enable further treatment of the same and other accident victims. Fourth, the scheme will encourage and facilitate rehabilitation to reduce the adverse impact of injury and disability. A claim in common law does not have a curative objective.

#### 9.8.6 Social solidarity

According to the RAFC, a scheme of road accident compensation should “*contribute towards social solidarity in the system of social security, rather than exacerbate disparities between the rich and the poor, the abled and disabled, the advantaged and disadvantaged*”.<sup>224</sup>

Considerations of social solidarity support an argument for the removal of the common law right to sue the wrongdoer. Society as a whole can benefit from a statutory no-fault social security scheme for road users as it gives “*individuals and families the confidence that their level of living and quality of life will not, in so far as is possible, be greatly eroded by any social or economic eventuality*”.<sup>225</sup> The scheme will provide assurance to road users that they will be supported and assisted when injured or deprived of a breadwinner, and also from the economic consequences if they may cause or contribute to the injury of another. In this context of social solidarity, the limitation on the exercise of the common law right is viewed as beneficial to society as a whole. Just as the scheme aims not to leave injured persons or dependants destitute in their hour of need, so too should road users whose actions may have caused the injury, not face potential devastation and become burdens to the state.

If the common law right is retained, the social security scheme will cater for individual situations, and this will introduce inequities and unfairness. A key consideration in reforming the benefit scheme for road users is to avoid perpetuating the disparities and inequities of the system under the RAF Act. Also, it will defeat the values of social solidarity to shift the balance of the burden onto individuals and onto people who hold minimal assets.

#### 9.8.7 Equity considerations

Further equity considerations include the following:

- a. The actions of road users which gave rise to a collision may not be extremely immoral or wicked, and worthy of “punishment” to compensate an injured

<sup>224</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 16, par 16.66, p. 417.

<sup>225</sup> Report of the Road Accident Fund Commission. 2002. Vol. 1, Chapter 16, par 16.62, p. 416.

person. A "*moment of inattention in years of motoring may attract a ruinous liability*".<sup>226</sup> Such a prospect could be inequitable.

- b. The social security coin has two sides: on the one hand, society benefits from the right to expanded no-fault benefits beyond what would be available in common law, and on the flip-side, the right is removed to sue for the shortfall of loss as calculated in common law. This is a principle of *quid pro quo*.
- c. As a further consideration of the *quid pro quo* principle, all road users contribute directly or indirectly to the fuel levy, and in return, funders of the scheme are afforded immunity from liability for their road use. There is a trade-off. If road users were not protected in this manner, they would have to pay the costs of the scheme and liability insurance to cover themselves against the risk of damages claims.
- d. It would be inequitable if an injured road user without means could recover the balance of his damages from a wrongdoer with means, and yet, should the latter be injured by the wrongdoing of the former, the common law claim of the person with means will not be satisfied.
- e. An unfair burden will be placed on the public to purchase both liability and personal injury insurance, if the common law right remains intact. It would be more equitable to encourage road users to provide for the balance of their specific needs which may not be covered by the social security scheme. By securing additional personal cover, individuals can protect their income and lifestyle against the risks of life.

#### 9.8.8 Constitutional precedent

Constitutional precedent exists for the removal of the common law right to sue a wrongdoer in another social insurance scheme operated by the state.

#### 9.8.9 Existing legislation

The common law right to sue the wrongdoer for the balance of the loss not covered by the RAF's limited benefits, has been removed in respect of personal injury and death claims resulting from accidents from 1 August 2008.

#### 9.8.10 Private arrangements

Government will encourage road users who wish to protect income levels and lifestyles to make appropriate private arrangements via personal insurance. It is reasonable to expect that the organised insurance industry will develop innovative products at relevant premiums. Government may conduct investigations into areas where it could be necessary to increase the statutory minimum levels of personal injury cover that parents may acquire for their minor children.

It is also acknowledged that many formal sector employees already have top-up cover in the form of medical scheme membership, pension and disability benefits by virtue of their employment. Government continues to provide a favourable tax incentive to persons who make such provision for their personal and family needs.

<sup>226</sup> Department of Transport. 1998. *White Paper on the Road Accident Fund*. Notice 170 of 1998, *Government Gazette* 18658 of 4 February 1998, p. 49.

## SECTION 4

### 10 IMPLEMENTATION PLANNING

#### 10.1 PUBLIC CONSULTATION

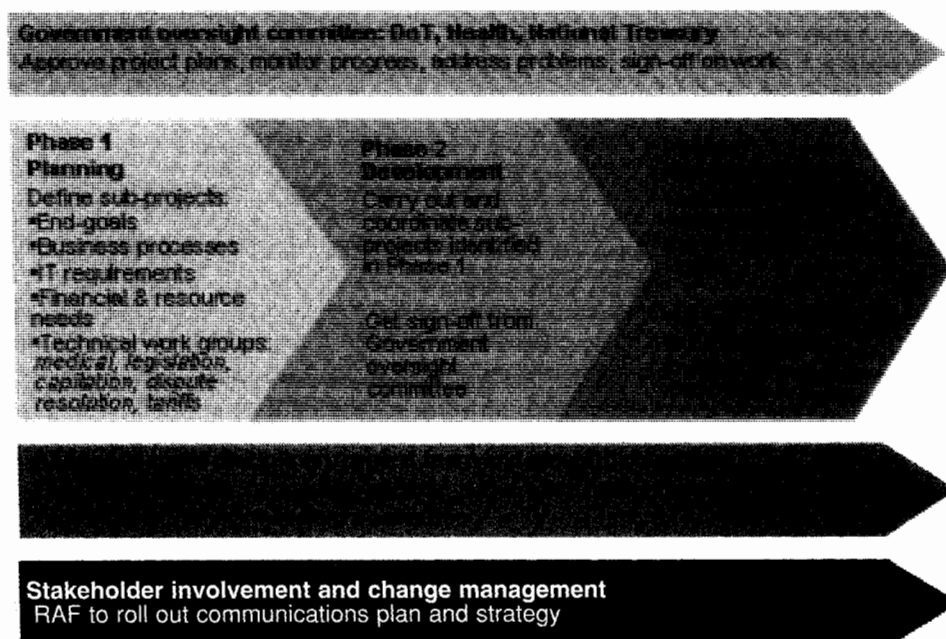
The Department of Transport (DoT) will conduct a further public consultation process on the structure and provision of benefits to persons affected by injury or death in road accidents. This process will include publication of the policy document for comment. Such a process will enable Government to reconsider and re-assess its proposals, and to make adjustments where required.

#### 10.2 IMPLEMENTATION FRAMEWORK

##### 10.2.1 Project management

The project to implement the policy will be carried out in three phases: planning, development and implementation, as depicted in Figure 10.1.

Figure 10.1 Implementation framework for the RABSA



##### 10.2.2 Role-players

Overall project implementation will be carried out by the RAF and oversight exercised by the DoT. Government's oversight function will be strengthened by an oversight committee consisting of senior Government officials from the Department of Health (DoH), DoT and the National Treasury (NT). The Government oversight committee will ensure that planning for implementation is in accordance with the stated Government policy, approve project plans, address problems arising during the project, give advice, receive progress reports from the RAF on the planning and sign off on the three project phases.

The DoT will work closely with the RAF, DoH and the NT to identify and plan for the preparatory work required to implement the RABS.

The RAF will lead the project implementation and a multi-disciplinary project team tasked to plan and prepare for the implementation of the scheme. The multi-disciplinary project team will consist of senior Government officials and experts on healthcare provision, healthcare financing, health economics, business development, change management, information systems technology, finance, and so on.

Core members of this multi-disciplinary team will form the steering committee to lead, facilitate, coordinate, integrate and execute the entire project. Senior Government officers will also be members of the steering committee. This steering committee will develop and adjust the overall project implementation plan which must be approved by the Government oversight committee. The steering committee and Government oversight committee will hold regular work sessions to enable the steering committee to report on progress, raise problems and secure decisions.

The RAF will provide resources to lead the planning phase, and engage external experts, specialists and resources, where required, to assist with the planning. The RAF will work closely with the DoT and Government's oversight committee, and engage stakeholders during the life of the project.

### 10.2.3 Planning phase

Planning will commence as soon as possible after the review of the policy document following the public consultation process. During the planning phase the following activities will take place:

- a. Defining of the end-goals to be achieved in order to put the RABS into operation
- b. Describing the RABSA organisational structure with areas of responsibility, reporting lines, work profiles, skills required, training and development needs
- c. Defining business processes and procedures for the RABSA, including the development of claim forms, claimant information, claims policy manual, channels for assisting claimants and family members, etc
- d. Defining information technology requirements to enable business processes and information links with external sources (e.g. preferred providers, police services), requirements to develop trauma and medical databases, claims and payment systems
- e. Identifying specific technical work groups required to, e.g.:
  - i. draft enabling legislation and regulations
  - ii. develop policies for medical care and rehabilitation
  - iii. develop an implementation plan for the use of the medical assessment framework, adjustments needed thereto to relate disability assessments to occupations, training of medical practitioners to use assessment guides
  - iv. develop the medical peer review mechanism, rules and guidelines
  - v. plan for implementation of managed healthcare policies
  - vi. develop and implement the capitation model for healthcare financing, identify geographical areas, set minimum treatment standards, requests for proposals from potential service providers
  - vii. develop administrative dispute resolution processes and rules, skills required, infrastructure for the review board and appeal tribunal
  - viii. develop tariffs for medical and disability assessments, peer review, medical services rendered by non-preferred providers, legal fees for professional services at the appeal tribunal
  - ix. develop parameters for proposed surcharges on alcohol sold, registration of certain vehicles and traffic transgressions involving motorised vehicles and plan for implementation
- f. Identify areas for transition management and integration across sub-projects and technical work groups

- g. Identify and in-source the required expertise for the various sub-project teams and technical work groups
- h. Define the financial implications and financing requirements to implement the RABS.

Timelines, key objectives and deliverables will be developed for each of the technical work groups and sub-projects which will apply during the development phase of the overall project. Areas of overlap with other sub-projects will be identified to ensure that coordination and integration is planned.

#### **10.2.4 Development phase**

During this phase the projects identified in the planning phase will be carried out and completed by the sub-project teams and technical work groups. This phase will develop the solutions, business requirements and outcomes defined in the planning phase. It is envisaged that members of the multi-disciplinary project team will assume responsibility for sub-projects and technical project work to be completed. The RAF's steering committee will continue to lead, coordinate and integrate the work of the various project teams and technical work groups.

#### **10.2.5 Implementation phase**

The plans and procedures developed in the previous phase will be tested, integrated and implemented. The RAF's steering committee will lead the implementation phase and continue to work closely with the Government oversight committee to obtain sign-off and involve relevant stakeholders.

#### **10.2.6 Stakeholder involvement**

The steering committee and project teams will engage with stakeholders to plan, coordinate and execute the implementation plans. Among the stakeholders to be involved are:

- a. Relevant Government departments (DoH, DoSD, NT)
- b. Public and private sector hospitals (provincial health departments, private sector hospital groups)
- c. Trauma experts, rehabilitation providers and occupational therapists
- d. Organised medical profession
- e. Insurance providers (life insurers, short term insurers, healthcare funders)
- f. Emergency services (provincial, local authorities and private providers)
- g. South African Police Service
- h. Road Traffic Management Corporation
- i. Organised legal profession
- j. Tourism industry
- k. RAF management and employees.

During the planning phase more stakeholders may be identified and engaged.

The RAF will also coordinate an extensive communications plan and strategy to communicate the policy to the broader South African public and the relevant stakeholders.

### **10.3 RUN-OFF OF CURRENT SCHEME**

The RAF will remain responsible for claims arising from road accidents prior to the date of enactment of the RABS. Government will commit parallel supplementary funds towards the run-off of the existing RAF compensation schemes, and liabilities incurred in terms

thereof, in addition to providing financing for the new RABS. The compensation schemes administered by the RAF will be ring-fenced to separate sources of income and expenditure, as well as the reporting on financial results for distinct compensation systems. Once most of the current scheme has run off, the administration of the RAF's statutory undertakings will be transferred to the RABSA.

#### **10.4 MONITORING AND EVALUATION**

The RABS will be subject to on-going monitoring and evaluation to make certain that the objectives of the social insurance scheme are met. The RABSA will be required to introduce appropriate corrective measures to ensure that the RABS achieves the purpose for which it was created.

Among the indicators to measure and monitor policy success will be:

- a. Quality and outcome of medical care:
  - i. speed of access to trauma care
  - ii. outcome of trauma care
  - iii. number of seriously injured road users rehabilitated and rehabilitation outcome (duration and cost)
  - iv. quality of long-term care
  - v. outcomes of case management for seriously injured cases
  - vi. improvement in medical care outcomes of preferred providers measured against treatment standards
  - vii. outcomes of managed healthcare policies to influence the quality and cost of treatment given by preferred providers
- b. Service delivery objectives:
  - i. number of claimants or family members assisted to access benefits and maintain entitlement to benefits
  - ii. prompt payment of income support, family support and funeral payments
  - iii. avoiding unnecessary transaction costs
  - iv. number of disputes settled in the administrative review process (without the need to resort to the courts)
  - v. Allocation of resources where needed
- c. Financial management objectives
- d. Impact of trauma and injury research conducted
- e. Impact of road safety and injury prevention strategies.

#### **10.5 POLICY ADVOCACY**

Upon approval of the final policy framework (following public consultations), the RAF will develop and coordinate an extensive communications plan and strategy to communicate the policy to the broader South African public and the relevant stakeholders. The communications plan will convey the policy objectives and implications thereof for road users and role-players within the benefit scheme. The DoT will approve the communications strategy and exercise oversight over the execution thereof.

#### **10.6 THE WAY FORWARD**

The RAF will lead the development of a project implementation plan as outlined above, allocate resources and involve specialists and experts to implement the project plan.

The DoT will engage with the Department of Health and the National Treasury to implement the Government oversight committee and define its role and responsibilities more clearly.

The DoT will ensure that work commences to draft new legislation and regulations for the RABS.



## 11 CONCLUSION

South Africa's social insurance provision for road accident victims is based on ineffective and unsatisfactory liability and compensation principles. In the current legalistic scheme the primary focus is on wrongdoing, rather than on facilitative and supportive measures to treat, cure, and restore the health and capacity to earn of the injured road user.

The present system favours high earners to the detriment of the poor, and pays out a disproportionate amount for minor afflictions, instead of channelling more resources towards serious and life-changing injuries. Rising legal and delivery costs consume limited public funds intended to alleviate hardship. Not only has the scheme proven to be unreasonable, inequitable, unaffordable and unsustainable in every respect but it also fails to achieve the purpose for which it was created.

Government has developed a more relevant policy framework with more effective remedies to address the risks of injury, disability and death in road accidents. Benefits will be available on a no-fault basis to all injured road users and persons deprived of an earner killed in a road accident. At the same time the scheme offers a safeguard to those unable to afford protection against the risks of road use, whether as the injured party or as the person who causes injury to another. With its strong focus on healthcare, the RABS facilitates a curative approach through timely access to appropriate care and rehabilitation to advance resumption of economic activities and reintegration into social life. Other major policy objectives are to ensure that scarce resources alleviate real loss and meet basic human requirements, rather than unspecific or vague needs, and to prioritise spending on seriously injured persons. Measures are introduced to link financing of the scheme to risks covered, and to deter anti-social behaviour.

The scope and objectives of the scheme are consistent with the state's constitutional obligations to expand the social security safety net and to enhance human dignity. Government's policy framework is also broadly aligned with the RAFC recommendations it has already accepted in principle. Under the RABS a greater number of road users will enjoy social support as more risks will be covered than in the past. A defined and more transparent benefit structure will create more certainty about entitlement. More poor and vulnerable persons will be able to access benefits due to the structure of the health and income benefits, simplified claims processes and the facilitative dispute resolution procedures envisaged.

**APPENDIX A****LIST OF ABBREVIATIONS**

AIDS	Acquired immunodeficiency syndrome
AMA	American Medical Association
BAC	Blood alcohol concentration
CEO	Chief executive officer
COIDA	Compensation of Occupational Injuries and Diseases Act
CPIX	Consumer price index
CSIR	Council for Scientific and Industrial Research
CSSS	Comprehensive Social Security System
DoH	Department of Health
DoSD	Department of Social Development
DoT	Department of Transport
Fund	Road Accident Fund
GDP	Gross domestic product
HIV	Human immunodeficiency virus
ICF	International Classification of Functioning
JMC	Joint Ministerial Committee consisting of the Ministers of Health, Transport and the National Treasury
MVA	Motor vehicle accident
MRC	Medical Research Council
NIMSS	National Injury Mortality Surveillance System of the Medical Research Council
NT	National Treasury
PAYG	Pay-as-you-go method of funding
PFMA	Public Finance Management Act,
PIC	Public Investment Corporation
RABS	Road Accident Benefit Scheme
RABSA	Road Accident Benefit Scheme Administrator
RAF	Road Accident Fund
RAFC	Road Accident Fund Commission
RTMC	Road Traffic Management Corporation
SARS	South African Revenue Service
SCOPA	Standing Committee on Public Accounts in Parliament
UIF	Unemployment Insurance Fund
WHO	World Health Organisation

## APPENDIX B

### DEFINITIONS OF TERMINOLOGY

Actuarial deficit	The amount by which the actuarial liabilities exceed assets.
Actuarial liabilities	The present value of all future payments relating to claims that occurred up to the date of the valuation, whether the claims have been reported or not.
Capitation model	Capitation arrangements to finance healthcare benefits enable a defined population (road accident victims) to access a specific menu of healthcare services against the payment by a third party funder (the RABSA) of a fixed monthly fee. The payment remains the same irrespective of the number of services provided. At the other end of the spectrum is payment of medical accounts of service providers on a presented in a case-by-case manner in terms of a fee-for-service approach.
Causal connection	A direct factual link between the conduct of a wrongdoer and the harm brought about or damage inflicted on another person
COIDA claim	A claim by the Compensation Commissioner in terms of sec 36 of the Compensation for Occupational Injury and Diseases Act, (COIDA) 130 of 1993. Sec 36 permits the Compensation Fund to recover the damages it paid for an occupational injury caused by a party other than the employer or employee, from the wrongdoing third party. If the employee was on duty and injured in a motor vehicle accident caused by a third party, claims would arise against both the RAF and the Compensation Fund. The latter may recover the damages it paid for the same injury from the RAF.
Collateral benefit	Additional compensation or benefits paid from other sources (e.g. employment contract, private provision or public sources) for the same injury, condition or disability.
Common law	It is the law of the land as developed through judicial precedent by the Courts and not enacted in Acts of Parliament. In South Africa the common law derives its authority from the Constitution and its historic base from the legal rules and principles drawn from Roman-Dutch and English law.
Compensation	A financial or pecuniary remedy which is awarded to a person who has sustained an injury or suffered damages in order to replace the loss caused by the injury. Money is paid as reparation for the damages or loss in an effort to restore the injured party to the financial position he or she would have held, but for the accident or injury.
Comprehensive social security system	A range of social security arrangements comprising collective and individual social, fiscal, occupational and welfare measures, of private, public and mixed origin aimed at providing social cover to members of society. In South Africa it includes social relief, social assistance, social insurance and voluntary provision.
Delict, law of	A delict is a civil wrong which causes harm or loss to another person and can be measured in financial terms.

Delictual action	Legal action instituted for loss or damage caused by the wrongful and blameworthy conduct of another person. The object of the action is to prove wrongdoing and loss, and to recover the financial value of the loss.
Dependant's claim	A claim by a surviving spouse or legally dependent minor child for loss of support following the death of a breadwinner.
Diesel rebate system	Diesel rebates are granted to certain economic sectors to recognise their level of off-road diesel consumption. Industries which qualify for 100% diesel concessions are the fishing, coastal shipping, offshore mining and rail freight sectors which do not use the road network in the consumption of diesel. ESKOM also claims a diesel rebate. The fuel levy income of the RAF is reduced by the diesel rebate system.
Disability	The alteration of an individual's capacity to meet personal, social or occupational demands or statutory or regulatory requirements because of an impairment. In the context of income support benefits for road accident victims, disability is a condition that reduces a person's capacity to perform his or her own occupation and alternative occupations for which the person may be qualified.
Emotional shock of secondary victim	Emotional shock of the secondary victim may be described as a psychiatric or psychological illness or disorder resulting from the shock in observing or learning of the death or injury in an accident of another person who was the primary victim. Such claims against the RAF have been recognised by South African courts, but have been excluded in the RAF Act in respect of accidents from 1 August 2008.
Financing mechanism	The term refers to the way the income received by a fund is defined, for example, the financing mechanism for the RAF is a levy charged on fuel sold.
Full funding	In a fully funded scheme, benefits are financed when the accident occurs, irrespective of when the benefit is payable. Sufficient assets or funds are set aside in a financial year to meet the claims incurred in that year, even if the claims may only be paid in later years.
Funding method	The term refers to the timing of receipt of the income, for example whether income is received when benefits are payable (PAYG method) or whether income is received when accidents occur and a fund is built up equal to the expected present value of benefits payable in respect of accidents that have occurred (fully funded scheme)
Funeral costs or expenses	If the RAF is liable to pay a claim for funeral expenses, it pays the reasonable and necessary costs incurred by the claimant to bury, inter or cremate the deceased accident victim.
General damages	Non-financial or non-economic loss suffered by victim; paid for pain and suffering, loss of amenities of life, shock, disfigurement, and curtailed life expectancy.
Gross domestic product	The total market value of all final goods and services produced in a country in a given year, equal to total consumer, investment and government spending, plus the value of exports, minus the value of imports.
Impairment	A deviation from normal in a body part or organ system and their functioning; the loss, loss of use or derangement of any body part, system or function.

Increase in provision for outstanding claims	The annual financial provision to meet claims incurred in that financial year.
Indemnity insurance	Indemnity insurance provides security against loss or damage caused to another person, e.g. the driver of a vehicle may purchase indemnity cover as security against the risk of causing damage to the property of another person. The RAF offers indemnity insurance to drivers and owners of vehicles who cause accidents and inflict personal injury losses on third parties—the RAF steps in to take over the liability of the wrongdoer.
Liability for outstanding claims	The term refers to claims which have arisen from accidents that occurred, but those claims have either not been submitted to the RAF or are not yet settled or paid. In essence, the liability for outstanding claims represents the value of “the promise” made in terms of the RAF legislation to pay compensation to injured persons or dependants of those killed on the roads.
Liability insurance	Form of insurance for people at risk of being sued by third parties for negligence or wrongdoing and harm that may be caused to a third party. The insured is the person at risk of causing harm and loss to another (a third party). See indemnity insurance. The RAF offers liability insurance, rather than personal accident cover.
Loss of earnings	Income lost due to injury and temporary or permanent disability between the date of accident and date of settlement of the claim is referred to as past loss of earnings. Future loss of earnings includes the income reasonably expected to be lost after the settlement date of the claim due to ongoing disability, or future medical treatment or earlier retirement due to injury.
Loss of support	Past loss of support refers to the appropriate portion of past loss of earnings of a deceased breadwinner that is awarded to a dependant. The dependant’s right to claim loss of support arises upon the death of the breadwinner. Future loss of support refers to the appropriate portion of future loss of earnings of a deceased breadwinner, and to which the dependant would have been entitled to, if the breadwinner had not died in the accident.
Medical expenses or medical costs	Past medical expenses or costs include the expenses incurred for hospitalisation, surgery, therapy and treatment, rehabilitation, medication and pharmaceuticals, assistive devices, attendant care, etc. and incurred between date of accident and settlement of the claim. Future medical costs or expenses include expenses for ongoing medical services, treatment, therapy, institutionalised care, assistive devices and attendant care required by a seriously injured person after settlement of the claim, or a medical intervention at some future date after settlement of the claim, e.g. follow-up or corrective surgery.
Non financial loss or non pecuniary loss	This includes pain, suffering, shock, disfigurement, loss of amenities of life (general damages) and cannot be expressed in terms of an economic value for a specific loss.

<b>Pay-as-you-go (PAYG) system</b>	In a PAYG scheme, benefits are financed only when paid irrespective of when the accident occurred. Income for the scheme is equal to the claims expected to be paid in a financial year, irrespective of when liability for the claim was incurred.
<b>Personal injury claim</b>	Claim for loss or damages caused by injury to the physical body and psyche of the claimant.
<b>Real financial loss</b>	Loss or damage that can be measured and calculated in monetary terms for costs and expenses incurred and income lost due to injury or death.
<b>Post-morbid</b>	After the injury
<b>Road Accident Fund Commission</b>	A statutory commission of inquiry was appointed by the President to enquire into and make recommendations regarding a reasonable, equitable, affordable and sustainable system for the payment by the Road Accident Fund of compensation or benefits, or a combination of compensation and benefits, in the event of the injury or death of persons in road accidents in South Africa. It commenced with its task on 1 June 1999 and reported in 2002. The Hon Ms Justice Kathleen Satchwell was appointed as the Chairperson. She was assisted by Ms Mangwasi Victoriah Phiyega, a senior executive manager, and Mr Zakhele Sithole, a chartered accountant. The Commission recommended extensive reforms to the RAF compensation system to advance constitutional rights to social security, healthcare and dignity.
<b>Road Traffic Management Corporation</b>	Public entity established in terms of the Road Traffic Management Corporation (RTMC) Act, No. 20 of 1999 to enhance the overall quality of road traffic management and service provision in South Africa and to strengthen the cooperation and coordination between the national, provincial and local spheres of government in the management of road traffic.
<b>Secondary victim</b>	A secondary victim is not directly involved in the collision and does not sustain a physical injury, and may not even have been in danger of being injured.
<b>Social insurance funds</b>	In South Africa the social insurance funds are the Road Accident Fund, the Unemployment Insurance Fund and the statutory compensation funds for workers. The Compensation Fund under the Occupational Injuries and Diseases Act (COIDA), 130 of 1993 is administered by the Department of Labour for the benefit of workers outside the mining and construction sectors, and is regarded as the main fund. Compensation for mine workers is paid from the Mine and Works Fund.
<b>Supplier claim</b>	A supplier claim is submitted by a medical services provider who has treated or provided goods and services to an injured person who is eligible to claim compensation from the RAF for loss or damages due to personal injury. It is submitted in terms of 17(5) of the RAF Act.
<b>Taylor Committee</b>	Prof Vivienne Taylor was the Chairperson of a committee of experts, appointed by Cabinet to inquire into and make recommendations to Government on a comprehensive social security system. The Committee was officially known as the Committee of Inquiry into Comprehensive Social Security and it reported to Government in 2002.

Undertaking	The provisions of sec 17 (4) of the RAF Act enable the RAF to provide a statutory undertaking for the costs of future hospitalisation of a claimant, or treatment required by, or the provision of goods and services to a claimant. The RAF undertakes to pay for such future or on-going medical costs after settlement of the personal injury claim, (e.g. a claimant may require corrective surgery after the claim is settled, or a claimant may be rendered a paraplegic and requires regular therapy, medication and assistive devices) after the costs have been incurred and on proof thereof.
Uninsured vehicle	A vehicle not covered by liability insurance, or the owner or driver of such a vehicle. Prior to the introduction of the fuel levy system, motorists were required by law to purchase compulsory third party insurance to cover their liability for personal injuries caused in vehicle accidents.
Unrealised loss	This refers to prospective losses or future losses which have not been suffered. Such losses are more uncertain and speculative as they relate to an uncertain future.
Wrongdoer	Person at fault or to blame for loss or damage caused wrongfully to another person